

**MISUSE OF DRUGS AMENDMENT ACT 2005**

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**BERMUDA**

**2005 : 26**

**MISUSE OF DRUGS AMENDMENT ACT 2005**

Date of Assent: 4 August 2005

Operative Date: 4 August 2005

ARRANGEMENT OF SECTIONS

1	Short title	9	Amends section 38
2	Amends section 1	10	Amends section 40
3	Amends section 3	11	Application
4	Amends section 12	12	Inserts Schedules 5 to 7
5	Amends section 24		Schedule 5
6	Amends section 27		Schedule 6
7	Amends section 27A		Schedule 7
8	Inserts sections 27B to 27F		

WHEREAS it is expedient to amend the Misuse of Drugs Act 1972:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

**Short title**

1 This Act may be cited as the Misuse of Drugs Amendment Act 2005.

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### **Amends section 1**

2 Section 1 of the Misuse of Drugs Act 1972 (in this Act referred to as "the principal Act") is amended by inserting the following subsection next after subsection (3) —

"(4) For the purposes of this Act the street value of a controlled drug shall be the value for which evidence is accepted by the court as the maximum value the controlled drug can be sold for in Bermuda."

### **Amends section 3**

3 Section 3 of the principal Act is amended by repealing subsections (2), (3) and (4).

### **Amends section 12**

4 Section 12 of the principal Act is amended by repealing subsection (7).

### **Amends section 24**

5 Section 24 of the principal Act is amended —

(a) by designating the existing provision as subsection (1);  
and

(b) by inserting the following subsection next after subsection (1) —

"(2) The Minister may by regulations amend the Schedules to this Act."

### **Amends section 27**

6 Section 27 of the principal Act is amended in subsection (1) by repealing paragraphs (a) and (b) and substituting the following paragraphs —

"(a) punishment on conviction on indictment:  
imprisonment for life or a fine of one million dollars or three times the street value of the controlled drug, whichever is greater or both such fine and imprisonment;

(b) punishment on summary conviction: imprisonment for ten years or a fine of five hundred thousand dollars or three times the street value of the controlled drug, whichever is greater or both such fine and imprisonment."

### **Amends section 27A**

7 Section 27A of the principal Act is amended by repealing subsection (5).

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### **Inserts sections 27B to 27F**

8 The principal Act is amended by inserting the following sections next after section 27A —

#### **"Controlled drugs and increased penalty**

27B In sentencing a person convicted for an offence involving a controlled drug prescribed under Schedule 5, the court shall have regard to —

- (a) the street value of the controlled drug; and
- (b) the destructive effect on society of the controlled drugs prescribed under Schedule 5;

and add an increased sentence of fifty per cent to the basic sentence.

#### **Period of imprisonment in default of payment of fine**

27C Where a court imposes a penalty of a fine on a person after conviction for an offence under this Act and the fine so ordered to be paid is not paid within the time allowed by the court, the court shall have the power to impose a sentence of imprisonment as prescribed under Schedule 6, in default of the payment of the fine and this period of imprisonment shall be consecutive to any period of imprisonment imposed for the same offence.

#### **Statutory amount to be deemed, for supply**

27D Where a person is charged with an offence pertaining to a controlled drug prescribed under Schedule 7, and supply is an element, where the amount of controlled drug equals or exceeds the respective weight specified in that Schedule, until the contrary is proved, the person shall be presumed to have that controlled drug with the intention, whether by him or another person, for supply.

#### **Sentencing discounts for assistance**

27E Where a person charged with an offence under this Act gives assistance to the investigation and prosecution of any offender —

- (a) in the same case in which he is charged, such person may be rewarded with a discount not exceeding fifty per cent of the basic sentence; and
- (b) in a case other than that for which he has been charged, the person may be rewarded with a discount not exceeding seventy-five per cent of the basic sentence.

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### **Consecutive sentencing for drug offences and offences relating to violence or use of weapons**

27F Where a person charged with an offence under this Act, is also charged with an offence under the —

- (a) Firearms Act 1973;
- (b) Criminal Code Part XV - (provisions of law relating to violence to the person and to the preservation of human life);
- (c) Criminal Code Part XVI - (homicide, suicide and offences relating to childbirth); or
- (d) Criminal Code Part XVII - (offences endangering life or health: assaults);

on the same information or indictment, the sentences shall be consecutive to each other."

### **Amends section 38**

9 Section 38 of the principal Act is amended by repealing subsection (2).

### **Amends section 40**

10 Section 40 of the principal Act is amended by deleting the words "a means".

### **Application**

11 This Act shall apply to all cases which appear before the courts for trial or sentencing after it comes into force.

### **Inserts Schedules 5 to 7**

12 The principal Act is amended by inserting the following Schedules next after Schedule 4 —

### **"Schedule 5**

**(Section 27B)**

#### **Controlled drugs and increased penalty**

1. (a) Cocaine;

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- (b) Diamorphine;
  - (c) Methylamphetamine;
  - (d) Any compound (not being methoxyphenamine) structurally derived from phenethylamine, an N-alkylphenethylamine, -methylphenethylamine, and N-Alkyl -methylphenethylamine or an N-alkyl -ethylphenethylamine by substitution in the ring to any extent with alkyl, alkoxy, alkylendioxy or halide substituents, whether or not further substituted in the ring by one or more other univalent substituents.
- 2. Any stereoisomeric form of a substance for the time being specified in paragraph 1.
  - 3. Any salt of a substance for the time being specified in paragraph 1.
  - 4. Any preparation or other product containing a substance or product for the time being specified in paragraph 1.

**Schedule 6**

**(Section 27C)**

**Period of imprisonment in default of payment of fine**

<b>Amount of Fine</b>	<b>Period of Imprisonment</b>
1. For a fine not exceeding three hundred thousand dollars	Three years imprisonment
2. For a fine exceeding three hundred thousand dollars but not exceeding six hundred thousand dollars	Four years imprisonment
3. For a fine exceeding six hundred thousand dollars but not exceeding nine hundred thousand dollars	Five years imprisonment
4. For a fine exceeding nine hundred thousand dollars	Six years imprisonment

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**SCHEDULE 7 (section 27D)**

**Statutory amount of controlled drugs to be deemed for supply**

<b>Controlled drug</b>	<b>Weight</b>
(a) Diamorphine (heroin)	1 gram
(b) Cocaine	1 gram
(c) Cannabis	20 grams
(d) 3,4-Methylenedioxyamphetamine (MDMA ( <b>Ecstasy</b> ))	4 tablets or 1 gram."

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