CAYMAN ISLANDS

MISUSE OF DRUGS (AMENDMENT) ACT, 2024

(Act 24 of 2024)

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PUBLISHING DETAILS

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CAYMAN ISLANDS

(Act 24 of 2024)
I Assent,

Jane Owen
Governor

Date: 9th January, 2025

MISUSE OF DRUGS (AMENDMENT) ACT, 2024

(Act 24 of 2024)

AN ACT TO AMEND THE MISUSE OF DRUGS ACT (2017 REVISION) TO ENHANCE THE LEGISLATIVE FRAMEWORK FOR COMBATTING ILLICIT TRAFFICKING ACTIVITIES CONDUCTED BY AIR; TO PROVIDE FOR RECIPROCAL ENFORCEMENT POWERS IN RELATION TO AIRCRAFT SUSPECTED OF BEING INVOLVED IN ILLICIT TRAFFICKING ACTIVITIES; TO DESIGNATE OFFICERS OF THE CAYMAN ISLANDS COAST GUARD AS ENFORCEMENT OFFICERS UNDER THE ACT; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Act may be cited as the Misuse of Drugs (Amendment) Act, 2024.

General amendments to the Misuse of Drugs Act (2017 Revision) - deletion of the words "customs officer" and substitution of the words "customs and border control officer"

2. The *Misuse of Drugs Act (2017 Revision)*, in this Act referred to as the "principal Act", is amended in the following sections by deleting the words "customs officer", wherever they appear, and substituting the words "customs and border control officer" —

(a) section 3(3);

(b) section 5(1), (2) and (3);

(c) section 6(1);

(d) section 15;

(e) section 25(1); and

(f) section 26(1) and (8).

Amendment of section 2 - definitions and interpretation

3. The principal Act is amended in section 2 as follows —

(a) by repealing the section heading and substituting the following section heading —

"**Interpretation**"; and

(b) in subsection (1) as follows —

(i) in the definition of the words "**Convention state**", by inserting after the words "Vienna Convention" the words "or the Treaty of San José";

(ii) by deleting the definition of the words "**customs officer**" and substituting the following definition —

" "**customs and border control officer**" means a public officer appointed under section 6 of the *Customs and Border Control Act (2024 Revision)* and includes any police officer or other person assisting the Customs and Border Control Service in any assigned matter;";

(iii) in the definition of the words "**drug trafficking offence**", in paragraph (e), by inserting after the word "ship" the words "or aircraft"; and

(iv) by inserting in the appropriate alphabetical sequence, the following definitions —

" "**Cayman aircraft**" means an aircraft registered in the Islands;

"**Cayman Islands waters**" means the sea or other waters within the seaward limits of the territorial sea of the Islands;

"**Chief Executive Officer**", in relation to the Maritime Authority, means the Chief Executive Officer of the Maritime Authority of the Cayman Islands appointed under section 9 of the *Maritime Authority Act (2013 Revision)*;

"**Coast Guard**" means the Cayman Islands Coast Guard established under section 3 of the *Cayman Islands Coast Guard Act, 2021*;

"**Commandant**" means the officer appointed by the Governor under section 14(2)(a) of the *Cayman Islands Coast Guard Act, 2021* to have command of the Coast Guard;

"**commissioned officer of the Coast Guard**" means a person granted a commission by the Governor under section 14(1) of the *Cayman Islands Coast Guard Act, 2021* and carrying rank and precedence within the Coast Guard in a rank specified in Part A of Schedule 1 to that Act;

"**Customs and Border Control Service**" means the Customs and Border Control Service established under section 3 of the *Customs and Border Control Act (2024 Revision)* and includes any officer authorized to act on its behalf;

"**Director-General of Civil Aviation**" means the Director-General of Civil Aviation appointed under section 11(1) of the *Civil Aviation Authority Act (2015 Revision)*;

"**enforcement officer**" means —

(a) a constable;

(b) a customs and border control officer;

(c) an officer of the Coast Guard; or

(d) any other person of a description specified in an Order made by the Cabinet for the purposes of Schedule 4;

"**internal waters**", in relation to the Islands, means Cayman Islands waters landward of the baselines for measuring the breadth of its territorial sea;

"**Maritime Authority**" means the Maritime Authority of the Cayman Islands established under section 3 of the *Maritime Authority Act (2013 Revision)*;

"**non-commissioned officer of the Coast Guard**" means a person appointed by the Commandant under section 14(5) of the *Cayman Islands Coast Guard Act, 2021* and carrying rank and precedence within the Coast Guard in a rank specified in Part B of Schedule 1 to that Act;

"**officer of the Coast Guard**" means a commissioned officer of the Coast Guard or a non-commissioned officer of the Coast Guard;

"**territorial sea**", in relation to the Islands, has the meaning given by the *Cayman Islands (Territorial Seas) Order 1989 [UKSI 1989/2397]*; and

"**Treaty of San José**" means the Agreement Concerning Co-operation in Suppressing Illicit Maritime and Air Trafficking in Narcotic Drugs and Psychotropic Substances in the Caribbean Area, signed in San José on 10th April, 2003;".

Amendment of section 7 - evidence

4. The principal Act is amended in section 7(5) by inserting after the word "Convention" the words "or the Treaty of San José".

Amendment of section 18 - offences on Cayman ships

5. The principal Act is amended in section 18 as follows —

(a) in the section heading, by inserting after the word "ships" the words "and Cayman aircraft"; and

(b) by inserting after the word "ship" the words "or a Cayman aircraft".

Amendment of section 19 - ships used for illicit traffic

6. The principal Act is amended in section 19 as follows —

(a) in the section heading, by inserting after the words "Ships" the words "and aircraft";

(b) in subsection (1) as follows —

(i) in paragraph (a), by inserting after the word "ship" the words "or a Cayman aircraft"; and

(ii) by repealing paragraph (b) and substituting the following paragraph —

"(b) a ship or an aircraft registered in a state other than the Islands which is a party to the Vienna Convention or the Treaty of San José; and"; and

(c) in subsection (2) as follows —

(i) by inserting after the words "a ship" the words "or an aircraft"; and

(ii) in paragraph (b), by inserting after the words "the ship" the words "or the aircraft".

Repeal and substitution of section 20 - enforcement powers in respect of ships

7. The principal Act is amended by repealing section 20 and substituting the following section —

"**Enforcement powers in respect of ships and aircraft**

20. (1) The powers conferred on an enforcement officer by Schedule 4 are exercisable in relation to a ship or an aircraft to which section 18 or 19 applies for detecting and taking appropriate action in respect of the offences mentioned in those sections.

(2) The powers referred to in subsection (1) are not exercisable outside the landward limits of the territorial sea of the Islands in relation to a

ship or an aircraft registered in a Convention state except with the authority of the Governor or the relevant competent authority.

(3) The Governor or the relevant competent authority shall not give authority under subsection (2) unless the relevant Convention state has, in relation to the ship or the aircraft —

(a) requested the assistance of the Islands for the purpose mentioned in subsection (1); or

(b) authorized the Islands to act for that purpose.

(4) Where the Governor or the relevant competent authority gives the authority under subsection (2) pursuant to a request or authorization referred to in subsection (3), the Governor or the relevant competent authority shall impose conditions or limitations on the exercise of the powers as may be necessary to give effect to any conditions or limitations imposed by that state.

(5) The Governor or the relevant competent authority, either of the Governor's or the relevant competent authority's own motion or in response to a request from a Convention state, may authorize that state to exercise, in relation to a Cayman ship or a Cayman aircraft, powers corresponding to those conferred on enforcement officers by Schedule 4 but subject to conditions or limitations, if any, as the Governor or the relevant competent authority may impose.

(6) The powers conferred by Schedule 4 are not to be exercised in or over the territory or the territorial waters of a state other than the Islands without the authority of the Governor or the relevant competent authority.

(7) The Governor or the relevant competent authority shall not give authority under subsection (6) unless the relevant state has consented to the exercise of those powers.

(8) Subsections (2), (5) and (6) are without prejudice to any agreement made with any other state on behalf of the Islands, under which the Islands agrees to the reciprocal provision of assistance to detect and take appropriate action in relation to an offence under section 18 or 19.

(9) The Governor or the relevant competent authority may request the assistance of the Chief Executive Officer of the Maritime Authority or any entity as may be reasonably required in the exercise of the powers of the Governor or the relevant competent authority under this section, and the Chief Executive Officer of the Maritime Authority or the entity shall provide the assistance requested to the Governor or the relevant competent authority.

(10) The relevant competent authority may exercise the functions of the Governor under this section where the Governor delegates the functions to the relevant competent authority.

(11) Where the Governor delegates the functions of the Governor under this section —

(a) the delegation shall be in writing and the instrument of delegation shall be given to the relevant competent authority; and

(b) the Governor may, by written notice to the relevant competent authority, at any time, revoke any functions so delegated.

(12) For the purposes of this section, "**relevant competent authority**" means —

(a) in relation to aircraft, the Director-General of Civil Aviation or the designate of the Director-General of Civil Aviation; and

(b) in relation to ships, the Commandant or the designate of the Commandant.".

Amendment of section 21 - jurisdiction and prosecutions in respect of ships

8. The principal Act is amended in section 21 as follows —

(a) in the section heading, by inserting after the word "ships" the words "and aircraft";

(b) in subsection (1), by inserting after the word "ship" the words "or an aircraft"; and

(c) in subsection (3), by inserting after the word "ship" the words "or an aircraft".

Repeal and substitution of section 22 - pursuit into territorial waters

9. The principal Act is amended by repealing section 22 and substituting the following section —

"**Entry into territorial waters**

22. (1) Subject to this section, a law enforcement official on board a law enforcement vessel of a Convention state may exercise in or over the internal waters and the territorial sea of the Islands the powers specified in paragraphs 2, 3 and 4 of Schedule 4 in relation to —

(a) any ship or aircraft, when so authorized by —

(i) a law enforcement official of the Islands who is embarked on a law enforcement vessel of the Convention state; or

(ii) the Commandant, where there is no law enforcement official of the Islands embarked on the law enforcement vessel of the Convention state;

(b) a ship or an aircraft which is reasonably suspected of engaging in the commission of a drug trafficking offence outside the landward limits of the territorial sea and is pursued into or over the territorial sea of the Islands by a law enforcement vessel of the Convention state; or

(c) a ship or an aircraft, other than a Cayman ship or a Cayman aircraft, which is suspected of engaging in the commission of a drug trafficking offence.

(2) A law enforcement official may only seize and detain a ship or an aircraft where a search under subsection (1) reveals evidence that the ship or the aircraft is being used for the commission of a drug trafficking offence.

(3) A law enforcement vessel of a Convention state shall not exercise the powers specified in subsection (1) unless a law enforcement vessel of the Islands is not immediately available to exercise the powers specified in this section in relation to the ship or the aircraft suspected of engaging in a drug trafficking offence.

(4) A law enforcement official of the Convention state shall, before exercising the powers under this section —

(a) give advance notice of the law enforcement official's proposed action in relation to the ship or the aircraft to the Cayman Islands Coast Guard Operations and Rescue Coordination Centre or an enforcement officer; or

(b) where it is not practical to give advance notice, notify the Cayman Islands Coast Guard Operations and Rescue Coordination Centre or an enforcement officer of any action taken in relation to the ship or the aircraft at the earliest opportunity after the action has been taken.

(5) Where a law enforcement official of a Convention state exercises any of the powers conferred on the law enforcement official by this section —

(a) paragraphs 5, 6, 7 and 8 of Schedule 4 shall apply to the law enforcement official; and

(b) the Cabinet may waive the right of the Islands to its primary jurisdiction and may authorize the enforcement of the law of the Convention state against the ship or the aircraft, its cargo or any person on board the ship or the aircraft.

(6) An enforcement officer may exercise in the territorial sea of a Convention state any of the powers given to a law enforcement official under this section subject to the same conditions applicable to the exercise of those powers by a law enforcement official.

(7) In this section —

"**law enforcement official**" means an official of a class selected by a Convention state to carry out the powers specified in this section; and

"**law enforcement vessel**", in relation to a Convention state, means —

(a) an aircraft of that state —

(i) which is authorized to be in the government's service of that state for the purposes of enforcement under this Act;

(ii) on which law enforcement officials of that state are embarked; and

(iii) which is clearly marked and identifiable as a law enforcement vessel; or

(b) a warship or other non-commercial ship of that state —

(i) which is authorized to be in the government's service of that state for the purposes of enforcement under this Act;

(ii) on which law enforcement officials of that state are embarked; and

(iii) which is clearly marked and identifiable as a law enforcement vessel,

and includes any boat or aircraft embarked on that aircraft or ship.".

Amendment of Schedule 4 - enforcement powers in respect of ships

10. The principal Act is amended in Schedule 4 as follows —

(a) in the Schedule Subheading, by inserting after the word "**SHIPS**" the words "**AND AIRCRAFT**";

(b) by repealing paragraph 1 and substituting the following paragraph —

"**Preliminary**

1. In this Schedule —

"**aircraft**" means the aircraft in relation to which the powers conferred by this Schedule are exercised; and

"**ship**" means the ship in relation to which the powers conferred by this Schedule are exercised.";

(c) in paragraph 2 as follows —

(i) in subparagraph (1), by deleting the words "stop the ship" and substituting the words "patrol in or over waters, stop a ship";

(ii) by repealing subparagraph (2) and substituting the following subparagraph —

"(2) Where an enforcement officer is exercising the enforcement officer's powers in or over the waters of another state in accordance with section 20, the enforcement officer may require the ship to be taken to a port in the state in question, or if the state has so requested, in any other country or territory willing to receive it."; and

(iii) by inserting after subparagraph (4) the following subparagraphs —

"(5) An enforcement officer may monitor an aircraft and where the aircraft lands in the Islands, the enforcement officer may detain the aircraft if the enforcement officer thinks it necessary for the exercise of the functions of the enforcement officer.

(6) If an enforcement officer detains an aircraft, the enforcement officer shall serve on the pilot a written notice stating that the aircraft is to be detained until the notice is withdrawn by the service on the pilot of a further written notice by an enforcement officer.";

(d) in paragraph 3 as follows —

(i) by repealing subparagraph (1) and substituting the following subparagraph —

"(1) In accordance with the powers conferred under section 20, an enforcement officer may search a ship or an aircraft, anyone on the ship or the aircraft and anything on the ship or the aircraft, including its cargo.";

(ii) in subparagraph (2), by inserting after the words "the ship", wherever they appear, the words "or the aircraft"; and

(iii) in subparagraph (3), by inserting after the words "the ship", wherever they appear, the words "or the aircraft"; and

(e) in paragraph 4 as follows —

(i) by inserting after the words “a ship” the words “or an aircraft”; and

(ii) in subparagraph (b), by inserting after the words “the ship” the words “or the aircraft”.

Passed by the Parliament the 16th day of December, 2024.

Hon. Sir Alden McLaughlin
Speaker

Zena Merren-Chin
Clerk of the Parliament