

Statutory Document No. 2016/0230



*Customs and Excise Act 1993*

## **PSYCHOACTIVE SUBSTANCES ACT 2016 (APPLICATION) ORDER 2016**

*Approved by Tynwald:*

*Coming into operation in accordance with article 2*

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The Treasury makes the following Order under sections 1 and 3 of the Customs and Excise Act 1993.

### **1 Title**

This Order is the Psychoactive Substances Act 2016 (Application) Order 2016.

### **2 Commencement**

- (1) This Order comes into operation when it is approved by Tynwald<sup>1</sup>.
- (2) However, when it is approved it shall be deemed to have come into operation on 12 August 2016<sup>2</sup>.

### **3 Application of the Psychoactive Substances Act 2016**

- (1) The Psychoactive Substances Act 2016<sup>3</sup> (“the applied legislation”) shall have effect in the Island, as part of the law of the Island, subject to the exceptions, modifications and adaptations in the Schedule to this Order.
- (2) The text of the applied legislation is annexed to this Order.

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<sup>1</sup> Section 3(1) of the Customs and Excise Act 1993 provides that an order under section 1 shall be laid before Tynwald as soon as practicable after it is made (and in any case not later than the second sitting of Tynwald following the making of the order) and if at the sitting at which it is laid Tynwald fails to approve the order it shall cease to have effect.

<sup>2</sup> Section 3(2) of the Customs and Excise Act 1993 provides that an order under section 1 may be made retrospective and be deemed to have come into operation from such day or days as may be specified in the order, not being earlier than the date on which the corresponding provision had effect in the United Kingdom. In this case, the Psychoactive Substances Act 2016 came into force on 26 May 2016.

<sup>3</sup> 2016 c.2 (of Parliament).

**MADE**

*Minister for the Treasury*



## SCHEDULE

[article 3]

**EXCEPTIONS, MODIFICATIONS AND ADAPTATIONS SUBJECT TO WHICH  
THE PSYCHOACTIVE SUBSTANCES ACT 2016 (C.2 OF PARLIAMENT) SHALL  
HAVE EFFECT IN THE ISLAND**

<b>Provision</b>	<b>Subject matter</b>	<b>Exception, modification or adaptation</b>
1	Overview.	Omit subsection (5).
3	Exempted substances	Omit subsections (2) to (5).
6	Aggravation of offences under section 5	<p>(1) In subsection (5), for the definition of “school” substitute —</p> <p style="margin-left: 2em;">❏ “school” has the same meaning as in section 59 of the Education Act 2001 (of Tynwald). ❏.</p> <p>(2) For subsection (10) substitute —</p> <p style="margin-left: 2em;">❏ (10) In this section, “custodial institution” has the same meaning as —</p> <p style="margin-left: 4em;">(a) that given to an “institution” in section 26 of the Custody Act 1995 (of Tynwald); and</p> <p style="margin-left: 4em;">(b) that given to “secure accommodation” in section 102 of the Children and Young Persons Act 2001 (of Tynwald). ❏.</p>
8	Importing or exporting a psychoactive substance.	(1) In subsection (3), for “1971” substitute ❏ 1976 (of Tynwald) ❏.

		(2)	In subsection (4), for “5” and “1979” respectively substitute <del>“188”</del> and <del>“1986”</del> (of Tynwald). <sup>22</sup>
		(3)	Add new subsection (6) —
			<div style="border-left: 1px solid black; padding-left: 10px;"> <p><del>“(6)”</del> In this section —</p> <p>(a) “import” and “importing” includes the removal of a substance from the United Kingdom to the Island; and</p> <p>(b) “export” and “exporting” includes the removal of a substance from the Island to the United Kingdom.<sup>22</sup></p> </div>
9	Possession of a psychoactive substance in a custodial institution.	Omit.	
10	Penalties	Substitute the following —	
			<div style="border-left: 1px solid black; padding-left: 10px;"> <p><del>“(10)”</del> A person guilty of an offence under sections 4 to 8 is liable —</p> <p>(a) on summary conviction to custody for a term not exceeding 6 months, a fine not exceeding £5,000, or both; or</p> <p>(b) on conviction on information, to custody for a term not exceeding 7 years, a fine, or both.<sup>22</sup></p> </div>
11	Exceptions to offences	(1)	In subsection (1), for “listed”

substitute **43** included **22**.

(2) In subsection (3), omit paragraph (f).

(3) Omit subsection (4).

(4) For subsection (5) substitute —

**43**(5) Before making any amendment to this section the Treasury must consult —

(a) the Advisory Council on the Misuse of Drugs; and

(b) any other person that the Treasury considers appropriate. **22**.

(5) Omit subsections (6) and (7).

12 Meaning of “prohibited activity” Omit.

13 Prohibition notices Omit.

14 Premises notices Omit.

15 Prohibition notices and premises notices: supplementary Omit.

16 Further provision about giving notices under sections 13 to 15 Omit.

17 Meaning of “prohibition order” (1) In subsection (2), omit paragraph (a).

(2) For subsection (3) substitute —



- 3(3) In this section, “prohibited activity” means any of the following activities —
- (a) producing a psychoactive substance that is likely to be consumed by individuals for its psychoactive effects;
  - (b) supplying such a substance;
  - (c) offering to supply such a substance;
  - (d) importing such a substance; or
  - (e) exporting such a substance. 2.

(3) After subsection (3), add new subsections (4) and (5) —

3(4) The carrying on by a person of an activity listed in any of paragraphs (a) to (e) of subsection (3) does not constitute carrying on of a prohibited activity if the carrying on of the activity by that person would not be an offence under this Act by virtue of section 11.

(5) In subsection (3), “importing” includes the removal of a psychoactive substance

				from the United Kingdom to the Island, and “exporting” includes the removal of such a substance from the Island to the United Kingdom. <b>22</b> .
18	Prohibition orders on application	Omit.		
19	Prohibition orders following conviction	(1)	In subsection (2)(b), omit “or, in Scotland, discharging the person absolutely”.	
		(2)	In subsection (5), omit paragraph (c).	
20	Premises orders	Omit.		
21	Applications for prohibition orders and premises orders	Omit.		
22	Provision that may be made by prohibition orders and premises orders	(1)	In subsection (1) -	
		(a)	omit “or a premises order”; and	
		(b)	omit “or the requirement referred to in section 20(2) (as the case may be)”.	
		(2)	In subsection (2), for “Subsections (3) to (6)” substitute <b>23</b> Subsections (3) to (5) <b>24</b> .	
		(3)	In subsection (3), omit “or a premises order”.	
		(4)	In subsection (6) omit “or the premises order”.	
		(5)	In subsection (10), omit “or the premises order (as the case may be)”.	



		(6)	For subsection (11) substitute —
			<p><b>(11)</b> For the purposes of this section a person (other than a mortgagee not in possession) owns premises if —</p> <p>(a) the person is entitled to dispose of the fee simple, whether in possession or reversion; or</p> <p>(b) the person holds or is entitled to the rents and profits of the premises under a lease that (when granted) was for a term not less than 3 years. <b>22</b>.</p>
		(7)	In the heading, omit the words “and premises orders”.
23	Enforcement of access prohibitions	(1)	For subsection (2) substitute —
			<p><b>(2)</b> In this section, “authorised person”, in relation to an access prohibition imposed by a prohibition order under section 19, means a relevant enforcement officer or a person authorised by —</p> <p>(a) the Chief Constable; or</p> <p>(b) the Treasury. <b>22</b>.</p>

		(2)	Omit subsection (3).
24	Access prohibitions: reimbursement of costs	(1)	For subsection (2) substitute -  <div style="border-left: 1px solid black; padding-left: 10px;"> <p><b>23</b> (2) Those persons are –</p> <p>(a) the Chief Constable;</p> <p>(b) the Treasury;</p> <p>(c) a local authority. <b>22</b>.</p> </div>
		(2)	For subsection (6) substitute –  <div style="border-left: 1px solid black; padding-left: 10px;"> <p><b>23</b> (6) In this section, “the court” means –</p> <p>(a) the court that made the order, except where paragraph (b) applies; or</p> <p>(b) where the court that made the order was a juvenile court but the person against whom the order was made is aged 18 or over at the time of the application, a magistrates’ court. <b>22</b>.</p> </div>
25	Access prohibitions: exemption from liability		In subsection (3), for “1998” substitute <b>23</b> 2001 (of Tynwald) <b>22</b> .
26	Offence of failing to comply with a prohibition order or premises order	(1)	In subsection (1), omit “or a premises order”.
		(2)	For subsection (2) substitute –

		<p><b>23</b>(2) A person guilty of an offence under this section is liable —</p> <p>(a) on summary conviction to custody for a term not exceeding 6 months, a fine not exceeding £5,000, or both; or</p> <p>(b) on conviction on information, to custody for a term not exceeding 7 years, a fine, or both. <b>22</b>.</p>
27	Offence of failing to comply with an access prohibition, etc	<p>For subsection (4) substitute —</p> <p><b>23</b>(4) A person guilty of an offence under subsections (2) or (3) is liable on summary conviction to custody for a term not exceeding 6 months, a fine not exceeding £5,000, or both. <b>22</b>.</p>
28	Variation and discharge on application	<p>(1) In subsection (1) —</p> <p>(a) omit “or a premises order”; and</p> <p>(b) omit paragraph (a).</p> <p>(2) For subsection (2) substitute —</p> <p><b>23</b>(2) Where a prohibition order is made under section 19, the court may also vary or discharge the order on the application of the Treasury. <b>22</b>.</p> <p>(3) Omit subsections (3) to (5).</p>

		(4)	In subsection (6), for paragraph (c) substitute —		
			<table border="0"> <tr> <td style="border-right: 1px solid black; padding-right: 10px;">(c)</td> <td>where the court that made the order was a juvenile court but the person against whom the order was made is aged 18 or over at the time of application, a magistrates’ court. <del>22</del>.</td> </tr> </table>	(c)	where the court that made the order was a juvenile court but the person against whom the order was made is aged 18 or over at the time of application, a magistrates’ court. <del>22</del> .
(c)	where the court that made the order was a juvenile court but the person against whom the order was made is aged 18 or over at the time of application, a magistrates’ court. <del>22</del> .				
		(5)	In subsection (7) —		
		(a)	in paragraph (a), for “youth” substitute <del>23</del> juvenile <del>22</del> ; and		
		(b)	omit “a magistrates’ court or, in Northern Ireland,”.		
		(6)	In subsection (8), omit paragraph (a).		
29	Variation following conviction	(1)	In subsection (1), on both occasions they occur, omit “or a premises order”.		
		(2)	In subsection (2), omit “or (as the case may be) the premises order”.		
		(3)	In subsection (3), for “sections 24 and 28” substitute <del>23</del> section 28 <del>22</del> .		
		(4)	In subsection (4)(b), omit “or, in Scotland, discharging the person absolutely”.		
30	Appeals against making of prohibition orders and premises orders	(1)	Omit subsections (1) to (4).		
		(2)	In the heading, omit “and premises orders”.		
31	Appeals about variation and discharge	(1)	For subsection (1) substitute —		
			<table border="0"> <tr> <td style="border-right: 1px solid black; padding-right: 10px;">(1)</td> <td>An appeal may be</td> </tr> </table>	(1)	An appeal may be
(1)	An appeal may be				

			made against a decision under section 28 to the Staff of Government Division. <b>22</b> .
		(2)	In subsections (6) and (7), omit “or a premises order”.
		(3)	In subsection (6), for “sections 24 and 28” substitute <b>24</b> section 28 <b>22</b> .
32	Nature of proceedings under sections 19 and 29, etc	(1)	In subsection (1), omit “(like court proceedings under section 18, 20 or 28)”.
		(2)	Omit subsection (5).
		(3)	For subsection (6) substitute —
		<b>24</b> (6)	A prohibition order may be made or varied as mentioned in sections 19(2)(b) or 29(4)(b) (as the case may be) in spite of anything in sections 6 and 7 of the Criminal Justice Act 1963 (of Tynwald) (which relate to orders discharging a person conditionally or absolutely and their effect). <b>22</b> .
33	Special measures for witnesses: England and Wales	Omit.	
34	Special measures for witnesses: Northern Ireland	Omit.	
35	Transfer of proceedings from youth court	(1)	On each occasion, for “youth” substitute <b>24</b> juvenile <b>22</b> .
		(2)	In subsection (2), for paragraphs (a) and (b) substitute <b>24</b> a magistrates’ court <b>22</b> .

		(3)	In the heading, for “youth” substitute <b>“juvenile”</b> .
36	Power to stop and search persons	(1)	In subsection (1) -
		(a)	for “police or customs officer” substitute <b>“relevant enforcement officer”</b> ; and
		(b)	for “sections 4 to 9”, substitute <b>“sections 4 to 8”</b> .
		(2)	Omit subsection (4).
37	Power to enter and search vehicles		For “police or customs officer”, on each occasion it occurs, substitute <b>“relevant enforcement officer”</b> .
38	Power to board and search vessels and aircraft		For “police or customs officer”, on each occasion it occurs, substitute <b>“relevant enforcement officer”</b> .
39	Power to enter and search premises	(1)	In subsection (1), after “justice”, on both occasions, insert <b>“of the peace”</b> .
		(2)	For subsection (2) substitute —
		<b>“(2)</b>	A search warrant may be issued only on the application of a relevant enforcement officer. <b>”</b> .
		(3)	In subsection (3)(b), omit “in the case of a warrant issued in England and Wales or Northern Ireland,”.
		(4)	Omit subsection (6).
40	Further provision about search warrants	(1)	For subsection (2) substitute —
		<b>“(2)</b>	The application must be supported by an information in writing. <b>”</b> .

		(2)	In subsection (3), omit from “In the case of” to the end.
		(3)	For subsection (7) substitute —
			<p><b>66</b>(7) Schedule 3 contains further provisions about applications for search warrants and search warrants issued. <b>62</b>.</p>
		(4)	In subsection (8), omit “issued in England and Wales or Northern Ireland”.
43	Powers of seizure, etc	(1)	In subsection (1), for “police or customs officer” substitute <b>66</b> relevant enforcement officer <b>62</b> .
		(2)	In subsection (5)(a), for “sections 4 to 9” substitute <b>66</b> sections 4 to 8 <b>62</b> .
44	Excluded items	(1)	For subsection (2) substitute —
			<p><b>66</b>(2) “Excluded items” means —</p> <ul style="list-style-type: none"> <li>(a) items subject to legal privilege;</li> <li>(b) excluded material; and</li> <li>(c) special procedure material,</li> </ul> <p>within the meaning given to those terms by the Police Powers and Procedures Act 1998 (of Tynwald). <b>62</b>.</p>
		(2)	Omit subsections (3) and (4).

48	Offences in relation to enforcement officers	(1)	For subsection (4) substitute —
			<p><b>43</b> (4) A person who is guilty of an offence under this section is liable on summary conviction to custody for a term not exceeding 6 months, a fine not exceeding £5,000, or both. <b>22</b>.</p>
50	Power of police, etc to dispose of seized psychoactive substances	(1)	<p>In subsection (1), for “police or customs officer” substitute <b>43</b> relevant enforcement officer <b>22</b>.</p>
		(2)	For subsection (4) substitute —
			<p><b>43</b> (4) In this section “enactment” includes an enactment contained in subordinate legislation. <b>22</b>.</p>
51	Forfeiture of seized items by court on application	(1)	<p>In subsection (1), for “the appropriate court” substitute <b>43</b> a magistrates’ court <b>22</b>.</p>
		(2)	Omit subsection (11).
52	Appeal against decision under section 51		For subsection (3) substitute -
			<p><b>43</b> (3) An appeal under this section is to the Staff of Government Division. <b>22</b>.</p>
53	Return of item to person entitled to it, or disposal if return impracticable		For subsection (5) substitute —
			<p><b>43</b> (5) In this section, “the appropriate court” means —</p>
			<p>(a) where the person making the application is an individual who is under the age of 18, a juvenile court; and</p>



		(b)	in any other case, a magistrates' court. <del>22</del> .
54	Forfeiture by court following conviction	(1)	In subsection (1)(a), for "sections 4 to 9" substitute <del>23</del> sections 4 to 8 <del>22</del> .
		(2)	In subsection (2) —
		(a)	in paragraph (a), omit "or (c)";
		(b)	in paragraph (b), for "Crown Court", on both occasions, substitute <del>24</del> Court of General Gaol <del>22</del> ; and
		(c)	omit paragraph (c).
		(3)	In subsection (11) —
		(a)	in each of paragraphs (a), (c) and (d), for "sections 4 to 9" substitute <del>23</del> sections 4 to 8 <del>22</del> ;
		(b)	omit paragraph (b).
55	Application of Customs and Excise Management Act 1979	(1)	For "1979", on each occasion it occurs, substitute <del>25</del> 1986 (of Tynwald) <del>22</del> .
		(2)	In subsection (1), for "164" substitute <del>26</del> 166 <del>22</del> .
		(3)	In subsection (2)(a)(ii), for "United Kingdom" substitute <del>27</del> Island <del>22</del> .
		(4)	In subsection (4), for "5" substitute <del>28</del> 188 <del>22</del> .
		(5)	After subsection (4) add —
			<del>29</del> (5) In this section —

		<p>(a) “import” and “importing” includes the removal of a substance from the United Kingdom to the Island; and</p> <p>(b) “export” and “exporting” includes the removal of a substance from the Island to the United Kingdom.</p> <p>(6) The exercise of any power under this Act, and offences under section 8 of this Act, are assigned matters for the purposes of the Customs and Excise Management Act 1986 (of Tynwald). <del>22</del>.</p>
		(6) In the heading of the section, for “1979” substitute <del>23</del> 1986 <del>22</del> .
56	Offences by directors, partners, etc	Omit subsection (4).
57	Providers of information society services	Omit.
58	Review	<p>In subsection (1) —</p> <p>(a) for “Secretary of State” substitute <del>24</del> Treasury <del>22</del>; and</p> <p>(b) for “Parliament” substitute <del>24</del> Tynwald <del>22</del>.</p>
59	Interpretation	<p>(1) In subsection (1) —</p> <p>(a) omit the following</p>

definitions —  
 “access prohibition”;  
 “designated NCA officer”;  
 “general customs function”;  
 “general customs official”;  
 “justice”;  
 “local authority”;  
 “police or customs officer”;  
 “premises notice”;  
 “premises order”;  
 “prohibited activity”;  
 “prohibition notice”;  
 “prohibition order”; and  
 “senior officer”;

(b) at the appropriate places, insert the following definitions —

☒ “customs officer” means an officer of customs and excise within the meaning given in section 184(1) of the Customs and Excise Management Act 1986 (of Tynwald);”;

“police officer” means a constable within the meaning of the Police Act 1993(of Tynwald);

“Treasury” means the Department of that name established under section 1 of the Government Departments Act 1987 (of Tynwald);☒;

		(c)	in the definition of “premises” –
		(i)	in paragraph (b), for “section 1 of the Mineral Workings (Offshore Installations) Act 1971” substitute <del>“</del> section 1(3) of the Mineral Workings (Offshore Installations) (Isle of Man) Act 1974 (of Tynwald) <del>”</del> ; and
		(ii)	omit paragraph (c);
		(d)	in the definition of “relevant enforcement officer”, for “has the meaning given by section 39(6)” substitute “means a customs or a police officer”; and
		(e)	for the definition of “relevant evidence” substitute – <del>“</del> “relevant evidence” means evidence that an offence has been committed under sections 4 to 8 or section 26 or an ancillary offence within the meaning given in section 54(11); <del>”</del> .
		(2)	Omit subsection (5).
61 and 62			Omit.
63	Commencement and short title		Omit subsections (1) to (3).

Schedule 1, Paragraph 1	Exempted substances: controlled drugs	For “1971” substitute <b>43</b> 1976 (of Tynwald) <b>22</b> .
Schedule 1, Paragraph 2	Medicinal products	For “Human Medicines” to the end substitute <b>43</b> Medicines Act 2003 (of Tynwald) <b>22</b> .
Schedule 1, Paragraph 5	Nicotine and tobacco products	For “1979” substitute <b>43</b> 1986 (of Tynwald) <b>22</b> .
Schedule 2, Paragraph 1	Healthcare-related activities	For “Human Medicines” to the end substitute <b>43</b> Health Care Professionals Act 2014 (of Tynwald) <b>22</b> .
Schedule 2, Paragraph 2	Healthcare-related activities	For “Human Medicines” to the end substitute <b>43</b> Health Care Professionals Act 2014 (of Tynwald) <b>22</b> .
Schedule 2, Paragraph 3.	Healthcare-related activities	Omit.
Schedule 2, Paragraph 4	Research	<p>(1) In the definition of “relevant ethics review body” —</p> <p>(a) in paragraph (a) after “Care Act 2014” add <b>43</b> (c.23 of Parliament) <b>22</b>;</p> <p>(b) for sub-paragraph (b)(i) substitute —</p> <div style="border-left: 1px solid black; padding-left: 20px; margin-left: 40px;"> <p><b>43</b> (i) a Government Department, within the meaning of the Government Departments Act 1987 (of Tynwald); <b>22</b>; and</p> </div> <p>(c) omit sub-paragraphs (b)(iii) and (b)(iv).</p> <p>(2) In the definition of “charity”, after paragraph (a), insert —</p>

		<p>☐(ab) a charity as defined by the Charities Act 1962 (of Tynwald); ☐.</p>
		<p>(3) For the definition of “relevant NHS body” substitute –</p>
		<p>☐ “relevant NHS body” means the Department of Health and Social Care or a body regulated by that Department pursuant to the National Health Services Act 2001 (of Tynwald). ☐.</p>
Schedule 3	Search Warrants	In the title, omit the words “England, Wales and Northern Ireland”.
Schedule 3, Paragraph 1	Application of this Schedule	Substitute -
		<p>☐1 This Schedule applies to applications for search warrants and to search warrants issued. ☐.</p>
Schedule 3, Paragraph 7	All-premises warrants	In sub-paragraph (3), in the definition of “relevant enforcement officer of the appropriate grade”, for paragraphs (a) and (b) substitute –
		<p>☐(a) a police officer of the rank of inspector or above, or</p> <p>(b) a customs officer of the senior executive officer grade or above. ☐.</p>
Schedule 3, Paragraph 13	Return and retention of warrant	<p>(1) In sub-paragraph (1), for “appropriate person (see sub-paragraph (2))” substitute ☐ Chief Registrar ☐.</p> <p>(2) Omit sub-paragraph (2).</p>
Schedule 4	Providers of Information Society Services	Omit.
Schedule 5,	Consequential	Omit.

Paragraph 1 amendments: Intoxicating Substances (Supply) Act 1985

Schedule 5, Paragraph 2 Consequential amendments: Proceeds of Crime Act 2002

- (1) In sub-paragraph (1), for “2002” substitute ~~2002~~ 2008 (of Tynwald) ~~2002~~.
- (2) For sub-paragraph (2) substitute —

- ~~2002~~(2) In Schedule 3 (lifestyle offences), after paragraph 1 insert —
  - “1A. An offence under any of the following provisions of the Psychoactive Substances Act 2016 (c.2 of Parliament), as it has effect in the Island —
    - (a) section 4 (producing a psychoactive substance);
    - (b) section 5 (supplying, or offering to supply, a psychoactive substance);
    - (c) section 7 (possession of psychoactive substance with intent to supply); or
    - (d) section 8 (importing or exporting a psychoactive

			substance).”. <sup>22</sup>
		(3)	Omit sub-paragraphs (3) and (4).
Schedule 5, Paragraphs 3 to 7	Consequential amendments	Omit.	
Schedule 5, Paragraph 8	Consequential amendments: Serious Crime Act 2007	(1)	For sub-paragraph (1) substitute -  <sup>23</sup> (1) In Schedule 3 to the Police Powers and Procedures Act 1998 (of Tynwald), after item 18 add –  “19 An offence under any of the following provisions of the Psychoactive Substances Act 2016 (c.2 of Parliament), as it has effect in the Island –  (a) section 4 (producing a psychoactive substance); (b) section 5 (supplying, or offering to supply, a psychoactive substance);  (c) section 7 (possession of psychoactive substance with intent to supply); or  (d) section 8 (importing or exporting a



		psychoactive substance).” <b>22</b>
	(2)	Omit sub-paragraphs (2) to (4).
	(3)	For the heading of the paragraph substitute <b>23</b> Police Powers and Procedures Act 1998 (of Tynwald) <b>22</b> .
Schedule 5, Paragraphs 9 and 10	Consequential amendments.	Omit.

***EXPLANATORY NOTE***

*(This note is not part of the Order)*

This Order applies in Island law certain provisions of the Psychoactive Substances Act 2016 (c.2 of Parliament) insofar as it applies in respect of imports, exports and removals to and from the United Kingdom of psychoactive substances, and the production and supply of such substances in the Island.

Annex

# Psychoactive Substances Act 2016

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An Act to make provision about psychoactive substances; and for connected Purposes.  
[28th January 2016]

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## **Introductory**

### **1 Overview**

- (1) This Act contains provision about psychoactive substances.
- (2) Section 2 defines what is meant by a “psychoactive substance”.
- (3) Sections 4 to 10 contain provision about offences relating to psychoactive substances.
- (4) Section 11 provides for exceptions to those offences.
- (5) *...Omitted.*
- (6) Sections 36 to 54 contain enforcement powers.

## **Psychoactive substances**

### **2 Meaning of “psychoactive substance” etc**

- (1) In this Act “psychoactive substance” means any substance which—
  - (a) is capable of producing a psychoactive effect in a person who consumes it, and
  - (b) is not an exempted substance (see section 3).
- (2) For the purposes of this Act a substance produces a psychoactive effect in a person if, by stimulating or depressing the person’s central nervous system, it affects the person’s mental functioning or emotional state; and references to a substance’s psychoactive effects are to be read accordingly.
- (3) For the purposes of this Act a person consumes a substance if the person causes or allows the substance, or fumes given off by the substance, to enter the person’s body in any way.

### **3 Exempted substances**

1. (1) In this Act “exempted substance” means a substance listed in Schedule
- (2) *...Omitted.*
- (3) *...Omitted.*
- (4) *...Omitted.*
- (5) *...Omitted.*

### **Offences**

#### **4 Producing a psychoactive substance**

- (1) A person commits an offence if –
  - (a) the person intentionally produces a psychoactive substance,
  - (b) the person knows or suspects that the substance is a psychoactive substance, and
  - (c) the person –
    - (i) intends to consume the psychoactive substance for its psychoactive effects, or
    - (ii) knows, or is reckless as to whether, the psychoactive substance is likely to be consumed by some other person for its psychoactive effects.
- (2) This section is subject to section 11 (exceptions to offences).

#### **5 Supplying, or offering to supply, a psychoactive substance**

- (1) A person commits an offence if –
  - (a) the person intentionally supplies a substance to another person,
  - (b) the substance is a psychoactive substance,
  - (c) the person knows or suspects, or ought to know or suspect, that the substance is a psychoactive substance, and
  - (d) the person knows, or is reckless as to whether, the psychoactive substance is likely to be consumed by the person to whom it is supplied, or by some other person, for its psychoactive effects.
- (2) A person (“P”) commits an offence if –

- (a) P offers to supply a psychoactive substance to another person ("R"), and
- (b) P knows or is reckless as to whether R, or some other person, would, if P supplied a substance to R in accordance with the offer, be likely to consume the substance for its psychoactive effects.

(3) For the purposes of subsection (2)(b), the reference to a substance's psychoactive effects includes a reference to the psychoactive effects which the substance would have if it were the substance which P had offered to supply to R.

(4) This section is subject to section 11 (exceptions to offences).

## **6 Aggravation of offence under section 5**

(1) This section applies if –

- (a) a court is considering the seriousness of an offence under section 5, and
- (b) at the time the offence was committed the offender was aged 18 or over.

(2) If condition A, B or C is met the court –

- (a) must treat the fact that the condition is met as an aggravating factor (that is to say, a factor that increases the seriousness of the offence), and
- (b) must state in open court that the offence is so aggravated.

(3) Condition A is that the offence was committed on or in the vicinity of school premises at a relevant time.

(4) For the purposes of subsection (3) a "relevant time" is –

- (a) any time when the school premises are in use by persons under the age of 18;
- (b) one hour before the start and one hour after the end of any such time.

(5) In this section –

"school premises" means land used for the purposes of a school, other than any land occupied solely as a dwelling by a person employed at the school;

*"school" has the same meaning as in section 59 of the Education Act 2001 (of Tynwald).*

(6) Condition B is that in connection with the commission of the offence the offender used a courier who, at the time the offence was committed, was under the age of 18.

(7) For the purposes of subsection (6) a person ("P") uses a courier in connection with an offence under section 5 if P causes or permits another person (the courier) –

- (a) to deliver a substance to a third person, or
- (b) to deliver a drug-related consideration to P or a third person.

(8) A drug-related consideration is a consideration of any description which

- (a) is obtained in connection with the supply of a psychoactive substance, or
- (b) is intended to be used in connection with obtaining a psychoactive substance.

(9) Condition C is that the offence was committed in a custodial institution.

(10) In this section, "*custodial institution*" has the same meaning as –

- (a) *that given to an "institution" in section 26 of the Custody Act 1995 (of Tynwald); and*
- (b) *that given to "secure accommodation" in section 102 of the Children and Young Persons Act 2001 (of Tynwald).*

## **7 Possession of psychoactive substance with intent to supply**

(1) A person commits an offence if –

- (a) the person is in possession of a psychoactive substance,
- (b) the person knows or suspects that the substance is a psychoactive substance, and
- (c) the person intends to supply the psychoactive substance to another person for its consumption, whether by any person to whom it is supplied or by some other person, for its psychoactive effects.

(2) This section is subject to section 11 (exceptions to offences).

## **8 Importing or exporting a psychoactive substance**

(1) A person commits an offence if—



- (a) the person intentionally imports a substance,
  - (b) the substance is a psychoactive substance,
  - (c) the person knows or suspects, or ought to know or suspect, that the substance is a psychoactive substance, and
  - (d) the person—
    - (i) intends to consume the psychoactive substance for its psychoactive effects, or
    - (ii) knows, or is reckless as to whether, the psychoactive substance is likely to be consumed by some other person for its psychoactive effects.
- (2) A person commits an offence if—
- (a) the person intentionally exports a substance,
  - (b) the substance is a psychoactive substance,
  - (c) the person knows or suspects, or ought to know or suspect, that the substance is a psychoactive substance, and
  - (d) the person—
    - (i) intends to consume the psychoactive substance for its psychoactive effects, or
    - (ii) knows, or is reckless as to whether, the psychoactive substance is likely to be consumed by some other person for its psychoactive effects.

(3) In a case where a person imports or exports a controlled drug suspecting it to be a psychoactive substance, the person is to be treated for the purposes of this section as if the person had imported or exported a psychoactive substance suspecting it to be such a substance.

In this subsection “controlled drug” has the same meaning as in the Misuse of Drugs Act 1976 (*of Tynwald*).

(4) Section 188 of the Customs and Excise Management Act 1986 (*of Tynwald*) (time of importation, exportation, etc) applies for the purposes of this section as it applies for the purposes of that Act.

(5) This section is subject to section 11 (exceptions to offences).

(6) *In this section –*

- (a) “import” and “importing” includes the removal of a substance from the United Kingdom to the Island; and

- (b) "export" and "exporting" includes the removal of a substance from the Island to the United Kingdom.

**9 ...Omitted.**

**10 Penalties**

*A person guilty of an offence under sections 4 to 8 is liable –*

- (a) *on summary conviction to custody for a term not exceeding 6 months, a fine not exceeding £5,000, or both; or*
- (b) *on conviction on information, to custody for a term not exceeding 7 years, a fine, or both.*

**11 Exceptions to offences**

(1) It is not an offence under this Act for a person to carry on any activity *included* in subsection (3) if, in the circumstances in which it is carried on by that person, the activity is an exempted activity.

(2) In this section "exempted activity" means an activity listed in Schedule 2.

(3) The activities referred to in subsection (1) are—

- (a) producing a psychoactive substance;
- (b) supplying such a substance;
- (c) offering to supply such a substance;
- (d) possessing such a substance with intent to supply it;
- (e) importing or exporting such a substance;
- (f) *...omitted.*

(4) *...Omitted.*

(5) *Before making any amendment to this section the Treasury must consult –*

- (a) *the Advisory Council on the Misuse of Drugs; and*
- (b) *any other person that the Treasury considers appropriate.*

(6) *...Omitted.*

(7) *...Omitted.*

## **Powers for dealing with prohibited activities**

**12** *...Omitted.*

**13** *...Omitted.*

**14** *...Omitted.*

**15** *...Omitted.*

**16** *...Omitted.*

### **17** **Meaning of "prohibition order"**

(1) In this Act a "prohibition order" means an order prohibiting the person against whom it is made from carrying on any prohibited activity of a description specified in the order.

(2) A prohibition order may be made –

(a) *...omitted;*

(b) following conviction of an offence under any of sections 4 to 8 or a related offence (see section 19).

(3) *In this section, "prohibited activity" means any of the following activities*

(a) *producing a psychoactive substance that is likely to be consumed by individuals for its psychoactive effects;*

(b) *supplying such a substance;*

(c) *offering to supply such a substance;*

(d) *importing such a substance;*

(e) *exporting such a substance.*

(4) *The carrying on by a person of an activity listed in any of paragraphs (a) to (e) of subsection (3) does not constitute carrying on of a prohibited activity if the carrying on of the activity by that person would not be an offence under this Act by virtue of section 11.*

(5) *In subsection (3), "importing" includes the removal of a psychoactive substance from the United Kingdom to the Island, and "exporting" includes the removal of such a substance from the Island to the United Kingdom.*

**18** *...Omitted.*

## **19 Prohibition orders following conviction**

(1) Where a court is dealing with a person who has been convicted of a relevant offence, the court may make a prohibition order under this section if the court considers it necessary and proportionate for the purpose of preventing the person from carrying on any prohibited activity.

(2) A prohibition order may not be made under this section except –

- (a) in addition to a sentence imposed in respect of the offence concerned, or
- (b) in addition to an order discharging the person conditionally.

(3) If a court makes a prohibition order under this section, any prohibition notice that has previously been given to the person against whom the order is made is to be treated as having been withdrawn.

(4) A prohibition order under this section made against an individual who is under the age of 18 at the time the order is made –

- (a) must specify the period for which it has effect, and
- (b) may not have effect for more than 3 years.

(5) In this section “relevant offence” means –

- (a) an offence under any of sections 4 to 8;
- (b) an offence of attempting or conspiring to commit an offence under any of sections 4 to 8;
- (c) *...omitted;*
- (d) an offence of inciting a person to commit an offence under any of sections 4 to 8;
- (e) an offence of aiding, abetting, counselling or procuring the commission of an offence under any of sections 4 to 8.

**20** *...Omitted.*

**21** *...Omitted.*

## **22 Provision that may be made by prohibition orders**

(1) A court making a prohibition order, or a court varying such an order under or by virtue of any of sections 28 to 31, may by order impose any prohibitions, restrictions or requirements that the court considers appropriate (in addition to the prohibition referred to in section 17(1)).

(2) *Subsections (3) to (5)* contain examples of the type of provision that may be made under subsection (1), but they do not limit the type of provision that may be so made.

(3) The prohibitions, restrictions or requirements that may be imposed on a person by a prohibition order include prohibitions or restrictions on, or requirements in relation to, the person's business dealings (including the conduct of the person's business over the internet).

(4) The requirements that may be imposed on a person by a prohibition order include a requirement to hand over for disposal an item belonging to the person that the court is satisfied –

- (a) is a psychoactive substance, or
- (b) has been, or is likely to be, used in the carrying on of a prohibited activity.

(5) An item that is handed over in compliance with a requirement imposed by virtue of subsection (4) may not be disposed of –

- (a) before the end of the period within which an appeal against the imposition of the requirement (ignoring any power to appeal out of time), or
- (b) if such an appeal is made, before it is determined or otherwise dealt with.

(6) The prohibitions that may be imposed on a person by a prohibition order include a prohibition prohibiting access to premises owned, occupied, leased, controlled or operated by the person for a specified period (an "access prohibition").

(7) The period specified under subsection (6) may not exceed 3 months (but see subsections (3) to (5) of section 28).

(8) An access prohibition may prohibit access –

- (a) by all persons, or by all persons except those specified, or by all persons except those of a specified description;
- (b) at all times, or at all times except those specified;
- (c) in all circumstances, or in all circumstances except those specified.

(9) An access prohibition may –

- (a) be made in respect of the whole or any part of the premises;
- (b) include provision about access to a part of the building or structure of which the premises form part.

(10) In this section "specified" means specified in the prohibition order.

(11) *For the purposes of this section a person (other than a mortgagee not in possession) owns premises if –*

(a) *the person is entitled to dispose of the fee simple, where in possession or reversion; or*

(b) *the person holds or is entitled to the rents and profits of the premises under a lease that (when granted) was for a term not less than 3 years.*

## **23 Enforcement of access prohibitions**

(1) An authorised person may –

(a) enter premises in respect of which an access prohibition is in effect (see section 22(6));

(b) do anything necessary to secure the premises against entry.

(2) *In this section, "authorised person", in relation to an access prohibition imposed by a prohibition order under section 19, means a relevant enforcement officer or a person authorised by –*

(a) *the Chief Constable; or*

(b) *the Treasury.*

(3) *...Omitted.*

(4) A person acting under subsection (1) may use reasonable force.

(5) A person seeking to enter premises under subsection (1) must, if required to do so by the occupier of the premises or, where the occupier is not present, by another person appearing to be in charge of the premises –

(a) give his or her name;

(b) if not a constable in uniform, produce documentary evidence that he or she is an authorised person.

(6) An authorised person may also enter premises in respect of which an access prohibition is in effect to carry out essential maintenance or repairs to the premises.

## **24 Access prohibitions: reimbursement of costs**

(1) A person listed in subsection (2) that incurs expenditure for the purpose of clearing, securing or maintaining premises in respect of which an access prohibition is in effect (see section 22(6)) may apply to the court for an order under this section.

- (2) *Those persons are –*
- (a) *the Chief Constable;*
  - (b) *the Treasury;*
  - (c) *a local authority.*

(3) On an application under this section the court may make whatever order it considers appropriate for the reimbursement (in full or in part) by the person against whom the order imposing the access prohibition was made of the expenditure mentioned in subsection (1).

(4) An application for an order under this section may not be heard unless it is made before the end of the period of 3 months starting with the day on which the access prohibition ceases to have effect.

(5) An application under this section must be served on the person against whom the order imposing the access prohibition was made.

- (6) *In this section "the court" means –*
- (a) *the court that made the order, except where paragraph (b) applies; or*
  - (b) *where the court that made the order was a juvenile court but the person against whom the order was made is aged 18 or over at the time of the application, a magistrates' court.*

## **25 Access prohibitions: exemption from liability**

(1) Neither an authorised person, nor the person under whose direction or control the authorised person acts, is to be liable in damages for anything done, or omitted to be done, by the authorised person in the exercise or purported exercise of a power under section 23.

(2) Subsection (1) does not apply to an act or omission shown to have been in bad faith.

(3) Subsection (1) does not apply so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 2001 (*of Tynwald*).

(4) This section does not affect any other exemption from liability (whether at common law or otherwise).

(5) In this section "authorised person" has the same meaning as in section 23.

## **26 Offence of failing to comply with a prohibition order**

(1) A person against whom a prohibition order is made commits an offence by failing to comply with the order.

(2) *A person guilty of an offence under this section is liable –*

(a) *on summary conviction to custody for a term not exceeding 6 months, a fine not exceeding £5,000, or both; or*

(b) *on conviction on information, to custody for a term not exceeding 7 years, a fine, or both.*

(3) A person does not commit an offence under this section if –

(a) the person took all reasonable steps to comply with the order, or

(b) there is some other reasonable excuse for the failure to comply.

## **27 Offence of failing to comply with an access prohibition, etc**

(1) This section applies where a prohibition order or a premises order imposes an access prohibition (see section 22(6)).

(2) A person, other than the person against whom the order was made, who without reasonable excuse remains on or enters premises in contravention of the access prohibition commits an offence.

(3) A person who without reasonable excuse obstructs a person acting under section 23(1) commits an offence.

(4) *A person guilty of an offence under subsections (2) or (3) is liable on summary conviction to custody for a term not exceeding 6 months, a fine not exceeding £5,000, or both.*

## **28 Variation and discharge on application**

(1) The court may vary or discharge a prohibition order on the application of –

(a) *...omitted;*

(b) the person against whom the order was made, or

(c) any other person who is significantly adversely affected by the order.

(2) *Where a prohibition order is made under section 19, the court may also vary or discharge the order on the application of the Treasury.*

(3) *...Omitted.*



- (4) ...Omitted.
- (5) ...Omitted.
- (6) In this section "the court" means –
- (a) the court that made the order, except where paragraph (b) applies;
  - (b) where –
    - (i) the order was made under section 19 on an appeal in relation to a person's conviction or sentence for an offence, or
    - (ii) the order was made by a court under that section against a person committed or remitted to that court for sentencing for an offence,the court by or before which the person was convicted (but see subsection (7)).
  - (c) *where the court that made the order was a juvenile court but the person against whom the order was made is aged 18 or over at the time of application, a magistrates' court.*
- (7) Where the person mentioned in subsection (6)(b) –
- (a) was convicted by a *juvenile* court, but
  - (b) is aged 18 or over at the time of the application,

the reference in subsection (6)(b) to the court by or before which the person was convicted is to be read as a reference to a court of summary jurisdiction.

(8) An order that has been varied under this section remains an order of the court that first made it for the purposes of –

- (a) ...omitted;
- (b) any further application under this section.

## **29 Variation following conviction**

- (1) This section applies where –
- (a) a court is dealing with a person who has been convicted of a relevant offence and against whom a prohibition order has previously been made, or

(b) a court is dealing with a person who has been convicted of an offence under section 26 of failing to comply with a prohibition order.

(2) The court may vary the prohibition order.

(3) An order that has been varied under subsection (2) remains an order of the court that first made it for the purposes of *section 28*.

(4) An order may not be varied under this section except –

(a) in addition to a sentence imposed in respect of the offence concerned, or

(b) in addition to an order discharging the person conditionally.

(5) In this section “relevant offence” has the same meaning as in section 19.

### **30 Appeals against making of prohibition orders**

(1) *...Omitted.*

(2) *...Omitted.*

(3) *...Omitted.*

(4) *...Omitted.*

#### **Orders made under section 19**

(5) A person against whom a prohibition order is made under section 19 may appeal against the making of the order as if it were a sentence passed on the person for the offence referred to in section 19(1) (to the extent it would not otherwise be so appealable).

### **31 Appeals about variation and discharge**

#### **Decisions under section 28**

(1) *An appeal may be made against a decision under section 28 to the Staff of Government Division.*

(2) The right of appeal under subsection (1) is exercisable by –

(a) the person against whom the relevant order was made, and

(b) any other person who is significantly adversely affected by that order.

(3) In subsections (1) and (2) the “relevant order” means the order that was the subject of the application under section 28.

(4) An appeal under subsection (1) against the making of a decision must be made before the end of the period of 28 days starting with the date of the decision.

(5) On an appeal under subsection (1) the court hearing the appeal may (to the extent it would not otherwise have power to do so) make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.

(6) A prohibition order that has been varied by virtue of subsection (5) remains an order of the court that first made it for the purposes of section 28.

### **Decisions under section 29**

(7) A person against whom a prohibition order has been made may appeal against a variation of the order under section 29 as if the varied order were a sentence passed on the person for the offence referred to in section 29(1) (to the extent it would not otherwise be so appealable).

## **32 Nature of proceedings under sections 19 and 29, etc**

(1) Proceedings before a court arising by virtue of section 19 or 29 are civil proceedings.

(2) The standard of proof to be applied by the court in the proceedings is the balance of probabilities.

(3) The court is not restricted in the proceedings to considering evidence that would have been admissible in the criminal proceedings in which the person concerned was convicted.

(4) The court may adjourn any proceedings arising by virtue of section 19 or 29 even after sentencing the person concerned.

(5) *...Omitted.*

(6) *A prohibition order may be made or varied as mentioned in sections 19(2)(b) or 29(4)(b) (as the case may be) in spite of anything in sections 6 and 7 of the Criminal Justice Act 1963 (of Tynwald) (which relate to orders discharging a person conditionally or absolutely and their effect).*

**33** *...Omitted.*

**34** *...Omitted.*

## **35 Transfer of proceedings from *juvenile* court**

(1) This section applies where –

- (a) an individual against whom a prohibition order is sought reaches the age of 18 while proceedings before a *juvenile* court for the making of the order are ongoing;

- (b) an individual against whom a prohibition order has been made reaches the age of 18 while proceedings before a *juvenile* court for the variation or discharge of the order are ongoing;
- (c) an individual against whom a prohibition order imposing an access prohibition has been made reaches the age of 18 while proceedings before a *juvenile* court under section 24 are ongoing.

(2) Rules of court may provide for the transfer of the proceedings from the *juvenile* court to a *magistrates' court*.

(3) Rules of court may prescribe circumstances in which the proceedings may or must remain in the *juvenile* court.

### **Powers of entry, search and seizure**

#### **36 Power to stop and search persons**

(1) This section applies where a *relevant enforcement officer* has reasonable grounds to suspect that a person has committed, or is likely to commit, an offence under any of *sections 4 to 8* or section 26.

(2) The officer may—

- (a) search the person for relevant evidence, and
- (b) stop and detain the person for the purposes of the search.

(3) The powers conferred by this section may be exercised in any place to which the officer lawfully has access (whether or not it is a place to which the public has access).

(4) *...Omitted.*

#### **37 Power to enter and search vehicles**

(1) This section applies where—

- (a) a *relevant enforcement officer* has reasonable grounds to suspect that there is relevant evidence in a vehicle, and
- (b) the vehicle is not a dwelling.

(2) The officer may at any time—

- (a) enter the vehicle and search it for relevant evidence;
- (b) stop and detain the vehicle for the purposes of entering and searching it.

(3) Where—

(a) a *relevant enforcement officer* has stopped a vehicle under this section, and

(b) the officer considers that it would be impracticable to search the vehicle in the place where it has stopped,

the officer may require the vehicle to be taken to such place as the officer directs to enable the vehicle to be searched.

(4) A *relevant enforcement officer* may require—

(a) any person travelling in a vehicle, or

(b) the registered keeper of a vehicle,

to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of any power conferred by this section.

(5) The powers conferred by this section may be exercised in any place to which the officer lawfully has access (whether or not it is a place to which the public has access).

(6) In this section "vehicle" does not include any vessel or aircraft.

(7) For provision conferring additional powers to enter and search vehicles, see section 39.

### **38 Power to board and search vessels or aircraft**

(1) This section applies where—

(a) a *relevant enforcement officer* has reasonable grounds to believe that there is relevant evidence in or on any vessel or aircraft, and

(b) the vessel or aircraft is not a dwelling.

(2) The officer may at any time—

(a) board the vessel or aircraft, and

(b) search it for relevant evidence.

(3) For the purposes of exercising the power conferred by subsection (2), the officer may require a vessel or aircraft—

(a) to stop, or

- (b) to do anything else that will facilitate the boarding of that or any other vessel or aircraft.

(4) A *relevant enforcement officer* who has boarded a vessel or aircraft may, for the purposes of disembarking from the vessel or aircraft, require that or any other vessel or aircraft—

- (a) to stop, or
- (b) to do anything else that will enable the officer to disembark from the vessel or aircraft.

(5) A *relevant enforcement officer* may require any person on board a vessel or aircraft to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of any power conferred by this section.

(6) For provision conferring additional powers to enter and search vessels and aircraft, see section 39.

### **39 Power to enter and search premises**

(1) Where a justice *of the peace* is satisfied that the requirements in subsection (4) are met in relation to any premises, the justice *of the peace* may issue a warrant (a "search warrant") authorising a relevant enforcement officer—

- (a) to enter the premises, and
- (b) to search them for relevant evidence.

(2) A search warrant may be issued only on the application of a relevant enforcement officer.

(3) A search warrant may be either—

- (a) a warrant that relates only to premises specified in the warrant (a "specific-premises warrant"), or
- (b) a warrant that relates to any premises occupied or controlled by a person specified in the warrant (an "all-premises warrant").

(4) The requirements of this subsection are met in relation to premises if there are reasonable grounds to suspect that—

- (a) there are items on the premises that are relevant evidence, and
- (b) in a case where the premises are specified in the application, any of the conditions in subsection (5) is met.

(5) The conditions referred to in subsection (4)(b) are—

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) that it is not practicable to communicate with any person entitled to grant access to the items;
- (c) that entry to the premises is unlikely to be granted unless a warrant is produced;
- (d) that the purpose of entry may be frustrated or seriously prejudiced unless a relevant enforcement officer arriving at the premises can secure immediate entry to them.

(6) *...Omitted.*

#### **40 Further provision about search warrants**

(1) An application for a search warrant may be made without notice being given to persons who might be affected by the warrant.

(2) *The application must be supported by an information in writing.*

(3) A person applying for a search warrant must answer on oath any question that the justice hearing the application asks the person.

(4) A search warrant may be executed by any relevant enforcement officer.

(5) A search warrant may authorise persons to accompany any relevant enforcement officer who is executing it.

(6) A person authorised under subsection (5) to accompany a relevant enforcement officer may exercise any power conferred by sections 39 to 45 which the officer may exercise as a result of the warrant.

But the person may exercise such a power only in the company of, and under the supervision of, a relevant enforcement officer.

(7) *Schedule 3 contains further provision about applications for search warrants and search warrants issued.*

(8) An entry on or search of premises under a search warrant is unlawful unless it complies with the provisions of Part 3 of that Schedule (execution of search warrants).

#### **41 Powers of examination, etc**

(1) This section applies where a relevant enforcement officer is exercising a power of search conferred by section 37, 38 or 39 in relation to any premises.

(2) The officer may examine anything that is in or on the premises.

(3) The officer may carry out any measurement or test of anything which the officer has power under this section to examine.

(4) The power conferred by subsection (3) includes power to take a sample from any live plant.

(5) For the purpose of exercising—

(a) a power of search conferred by section 37, 38 or 39, or

(b) any power conferred by this section,

the officer may, so far as is reasonably necessary for that purpose, break open any container or other locked thing.

(6) The officer may require any person in or on the premises to afford such facilities and assistance with respect to matters under that person's control as the officer considers would facilitate the exercise of—

(a) a power of search conferred by section 37, 38 or 39, or

(b) any power conferred by this section.

(7) Nothing in this section confers any power to search a person.

## **42 Power to require production of documents, etc**

(1) This section applies where a relevant enforcement officer is exercising a power of search conferred by section 37, 38 or 39 in relation to any premises.

(2) The officer may require any person in or on the premises to produce any document or record that is in the person's possession or control.

(3) A reference in this section to the production of a document includes a reference to the production of—

(a) a hard copy of information recorded otherwise than in hard copy form, or

(b) information in a form from which a hard copy can be readily obtained.

(4) For the purposes of this section—

(a) information is recorded in hard copy form if it is recorded in a paper copy or similar form capable of being read (and references to hard copy have a corresponding meaning);

(b) information can be read only if—

(i) it can be read with the naked eye, or



- (ii) to the extent that it consists of images (for example photographs, pictures, maps, plans or drawings), it can be seen with the naked eye.

### **43 Powers of seizure, etc**

(1) A *relevant enforcement officer* who is exercising the power of search conferred by section 36 may seize and detain anything found in the course of the search.

(2) This subsection applies where a relevant enforcement officer—

- (a) is exercising a power of search conferred by section 37, 38 or 39 in relation to any premises, or
- (b) is otherwise lawfully on premises.

(3) Where subsection (2) applies, the officer may—

- (a) seize and detain or remove any item found on the premises;
- (b) take copies of or extracts from any document or record found on the premises.

(4) A relevant enforcement officer to whom any document or record has been produced in accordance with a requirement imposed under section 42 may—

- (a) seize and detain or remove that document or record;
- (b) take copies of or extracts from that document or record.

In this subsection “document” includes anything falling within paragraph (a) or (b) of section 42(3).

(5) The powers under this section may only be exercised—

- (a) for the purposes of determining whether an offence under *sections 4 to 8* has been committed, or
- (b) in relation to an item which a relevant enforcement officer reasonably believes to be—
  - (i) relevant evidence, or
  - (ii) a psychoactive substance (whether or not it is relevant evidence).

(6) Nothing in this section confers power on a relevant enforcement officer to seize an item which is an excluded item (see section 44).

#### **44 Excluded items**

(1) This section defines what is meant by "excluded items" for the purposes of section 43.

(2) *"Excluded items" means –*

(a) *items subject to legal privilege;*

(b) *excluded material; and*

(c) *special procedure material,*

*within the meaning given to those terms by the Police Powers and Procedures Act 1998 (of Tynwald).*

(3) *...Omitted*

(4) *...Omitted.*

#### **45 Further provision about seizure under section 43**

(1) Where—

(a) any items which a relevant enforcement officer wishes to seize and remove are in a container, and

(b) the officer reasonably considers that it would facilitate the seizure and removal of the items if they remained in the container for that purpose,

any power to seize and remove the items conferred by section 43 includes power to seize and remove the container.

(2) If a container is seized under this section, reasonable efforts must be made to return it to—

(a) the person from whom it was seized, or

(b) (if different) a person to whom it belongs.

(3) Subsection (2) does not apply—

(a) if the container appears to be of negligible value,

(b) if it is not practicable for the container to be returned, or

(c) while the container is or may be needed for use as evidence at a trial for an offence.

(4) If, in the opinion of a relevant enforcement officer, it is not for the time being practicable for the officer to seize and remove any item, the officer may require—

- (a) the person from whom the item is being seized, or
- (b) where the officer is exercising a power of search conferred by section 37, 38 or 39 in relation to any premises, any person in or on the premises,

to secure that the item is not removed or otherwise interfered with until such time as the officer may seize and remove it.

#### **46 Notices and records in relation to seized items**

(1) This section applies where a relevant enforcement officer, or a person accompanying a relevant enforcement officer, seizes any item under section 43.

(2) When the item is seized, the officer must make reasonable efforts to give written notice to each of the following persons—

- (a) in the case of an item seized from a person, the person from whom the item was seized;
- (b) in the case of an item seized from premises, any person who appears to the officer to be the occupier of the premises or otherwise to be in charge of the premises;
- (c) if the officer thinks that the item may belong to any person not falling within paragraph (a) or (b), that other person.

A person falling within any of paragraphs (a) to (c) is referred to in this section as an "affected person".

(3) If—

- (a) the item is seized from premises, and
- (b) at the time of the seizure it is not reasonably practicable to give a notice to any affected person,

the officer must leave a copy of the notice in a prominent place on the premises.

(4) The notice must—

- (a) state what has been seized and the reason for its seizure;
- (b) specify any offence which the officer believes has been committed;
- (c) explain the effect of sections 49 to 51 and 53.

(5) The officer must make a record of what has been seized.

(6) If a person who appears to a relevant enforcement officer to be an affected person asks for a copy of that record, the officer must, within a reasonable time, provide a copy of that record to that person.

#### **47 Powers of entry, search and seizure: supplementary provision**

(1) A relevant enforcement officer may use reasonable force, if necessary, for the purpose of exercising any power conferred by sections 36 to 45.

(2) A person authorised under section 40(5) to accompany a relevant enforcement officer may use reasonable force, if necessary, for the purpose of exercising any power conferred by sections 39 to 45.

(3) The powers conferred on a relevant enforcement officer by any of sections 36 to 45 do not affect any powers exercisable by the officer apart from that section.

#### **48 Offences in relation to enforcement officers**

(1) A person commits an offence if, without reasonable excuse, the person intentionally obstructs a relevant enforcement officer in the performance of any of the officer's functions under sections 36 to 45.

(2) A person commits an offence if—

(a) the person fails without reasonable excuse to comply with a requirement reasonably made, or a direction reasonably given, by a relevant enforcement officer in the exercise of any power conferred by sections 37 to 45, or

(b) the person prevents any other person from complying with any such requirement or direction.

(3) In this section any reference to a relevant enforcement officer includes a reference to a person authorised under section 40(5) to accompany a relevant enforcement officer.

*(4) A person who is guilty of an offence under this section is liable on summary conviction to custody for a term not exceeding 6 months, a fine not exceeding £5,000, or both.*

### **Retention and disposal of items**

#### **49 Retention of seized items**

(1) This section applies to any item seized under section 43.

(2) The item may be retained so long as is necessary in all the circumstances and in particular—

- (a) for use as evidence at a trial for an offence under this Act, or
- (b) for forensic examination or for investigation in connection with an offence under this Act.

(3) No item may be retained for either of the purposes mentioned in subsection (2) if a photograph or a copy would be sufficient for that purpose.

## **50 Power of police, etc to dispose of seized psychoactive substances**

(1) This section applies if—

- (a) a *relevant enforcement officer* has seized an item found during the course of a search under section 36, 37 or 38,
- (b) the search was carried out in a place to which the officer lawfully had access without a warrant (whether issued under this Act or under any other enactment),
- (c) the officer reasonably believes that the item—
  - (i) is a psychoactive substance which, if it had not been seized, was likely to be consumed by an individual for its psychoactive effects, but
  - (ii) is not evidence of any offence under this Act, and
- (d) the officer has no reason to believe that, at the time of the seizure, the item was being used for the purposes of, or in connection with, an exempted activity carried on by a person entitled to the item.

(2) The officer may dispose of the item in whatever way the officer thinks is suitable.

(3) For the purposes of this section—

- (a) an activity is an “exempted activity” in relation to a person if the carrying on of the activity by that person would not be an offence under this Act by virtue of section 11;
- (b) the persons “entitled” to an item are—
  - (i) the person from whom it was seized;
  - (ii) (if different) any person to whom it belongs.

(4) *In this section “enactment” includes an enactment contained in subordinate legislation.*

## **51 Forfeiture of seized items by court on application**

(1) A relevant enforcement officer may apply to *a magistrates' court* for the forfeiture of an item retained under section 49.

(2) Where an application for the forfeiture of an item is made under this section, the item is to be retained while proceedings on the application are in progress.

(3) If the court is satisfied that—

(a) the item is a psychoactive substance which, if it had not been seized, was likely to be consumed by an individual for its psychoactive effects, and

(b) at the time of its seizure, the item was not being used for the purposes of, or in connection with, an exempted activity (see subsection (12)) carried on by a person entitled to the item,

the court must order the forfeiture of the item.

(4) If the item is not a psychoactive substance, the court may order the forfeiture of the item if satisfied that it has been used in the commission of an offence under this Act.

(5) Where an order for forfeiture of an item is made under subsection (3) or (4), the item may be disposed of in whatever way the officer who applied for the order, or another relevant enforcement officer acting on behalf of the same person as that officer, thinks is suitable.

(6) But the item may not be disposed of under subsection (5)—

(a) before the end of the period within which an appeal under section 52 may be made against the order, or

(b) if such an appeal is made, before it is determined or otherwise dealt with.

(7) If either subsection (8) or (9) applies in relation to an item, the court must order the item to be returned to a person entitled to it.

(For provision enabling an application for an order under this subsection to be made, see section 53.)

(8) This subsection applies in relation to an item if the court is not satisfied that the item—

(a) is a psychoactive substance, or

(b) has been used in the commission of an offence under this Act.

(9) This subsection applies in relation to an item if—

- (a) the item is a psychoactive substance, and
- (b) the court is satisfied that—
  - (i) if the item had not been seized, it was not likely to be consumed by any individual for its psychoactive effects, or
  - (ii) at the time of its seizure, the item was being used for the purposes of, or in connection with, an exempted activity carried on by a person entitled to the item.

(10) Where an order for the return of an item is made under subsection (7), the item may nevertheless be retained—

- (a) until the end of the period within which an appeal under section 52 may be made against the order, or
- (b) if such an appeal is made, until the time when it is determined or otherwise dealt with.

But if it is decided before the end of the period mentioned in paragraph (a) that there is to be no appeal, the item must be returned as soon as possible after that decision is made.

(11) *...Omitted.*

(12) For the purposes of this section—

- (a) an activity is an “exempted activity” in relation to a person if the carrying on of the activity by that person would not be an offence under this Act by virtue of section 11;
- (b) the persons “entitled” to an item are—
  - (i) the person from whom it was seized;
  - (ii) (if different) any person to whom it belongs.

## **52 Appeal against decision under section 51**

(1) Where an order has been made under section 51, each of the following persons may appeal against the order—

- (a) any party to the proceedings in which the order was made;
- (b) any other person entitled to the item to which the order relates.

(2) Where—

- (a) a relevant enforcement officer brings an appeal under this section, and

- (b) no person entitled to the item in question was a party to the original proceedings,

the officer must make reasonable efforts to give notice of the appeal to every person who the officer thinks is or may be entitled to the item.

(3) *An appeal under this section is to the Staff of Government Division.*

(4) An appeal under this section against an order must be made before the end of the period of 28 days starting with the date of the order.

(5) Subject to subsections (6) and (7), the court hearing the appeal may make any order the court thinks appropriate.

(6) If an appeal against an order for the return of an item is allowed—

- (a) the court must order the item to be forfeited, and
- (b) subsections (5) and (6) of section 51 apply with the necessary adaptations.

(7) If an appeal against an order forfeiting an item is allowed—

- (a) the court must order the item to be returned to a person entitled to it, and
- (b) subsection (10) of section 51 applies with the necessary adaptations.

(8) The persons “entitled” to an item for the purposes of this section are—

- (a) the person from whom it was seized;
- (b) (if different) any person to whom it belongs.

### **53 Return of item to person entitled to it, or disposal if return impracticable**

(1) Where the retention of an item has been, but is no longer, authorised under this Act—

- (a) the item must be returned to a person entitled to it (but see subsection (4));
- (b) the appropriate court must, if asked to do so by a person entitled to the item, order it to be returned to that person.

(2) A person who claims to be entitled to an item retained under this Act may apply to the appropriate court for an order under subsection (1)(b) or section 51(7) (as appropriate).



- (3) Where—
- (a) a court makes an order under this Act requiring an item to be returned to a particular person, and
  - (b) reasonable efforts have been made, without success, to find that person, or it is for some other reason impracticable to return the item to that person,

the order has effect as if it required the item to be returned to any person entitled to it.

- (4) Where—
- (a) an item is required by a provision of this Act, or an order made under this Act, to be returned to a person entitled to it, and
  - (b) reasonable efforts have been made, without success, to find a person entitled to the item, or it is for some other reason impracticable to return the item to a person entitled to it,

a relevant enforcement officer may dispose of the item in whatever way the officer thinks is suitable.

- (5) *In this section, "the appropriate court" means –*

- (a) *where the person making the application is an individual who is under the age of 18, a juvenile court; and*
- (b) *in any other case, a magistrates' court.*

- (6) The persons "entitled" to an item for the purposes of this section are—

- (a) the person from whom it was seized;
- (b) (if different) any person to whom it belongs.

## **54 Forfeiture by court following conviction**

- (1) This section applies where a person is convicted of—

- (a) an offence under any of *sections 4 to 8* and *26*, or
- (b) an ancillary offence (see subsection (11)).

- (2) In this section "the court" means—

- (a) the court by or before which the person is convicted of the offence, except where paragraph (b) applies;
- (b) if the person is committed to the *Court of General Gaol* to be dealt with for that offence, the *Court of General Gaol*;

(c) ...omitted.

(3) The court must make an order for the forfeiture of any psychoactive substance in respect of which the offence was committed.

(4) The court may also make an order for the forfeiture of any other item that was used in the commission of the offence.

(5) An order under subsection (3) or (4) is referred to in this section as a "forfeiture order".

(6) Before making a forfeiture order under subsection (4) in relation to any item, the court must give an opportunity to make representations to any person (in addition to the convicted person) who claims to be the owner of the item or otherwise to have an interest in it.

(7) A forfeiture order may not be made so as to come into force at any time before there is no further possibility (ignoring any power to appeal out of time) of the order being varied or set aside on appeal.

(8) Where the court makes a forfeiture order, it may also make such other provision as it considers to be necessary for giving effect to the forfeiture.

(9) That provision may, in particular, include provision relating to the retention, handling, destruction or other disposal of the item.

(10) Provision made by virtue of this section may be varied at any time by the court that made it.

(11) In this section "ancillary offence" means—

(a) an offence of attempting or conspiring to commit an offence under any of *sections 4 to 8* and 26;

(b) ...omitted;

(c) an offence of inciting a person to commit an offence under any of *sections 4 to 8* and 26;

(d) an offence of aiding, abetting, counselling or procuring the commission of an offence under any of *sections 4 to 8* and 16.

### **Supplementary and final provisions**

#### **55 Application of Customs and Excise Management Act 1986 (of Tynwald)**

(1) Section 166 of the Customs and Excise Management Act 1986 (of Tynwald) (power to search persons) applies in relation to a psychoactive substance as it applies in relation to an article with respect to the importation or exportation of

which any prohibition or restriction is for the time being in force under or by virtue of any enactment.

(2) A psychoactive substance is liable to forfeiture under the Customs and Excise Management Act 1986 (*of Tynwald*) if—

- (a) the psychoactive substance—
  - (i) is imported or exported, or
  - (ii) is entered for exportation or brought to any place in the *Island* for exportation,
- (b) the psychoactive substance is likely to be consumed by any individual for its psychoactive effects, and
- (c) the importation or (as the case may be) exportation of the psychoactive substance is not an exempted activity.

(3) For the purposes of subsection (2) the importation or exportation of a psychoactive substance is an “exempted activity” if it would not be an offence under this Act by virtue of section 11.

(4) Section 188 of the Customs and Excise Management Act 1986 (*of Tynwald*) (time of importation, exportation, etc) applies for the purposes of subsection (2) as it applies for the purposes of that Act.

(5) *In this section –*

- (a) *“import” and “importing” includes the removal of a substance from the United Kingdom to the Island; and*
- (b) *“export” and “exporting” includes the removal of a substance from the Island to the United Kingdom.*

(6) *The exercise of any power under this Act and offences under section 8 of this Act, are assigned matters for the purposes of the Customs and Excise Management Act 1986 (of Tynwald).*

## **56 Offences by directors, partners, etc**

(1) Where an offence under this Act has been committed by a body corporate and it is proved that the offence—

- (a) has been committed with the consent or connivance of a person falling within subsection (2), or
- (b) is attributable to any neglect on the part of such a person,

that person (as well as the body corporate) is guilty of that offence and liable to be proceeded against and punished accordingly.

- (2) The persons are—
- (a) a director, manager, secretary or similar officer of the body corporate;
  - (b) any person who was purporting to act in such a capacity.

(3) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member, in connection with that management, as if the member were a director of the body corporate.

(4) *...Omitted.*

## **57** *...Omitted.*

## **58** **Review**

- (1) Before the end of the period mentioned in subsection (2), the *Treasury* must—
- (a) review the operation of this Act,
  - (b) prepare a report of the review, and
  - (c) lay a copy of the report before *Tynwald*.

(2) The period referred to in subsection (1) is the period of 30 months beginning with the day on which sections 4 to 8 come into force.

## **59** **Interpretation**

- (1) In this Act—

*"access prohibition" - omitted;*

*"customs officer" means an officer of customs and excise within the meaning given in section 184(1) of the Customs and Excise Management Act 1986 (of Tynwald);*

*"designated NCA officer" - omitted;*

*"exempted substance" has the meaning given by section 3;*

*"general customs function" - omitted;*

*"general customs official" - omitted;*

*"item" includes any substance;*

*"justice" - omitted;*

*"local authority" - omitted;*

*"police officer" means a constable within the meaning of the Police Act 1993 (of Tynwald);*

*"police or customs officer" - omitted;*

"premises" includes any place and, in particular, includes—

- (a) any vehicle, vessel or aircraft;
- (b) any offshore installation within the meaning given by *section 1(3) of the Mineral Workings (Offshore Installations) (Isle of Man) Act 1974 (of Tynwald)*;
- (c) *...omitted;*
- (d) any tent or movable structure;

*"premises notice" - omitted;*

*"premises order" - omitted;*

*"prohibited activity" - omitted;*

*"prohibition notice" - omitted;*

*"prohibition order" - omitted;*

"psychoactive effects", in relation to a substance, is to be read in accordance with section 2(2);

"psychoactive substance" has the meaning given by section 2(1);

"relevant enforcement officer" *means a customs or a police officer;*

*"relevant evidence" means evidence that an offence has been committed under sections 4 to 8 or section 26 or an ancillary offence within the meaning given in section 54(11);*

"search warrant" means a warrant under section 39;

*"senior officer" - omitted;*

*"Treasury" means the Department of that name established under section 1 of the Government Departments Act 1987 (of Tynwald);*

"vessel" is to be read in accordance with subsection (4).

(2) In this Act—

- (a) any reference to producing a substance is a reference to producing it by manufacture, cultivation or any other method;

- (b) any reference to supplying a substance includes a reference to distributing it;
- (c) any reference to consuming a substance is to be read in accordance with section 2(3).

(3) For the purposes of this Act the items which are in a person's possession include any items which are—

- (a) subject to that person's control, but
- (b) in the custody of another person.

(4) In this Act any reference to a vessel includes a reference to—

- (a) any ship or boat or any other description of vessel used in navigation, and
- (b) any hovercraft, submersible craft or other floating craft,

but does not include a reference to anything that permanently rests on, or is permanently attached to, the sea bed.

(5) *...Omitted.*

## **60 Consequential amendments**

Schedule 5 (which contains consequential amendments) has effect.

**61** *...Omitted.*

**62** *...Omitted.*

## **63 Commencement and short title**

(1) *...Omitted.*

(2) *...Omitted.*

(3) *...Omitted.*

(4) This Act may be cited as the Psychoactive Substances Act 2016.

# SCHEDULES

## SCHEDULE 1

Section 3

### EXEMPTED SUBSTANCES

#### Controlled drugs

- 1 Controlled drugs (within the meaning of the Misuse of Drugs Act 1976 (*of Tynwald*)).

#### Medicinal products

- 2 Medicinal products.

In this paragraph "medicinal product" has the same meaning as in the *Medicines Act 2003 (of Tynwald)*.

#### Alcohol

- 3 Alcohol or alcoholic products.

In this paragraph—

"alcohol" means ethyl alcohol, and

"alcoholic product" means any product which—

- (a) contains alcohol, and
- (b) does not contain any psychoactive substance.

#### Nicotine and tobacco products

- 4 Nicotine.

- 5 Tobacco products.

In this paragraph "tobacco product" means—

- (a) anything which is a tobacco product within the meaning of the Tobacco Products Duty Act 1986 (*of Tynwald*) (see section 1 of that Act), and
- (b) any other product which—
  - (i) contains nicotine, and
  - (ii) does not contain any psychoactive substance.

#### Caffeine

- 6 Caffeine or caffeine products.

In this paragraph "caffeine product" means any product which—

- (a) contains caffeine, and
- (b) does not contain any psychoactive substance.

## **Food**

7 Any substance which—

- (a) is ordinarily consumed as food, and
- (b) does not contain a prohibited ingredient.

In this paragraph—

"food" includes drink;

"prohibited ingredient", in relation to a substance, means any psychoactive substance—

- (a) which is not naturally occurring in the substance, and
- (b) the use of which in or on food is not authorised by an EU instrument.

## **SCHEDULE 2**

Section 11

### **EXEMPTED ACTIVITIES**

#### **Healthcare-related activities**

1 Any activity carried on by a person who is a health care professional and is acting in the course of his or her profession.

In this paragraph "health care professional" has the same meaning as in the *Health Care Professionals Act 2014 (of Tynwald)*.

2 Any activity carried on for the purpose of, or in connection with—

- (a) the supply to, or the consumption by, any person of a substance prescribed for that person by a health care professional acting in the course of his or her profession, or
- (b) the supply to, or the consumption by, any person of a substance in accordance with the directions of a health care professional acting in the course of his or her profession.

In this paragraph "health care professional" has the same meaning as in the *Health Care Professionals Act 2014 (of Tynwald)*.



3 ...Omitted.

## Research

4 Any activity carried on in the course of, or in connection with, approved scientific research.

In this paragraph—

“approved scientific research” means scientific research carried out by a person who has approval from a relevant ethics review body to carry out that research;

“relevant ethics review body” means—

- (a) a research ethics committee recognised or established by the Health Research Authority under Chapter 2 of Part 3 of the Care Act 2014 (*c.23 of Parliament*), or
- (b) a body appointed by any of the following for the purpose of assessing the ethics of research involving individuals—
  - (i) *a Government Department, within the meaning of the Government Departments Act 1987 (of Tynwald);*
  - (ii) a relevant NHS body;
  - (iii) *...omitted;*
  - (iv) *...omitted;*
  - (v) a charity which has as its charitable purpose (or one of its charitable purposes) the advancement of health or the saving of lives;

“charity” means –

- (a) a charity as defined by section 1(1) of the Charities Act 2011,
- (ab) *a charity as defined by the Charities Act 1962 (of Tynwald),*
- (b) a body entered in the Scottish Charity Register , or
- (c) a charity as defined by section 1(1) of the Charities Act (Northern Ireland) 2008;

*“relevant NHS body” means the Department of Health and Social Care or a body regulated by that Department pursuant to the National Health Services Act 2001 (of Tynwald).*

**SCHEDULE 3**  
**SEARCH WARRANTS**

Section 40

**PART 1**

**APPLICATION OF THIS SCHEDULE**

*1 This Schedule applies to applications for search warrants and to search warrants issued.*

**PART 2**

**SEARCH WARRANTS: APPLICATIONS AND SAFEGUARDS**

**Applications for warrants**

- 2 (1) A person applying for a search warrant must—
- (a) state that the application is made under section 39 of this Act;
  - (b) specify the matters set out in sub-paragraph (2) or (3) (as the case may be);
  - (c) state what are the grounds for suspecting that relevant evidence is on the premises;
  - (d) identify, so far as is possible, the offence to which the relevant evidence relates.
- (2) If the person is applying for a specific-premises warrant, the person must specify each set of premises that it is desired to enter and search.
- (3) If the person is applying for an all-premises warrant, the person must specify—
- (a) as many of the sets of premises that it is desired to enter and search as it is reasonably practicable to specify;
  - (b) the person who is in occupation or control of those premises and any others that it is desired to enter and search;
  - (c) why it is necessary to search more premises than those specified under paragraph (a);
  - (d) why it is not reasonably practicable to specify all the premises that it is desired to enter and search.
- (4) If the person is applying for a search warrant authorising entry and search on more than one occasion, the person must also state—
- (a) the ground on which the person applies for such a warrant, and

- (b) whether the person seeks a warrant authorising an unlimited number of entries, or (if not) the maximum number of entries desired.

(5) In this paragraph “specific-premises warrant” and “all-premises warrant” have the meaning given by section 39(3).

### **Safeguards in connection with power of entry conferred by warrant**

3 A search warrant authorises entry on one occasion only, unless it specifies that it authorises multiple entries.

If it specifies that it authorises multiple entries, it must also specify whether the number of entries authorised is unlimited, or limited to a specified maximum.

- 4 (1) A search warrant must—
- (a) specify the name of the person who applies for it;
  - (b) specify the date on which it is issued;
  - (c) state that the warrant is issued under section 39 of this Act;
  - (d) specify each set of premises to be searched, or (in the case of an all premises warrant) the person who is in occupation or control of premises to be searched, together with any premises to be searched that are under the person’s occupation or control and can be specified;
  - (e) identify, so far as is possible, the offence to which the relevant evidence suspected to be on the premises relates.

(2) In sub-paragraph (1)(d) “all-premises warrant” has the meaning given by section 39(3).

5 (1) Two copies must be made of a search warrant that specifies only one set of premises and does not authorise multiple entries.

(2) As many copies as are reasonably required may be made of any other kind of search warrant.

(3) The copies must be clearly certified as copies.

## **PART 3**

### **EXECUTION OF SEARCH WARRANTS**

#### **Warrant to be executed within one month**

6 Entry and search under a search warrant must be within one month from the date of its issue.

## **All-premises warrants**

7 (1) In the case of an all-premises warrant, premises that are not specified in the warrant may be entered and searched only if a relevant enforcement officer of the appropriate grade has authorised them to be entered.

(2) An authorisation under sub-paragraph (1) must be in writing.

(3) In this paragraph—

“all-premises warrant” has the meaning given by section 39(3);

“relevant enforcement officer of the appropriate grade” means—

(a) *a police officer of the rank of inspector or above, or*

(b) *a customs officer of the senior executive officer grade or above.*

## **Search of premises more than once**

8 (1) Premises may be entered or searched for the second or any subsequent time under a search warrant authorising multiple entries only if a relevant enforcement officer of the appropriate grade has authorised that entry to the premises.

(2) An authorisation under sub-paragraph (1) must be in writing.

(3) In this paragraph “relevant enforcement officer of the appropriate grade” has the same meaning as in paragraph 7.

## **Time of search**

9 Entry and search under a search warrant must be at a reasonable hour unless it appears to the relevant enforcement officer executing it that the purpose of a search may be frustrated on an entry at a reasonable hour.

## **Evidence of authority etc**

10 (1) Where the occupier of premises to be entered and searched under a search warrant is present at the time when a relevant enforcement officer seeks to execute the warrant, the following requirements must be satisfied—

(a) the occupier must be told the officer’s name;

(b) if not a constable in uniform, the officer must produce to the occupier documentary evidence that the officer is a relevant enforcement officer;

(c) the officer must produce the warrant to the occupier;

(d) the officer must supply the occupier with a copy of it.

(2) Where the occupier of premises to be entered and searched under a search warrant is not present at the time when a relevant enforcement officer seeks to execute the warrant—

- (a) if some other person who appears to the officer to be in charge of the premises is present, sub-paragraph (1) has effect as if a reference to the occupier were a reference to that other person;
- (b) if not, the officer must leave a copy of the warrant in a prominent place on the premises.

### **Extent of search**

11 A search under a search warrant may only be a search to the extent required for the purpose for which the warrant was issued.

### **Securing premises after entry**

12 A relevant enforcement officer who enters premises under a search warrant must take reasonable steps to ensure that when the officer leaves the premises they are as secure as they were before the officer entered.

### **Return and retention of warrant**

13 (1) A search warrant must be returned to the *Chief Registrar* (see sub-paragraph (2))—

- (a) when the warrant has been executed, or
- (b) on or before the expiry of the period of one month from the date of its issue, if the warrant is—
  - (i) a specific-premises warrant that has not been executed,
  - (ii) an all-premises warrant, or
  - (iii) a warrant authorising multiple entries.

(2) *...Omitted.*

(3) The appropriate person must retain a search warrant returned under sub-paragraph (1) for 12 months from the date of its return.

(4) If during that period the occupier of premises to which the search warrant relates asks to inspect it, the occupier must be allowed to do so.

(5) In this paragraph "specific-premises warrant" and "all-premises warrant" have the meaning given by section 39(3).

**SCHEDULE 4**  
**...Omitted.**

**SCHEDULE 5**  
**CONSEQUENTIAL AMENDMENTS**

Section 60

***Intoxicating Substances (Supply) Act 1985***

1 ...Omitted.

***Proceeds of Crime Act 2008 (of Tynwald)***

2 (1) The Proceeds of Crime Act 2008 (*of Tynwald*) is amended as follows.

(2) In Schedule 3 (lifestyle offences), after paragraph 1 insert—

"1A. *An offence under any of the following provisions of the Psychoactive Substances Act 2016 (c.2 of Parliament), as it has effect in the Island –*

(a) *section 4 (producing a psychoactive substance);*

(b) *section 5 (supplying, or offering to supply, a psychoactive substance);*

(c) *section 7 (possession of psychoactive substance with intent to supply); or*

(d) *section 8 (importing or exporting a psychoactive substance).*

(3) ...Omitted.

(4) ...Omitted.

***Police Reform Act 2002***

3 ...Omitted.

***Police (Northern Ireland) Act 2003***

4 ...Omitted.

***Licensing Act 2003***

5 ...Omitted.

**Gambling Act 2005**

6 ...Omitted.

**Armed Forces Act 2006**

7 ...Omitted.

**Police Powers and Procedures Act 1998 (of Tynwald)**

8 (1) *In Schedule 3 to the Police Powers and Procedures Act 1998 (of Tynwald), after item 18 add –*

*"19. An offence under any of the following provisions of the Psychoactive Substances Act 2016 (c.2 of Parliament), as it has effect in the Island –*

- (a) section 4 (producing a psychoactive substance);*
- (b) section 5 (supplying, or offering to supply, a psychoactive substance);*
- (c) section 7 (possession of psychoactive substance with intent to supply);*
- (d) section 8 (importing or exporting a psychoactive substance.*

*(2) ...Omitted.*

*(3) ...Omitted.*

*(4) ...Omitted.*

**Regulatory Enforcement and Sanctions Act 2008**

9 ...Omitted.

**Policing and Crime Act 2009**

10 ...Omitted.