

ABBOZZ TA' LIĠI msejjah

ATT ta' l-1997 li jemenda l-Ordinanza dwar il-Professjoni Medika u l-Professjonijiet li għandhom x'jaqsmu magħha, Kap. 31.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:-

1. Dan l-Att jista' jissejjah l-Att ta' l-1997 li jemenda l-Ordinanza dwar il-Professjoni Medika u l-Professjonijiet li għandhom x'jaqsmu magħha, u għandu jinqara u jiftiehem haġa waħda ma' l-Ordinanza dwar il-Professjoni Medika u l-Professjonijiet li għandhom x'jaqsmu magħha, hawnhekk iżjed 'il quddiem imsejha "il-liġi prinċipali". Titolu fil-qosor.

2. L-artikolu 2 tal-liġi prinċipali għandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 2 tal-liġi prinċipali.

(a) l-artikolu kif inhu bhal issa għandu jiġi enumerat mill-ġdid bħala s-subartikolu (1);

(b) fit-test Inġliż tas-subartikolu (1) tiegħu kif enumerat mill-ġdid, minnufih wara t-tifsira ta' "authorised apothecary" għandhom jizjeddu dawn it-tifsiriet godda li ġejjin:

"export", with its grammatical variations and cognate expressions, in relation to Malta, means to take or cause to be taken out of Malta in any manner whatsoever;

“import”, with its grammatical variations and cognate expressions, in relation to Malta, means to bring or cause to be brought into Malta in any manner whatsoever;”;

(c) fit-test Malta tas-subartikolu (1) tieghu kif enumerat mill-gdid, minnufih qabel it-tifsira ta’ “il-Kunsill Mediku” ghandhom jizziedu dawn it-tifsiriet godda li ġejjin:

“esportazzjoni”, bil-varjazzjonijiet grammatikali tagħha u bl-espressjonijiet imnisslin minnha, tfisser, rigward Malta, tiehu jew iġġieghel li jittiehed barra minn Malta b’kull mod li jkun;

“importazzjoni”, bil-varjazzjonijiet grammatikali tagħha u bl-espressjonijiet imnisslin minnha, tfisser, rigward Malta, iġġib jew iġġieghel li jingieb f’Malta b’kull mod li jkun;”;

(d) minnufih wara s-subartikolu (1) tieghu kif enumerat mill-gdid, ghandu jizzied dan is-subartikolu ġdid li ġej:

“(2) F’ din l-Ordinanza, kemm-il darba r-rabta tal-kliem ma tehtiegħ xort’ohra, kull riferenza għal din l-Ordinanza għandha titqies li tinkludi riferenza għar-regoli jew regolamenti magħmulin taħtha.”.

3. L-artikolu 120A tal-liġi prinċipali għandu jiġi emendat kif ġej:

(a) fis-subparagrafu (d) tas-subartikolu (1) tieghu, minflok il-kliem “fis-sehh f’ dak il-post, jew” għandhom jidhlu l-kliem “fis-sehh f’ dak il-post, jew tassocja ruhha ma’ xi persuna jew persuni ohra f’Malta sabiex tagħmel tali reat,”;

(b) fis-subartikolu (1A) tieghu, minflok il-kliem “msemmija fil-paragrafu (f)” għandhom jidhlu l-kliem “msemmija fil-paragrafi (d) u (f)”;

(c) minflok is-subartikolu (1B) tieghu għandu jidhol dan li ġej:

“(1B) Għall-finijiet ta’ dan l-artikolu l-kelma “jittraffika” (bil-varjazzjonijiet grammatikali u bl-espressjonijiet imnisslin minnha) b’riferenza għal traffikar f’medicina, tinkludi l-koltivazzjoni, l-importazzjoni, il-manifattura, l-esportazzjoni, id-distribuzzjoni, il-produzzjoni, l-amministrazzjoni, il-provvista, li wiehed joffri li jagħmel xi wiehed minn dawn l-atti, u l-ghoti ta’ informazzjoni intiza biex twassal għax-xiri ta’ tali medicina bi ksur tad-dispożizzjonijiet ta’ din l-Ordinanza.”;

(d) minnufih wara s-subartikolu (1B) tieghu għandhom jidhlu dawn is-subartikoli godda li ġejjin:

Emenda ta’
l-artikolu 120A
tal-liġi
prinċipali.

“(1C) Persuna tkun ukoll hatja ta’ reat kontra din l-Ordinanza jekk timmanifattura, tittrasporta jew tqassam xi taghmir jew materjal meta tkun taf li dawn ikunu sejrin jintużaw għall-produzzjoni jew manifattura ta’ xi mediċina kontra d-dispożizzjonijiet ta’ din l-Ordinanza u kull ghemil projbit taht dan is-subartikolu għandu għall-finijiet ta’ din l-Ordinanza jitqies li jkun jikkostitwixxi reat ta’ bejgh jew traffikar ta’ mediċina kontra din l-Ordinanza.

(1D) (a) Persuna tkun ukoll hatja ta’ reat kontra din l-Ordinanza jekk tuża, tittrasferixxi l-pussess ta’, tibghat jew tikkonsenja lil xi persuna jew *post, bankwista, tirċievi, iżżomm, tittrasporta, tittrasmetti, taltera, tiddisponi minn jew b’xi mod iehor tinnegozja, bi kwalunkwe mod jew bi kwalunkwe mezz, xi flus, proprjetà (kemm jekk mobbli jew immobbli) jew xi rikavat minn dawk il-flus jew minn dik il-proprjetà bil-hsieb li taħbi jew tikkonverti dawk il-flus jew dik il-proprjetà jew dak ir-rikavat u tkun taf jew ikollha suspett li dawk il-flus jew proprjetà kollha jew parti minnhom, jew dak ir-rikavat kollu jew parti minnu, ikunu ġew miksuba jew riċevuti, direttament jew indiretta, bhala riżultat ta’ —*

(i) l-għemil ta’ reat imsemmi fis-subartikoli (1) u (1C) ta’ dan l-artikolu; jew

(ii) xi att ta’ kommissjoni jew ommissjoni f’xi post barra minn dawn il-Gzejjer li jekk isir f’dawn il-Gzejjer ikun jikkostitwixxi reat taht is-subartikoli (1) jew (1C) ta’ dan l-artikolu.

(b) Fi proċedimenti għal reat taht il-paragrafu (a) ta’ dan is-subartikolu, meta l-prosekuzzjoni ġgħib prova li l-imputat jew akkużat ma jkun ta ebda spjegazzjoni raġonevoli li turi li dawk il-flus, proprjetà jew rikavat ma kenux flus, proprjetà jew rikavat kif deskritti fl-imsemmi paragrafu, l-oneru li jipprova l-provenjenza leċita ta’ dawk il-flus, proprjetà jew rikavat ikun jinkombi fuq il-persuna imputata jew akkużata.

(1E) Persuna tkun ukoll hatja ta’ reat kontra din l-Ordinanza jekk tbiegh jew xort’ohra tittraffika f’sustanza msemmiya fit-Tielet Skeda li tinsab ma’ l-Ordinanza dwar il-Mediċini Perikolużi, meta tkun taf jew ikollha suspett illi sustanza tkun sejra tintuża fi jew għall-produzzjoni ta’ mediċina msemmiya fit-Taqsima A tat-Tielet Skeda li tinsab ma’ din l-Ordinanza kontra d-dispożizzjonijiet ta’ din l-Ordinanza; u t-tifsira ta’ “jittraffika” fis-subartikolu (1B) għandha tapplika, *mutatis mutandis*, għal dan is-subartikolu.”; Kap. 101

(e) minflok is-subartikolu (2) tieghu ghandu jidhol dan li
gej:

“(2) Kull persuna akkuzata b’reat kontra din l-Ordinanza ghandha titressaq jew quddiem il-Qorti Kriminali jew quddiem il-Qorti tal-Magistrati (Malta) jew il-Qorti tal-Magistrati (Ghawdex), skond kif jordna l-Avukat Ġenerali, u jekk tinsab hatja tehel, ghal kull reat —

(a) meta tinsab hatja mill-Qorti Kriminali —

(i) meta r-reat ikun il-bejgh jew traffikar ta’ medicina msemmija fit-Taqsima A tat-Tielet Skeda li tinsab ma’ din l-Ordinanza kontra d-dispożizzjonijiet ta’ dan l-artikolu, jew ikun reat taht il-paragrafu (f) tas-subartikolu (1), jew ikun reat ta’ pussess ta’ medicina, kontra d-dispożizzjonijiet ta’ din l-Ordinanza, taht tali ċirkostanzi li l-qorti tkun sodisfatta li dak il-pussess ma kienx ghall-użu esklussiv tal-hati, jew ikun reat imsemmi fis-subartikoli (1C) jew (1D) jew (1E), prigunerija ghall-ghomor:

Iżda:

(aa) meta l-Qorti tkun tal-fehma li, meta tqis l-età tal-hati, il-kondotta ta’ qabel tal-hati, il-kwantità tal-medicina u x-xorta u l-kwantità tat-tagħmir jew materjali, jekk ikun il-każ, involuti fir-reat u ċ-ċirkostanzi l-oħra kollha tar-reat, il-piena ta’ prigunerija ghall-ghomor ma tkunx dik xierqa; jew

(bb) meta l-verdett tal-ġuri ma jkunx unanimu,

f’każijiet bhal dawn il-Qorti tista’ tikkundanna lill-persuna misjuba hatja ghall-piena ta’ prigunerija ghal żmien ta’ mhux inqas minn erba’ snin iżda mhux iżjed minn tletin sena u multa ta’ mhux inqas minn elf lira Maltija iżda mhux iżjed minn ħamsin elf lira Maltija; u

(ii) ghal kull reat iehor prigunerija ghal zmien ta' mhux inqas minn tnax-il xahar izda mhux iżjed minn ghaxar snin u multa ta' mhux inqas minn mitejn lira Maltija izda mhux iżjed minn ghaxart elef lira Maltija; jew

(b) meta tinsab hatja mill-Qorti tal-Magistrati (Malta) jew il-Qorti tal-Magistrati (Ghawdex) —

(i) meta r-reat ikun il-bejgh jew trafikar ta' medicina msemija fit-Taghsima A tat-Tielet Skeda li tinsab ma' din l-Ordinanza kontra d-dispożizzjonijiet ta' dan l-artikolu, jew ikun reat taht il-paragrafu (f) tas-subartikolu (1), jew ikun reat ta' pussess ta' medicina, kontra d-dispożizzjonijiet ta' din l-Ordinanza, taht tali cirkostanzi li l-qorti tkun sodisfatta li dak il-pussess ma kienx ghall-użu esklussiv tal-hati, jew ikun reat imsemmi fis-subartikoli (1C) jew (1D) jew (1E), prigunerija ghal zmien ta' mhux inqas minn sitt xhur izda mhux iżjed minn ghaxar snin u multa ta' mhux inqas minn mitejn lira Maltija izda mhux iżjed minn hamest elef lira Maltija; u

(ii) ghal kull reat iehor, fil-każ ta' persuna li tinsab hatja, multa ta' mhux inqas minn mitt lira Maltija izda mhux iżjed minn elf lira Maltija jew prigunerija ghal zmien ta' mhux inqas minn tliet xhur izda mhux iżjed minn tnax-il xahar, jew dik il-multa u prigunerija flimkien,

u f'kull każ li persuna tinsab hatja ta' reat kontra din l-Ordinanza, l-oġġetti kollha li dwarhom ikun sar ir-reat jiġu konfiskati favur il-Gvern, u kull oġġett hekk ikkonfiskat ghandu, jekk il-qorti hekk tordna, jiġi distrutt jew isir minnu xort'ohra kif jista' jiġi provdut fl-ordni:

Izda ghall-finijiet ta' dan is-subartikolu, meta l-persuna akkużata ma tkunx ghalqet l-età ta' sittax-il sena u kemm-il darba ma tkunx akkużata flimkien ma' persuna ohra li tkun ghalqet l-età ta' sittax-il sena, kull riferenza ghall-Qorti tal-Magistrati (Malta) jew ghall-Qorti tal-Magistrati (Ghawdex) ghandha tiftiehem bhala riferenza ghall-Qorti tal-Minorenni:

Iżda wkoll, meta persuna tinsab hatja kif provdut fis-subparagrafu (i) tal-paragrafu (a) jew fis-subparagrafu (i) tal-paragrafu (b) u r-reat ikun sar fi, jew gewwa distanza ta' 100 metru mill-perimetru ta', skola, club jew centru taż-żghazagh, jew xi post iehor simili fejn normalment jiltaqghu iż-żghazagh, jew ir-reat ikun jikkonsisti fil-bejgh, fil-provvista, fl-amministrazzjoni jew f'li wiehed joffri li jaghmel xi wiehed minn dawn l-atti, lil minuri, lil mara tqila jew lil persuna li tkun qed issegwi programm ta' kura jew ta' riabilitazzjoni mid-dipendenza mid-drogi, il-piena tidded bi grad.”;

(f) fis-subartikolu (2A) tieghu, minflok il-kliem “dwar xi medicina bhal dik” ghandhom jidhlu l-kliem “dwar xi medicina bhal dik, jew dwar ir-reat ta' pussess ta' medicina, kontra d-dispożizzjonijiet ta' din l-Ordinanza, taht tali ċirkostanzi li l-qorti tkun sodisfatta li dak il-pussess ma kienx ghall-użu esklussiv tal-hati, jew dwar reati msemmija fis-subartikolu (1C) jew (1D),”;

(g) minflok is-subartikolu (6) tieghu ghandu jidhol dan li ġej:

“(6) Meta jirriżulta lill-qorti li l-hati, li ma jkunx persuna li tkun instabet hatja ta' reat kif imsemmi fis-subparagrafu (i) tal-paragrafu (a) jew fis-subparagrafu (i) tal-paragrafu (b) tas-subartikolu (2), ikun jinhtieg kura u għajnuna ghar-riabilitazzjoni tieghu mid-dipendenza fuq xi medicina msemmija fit-Tielet Skeda li tinsab ma' din l-Ordinanza l-qorti tista', minflok ma tapplika xi wahda mill-pieni provduti fis-subartikoli ta' qabel dan, tqiegħed lill-hati fuq *probation* skond id-dispożizzjonijiet ta' l-Att dwar il-*Probation* ta' Hatjin, hekk iżda li dak l-ordni ta' *probation* jista' jsir minkejja li l-hati, li jkun għalaq l-età ta' erbatax-il sena, ma jkunx wera r-rieda tieghu li jhares il-htigiet ta' l-ordni kif provdut fis-subartikolu (5) ta' l-artikolu 5 ta' dak l-Att.”;

(h) minnufih wara s-subartikolu (6) tieghu ghandhom jidhlu dawn is-subartikoli ġodda li ġejjin:

“(7) Id-dispożizzjonijiet ta' l-artikoli 21 u 28A tal-Kodiċi Kriminali u d-dispożizzjonijiet ta' l-Att dwar il-*Probation* ta' Hatjin ma jkunux applikabbli dwar xi persuna misjuba hatja ta' reat kif imsemmi fis-subparagrafu (i) tal-paragrafu (a) jew fis-subparagrafu (i) tal-paragrafu (b) tas-subartikolu (2).

(8) Meta, fil-kaz ta' persuna misjuba hatja ta' reat imsemmi fis-subartikolu (7), il-qorti tkun sodisfatta li dik il-persuna tkun tinhtieg kura ghar-riabilitazzjoni taghha mid-dipendenza fuq xi medicina msemmija fit-Tielet Skeda li tinsab ma' din l-Ordinanza, id-dispożizzjonijiet tas-subartikoli (10) sa (14) ta' l-artikolu 22 ta' l-Ordinanza dwar il-Medicini Perikolużi ghandhom ikunu applikabbli bl-istess mod u sa l-istess limitu daqskieku dik il-persuna kienet persuna misjuba hatja ta' reat imsemmi fis-subartikolu (10) ta' l-imsemmi artikolu 22 ”.

4. Minnufih wara l-artikolu 102A tal-liġi prinċipali ghandhom jizziedu dawn l-artikoli godda li ġejjin:

Zieda ta' l-artikoli godda 120B, 120C, 120D, 120E u 120F mal-liġi prinċipali.

“Tifsir tal-kelmiet “liġi korrispondenti”.

120B. Għall-finijiet ta' l-artikoli 120A u 121C il-kelmiet “liġi korrispondenti” ghandhom l-istess tifsira bhal dik moghtija lilhom bl-artikolu 23 ta' l-Ordinanza dwar il-Medicini Perikolużi u d-dispożizzjonijiet ta' l-imsemmi artikolu 23 ghandhom japplikaw ghalihom.

Kap. 101.

Setgħat addizzjonali ta' investigazzjoni.

120C. (1) Meta, wara informazzjoni li tasallu, l-Avukat Ġenerali jkollu raġuni biżżejjed biex jissuspetta li persuna (hawnhekk iżjed 'il quddiem imsejha “il-persuna suspettata”):

(a) tkun hatja ta' bejgh jew traffikar ta' xi medicina kontra d-dispożizzjonijiet ta' din l-Ordinanza, jew

(b) tkun hatja ta' xi reat imsemmi fil-paragrafi (e) jew (f) tas-subartikolu (1) ta' l-artikolu 120A, jew

(c) tkun hatja ta' reat imsemmi fil-paragrafu (d) tas-subartikolu (1) ta' l-artikolu 120A b'riferenza għal xi reat imsemmi fil-paragrafi ta' qabel dan ta' dan is-subartikolu, jew

(d) tkun hatja ta' reat imsemmi fis-subartikolu (1D) ta' l-artikolu 120A,

l-Avukat Ġenerali jista' jitlob lill-Qorti Kriminali għal ordni ta' investigazzjoni jew ordni ta' sekwestru jew għat-tnejn u d-dispożizzjonijiet ta' l-artikolu 24A ta' l-Ordinanza dwar il-Medicini Perikolużi ghandhom *mutatis mutandis* japplikaw għal dik it-talba u għall-persuna suspettata u għal kull ordni ta' investigazzjoni jew ta' sekwestru magħmul mill-Qorti bhala riżultat ta' dik it-talba.

Kap. 101.

(2) Il-kliem "ordni ta' investigazzjoni" fis-subartikoli (2) u (5) ta' l-artikolu 24A ta' l-Ordinanza dwar il-Mediċini Perikolużi għandhom jinqraw u jiftiehem bħala li jinkludu ordni ta' investigazzjoni magħmul taht id-dispożizzjonijiet ta' dan l-artikolu.

(3) Il-kliem "ordni ta' sekwestru" fis-subartikolu (6A) ta' l-artikolu 24A ta' l-Ordinanza dwar il-Mediċini Perikolużi għandhom jinqraw u jiftiehem bħala li jinkludu ordni ta' sekwestru magħmul taht id-dispożizzjonijiet ta' dan l-artikolu.

Setgħat ta' investigazzjoni dwar reati fil-kompetenza ta' Qrati barra minn Malta.

120D. (1) Meta l-Avukat Ġenerali jirċievi talba magħmula minn awtorità ġudizzjarja jew prosekutriċi ta' xi post barra minn Malta sabiex isiru investigazzjonijiet f'Malta dwar persuna (hawnhekk iżjed 'il quddiem imsejha "il-persuna suspettata") suspettata minn dik l-awtorità b'att jew ommissjoni li jekk isiru f'dawn il-Gzejjer, jew f'ċirkostanzi korrispondenti, ikunu jikkostitwixxu xi wiehed mir-reati msemmija fil-paragrafi (a), (b), (ċ) u (d) tas-subartikolu (1) ta' l-artikolu 120C l-Avukat Ġenerali jista' jitlob lill-Qorti Kriminali għal ordni ta' investigazzjoni jew ordni ta' sekwestru jew għat-tnejn u d-dispożizzjonijiet ta' l-artikolu 24A ta' l-Ordinanza dwar il-Mediċini Perikolużi għandhom *mutatis mutandis* japplikaw għal dik it-talba u għall-persuna suspettata u għal kull ordni ta' investigazzjoni jew ta' sekwestru magħmul mill-Qorti bħala riżultat ta' dik it-talba.

Kap. 101.

(2) Il-kliem "ordni ta' investigazzjoni" fis-subartikoli (2) u (5) ta' l-istess artikolu 24A għandhom jinqraw u jiftiehem bħala li jinkludu ordni ta' investigazzjoni magħmul taht id-dispożizzjonijiet ta' dan l-artikolu.

Iffriżar ta' proprjetà ta' persuna akkużata b'reati fil-kompetenza ta' Qrati barra minn Malta.

120E. (1) Meta l-Avukat Ġenerali jirċievi talba magħmula minn awtorità ġudizzjarja jew prosekutriċi ta' xi post barra minn Malta għall-qbid temporanju ta' kull jew xi flejjes jew proprjetà, mobbli jew immobbli, ta' persuna (hawnhekk iżjed 'il quddiem f'dan l-artikolu msejha "l-akkużat") imputata jew akkużata fi proċedimenti quddiem il-qrati ta' dak il-post b'reat li jkun jikkonsisti f'att jew ommissjoni li jekk isiru f'dawn il-Gzejjer, jew f'ċirkostanzi korrispondenti, ikunu jikkostitwixxu xi wiehed mir-reati msemmija fil-paragrafi (a), (b), (ċ) u (d) tas-subartikolu (1) ta' l-artikolu 120C, l-Avukat Ġenerali jista' jitlob lill-Qorti Kriminali għal ordni (hawnhekk iżjed 'il quddiem imsejjah "ordni ta' iffriżar") li jkollu l-istess effett bħal ordni kif

imsemmi fis-subartikolu (1) ta' l-artikolu 22A ta' l-Ordinanza Kap. 101.
dwar il-Mediċini Perikolużi u d-dispożizzjonijiet ta' l-
imsemmi artikolu 22A ghandhom, bla hsara ghad-
dispożizzjonijiet tas-subartikolu (2) ta' dan l-artikolu,
japplikaw *mutatis mutandis* ghal dak l-ordni.

(2) Id-dispożizzjonijiet tas-subartikoli (2) sa (5)
ta' l-artikolu 24C ta' l-Ordinanza dwar il-Mediċini Perikolużi
ghandhom ikunu applikabbli ghal ordni magħmul taht dan l-
artikolu daqskieku kien ordni magħmul taht l-imsemmi
artikolu 24C.

(3) L-artikolu 22B ta' l-Ordinanza dwar il-
Mediċini Perikolużi ghandu wkoll japplika ghal kull persuna
li taġixxi bi ksur ta' ordni ta' iffriżar taht dan l-artikolu.

Esekuzzjoni
ta' ordnijiet
ta' konfiska
magħmulin
minn Qrati
barra minn
Malta wara
kundanna
ghal reati fil-
kompetenza
ta' dawk il-
Qrati.

120F. (1) Ordni ta' konfiska magħmul minn qorti
barra minn Malta li jkun jipprovdi jew jidher li jkun jipprovdi
ghall-konfiska jew telfien ta' rikavat mill-ghemil ta' reat
rilevanti jista' jiġi esegwit f'Malta skond id-dispożizzjonijiet
tas-subartikoli (2) sa (11) ta' l-artikolu 24D ta' l-Ordinanza Kap. 101.
dwar il-Mediċini Perikolużi.

(2) Għall-finijiet ta' dan l-artikolu, iżda bla hsara
ghad-dispożizzjonijiet tas-subartikolu (3), "ordni ta' konfiska"
u "rikavat" ghandhom l-istess tifsiriet mogħtija lilhom bis-
subartikolu (12) ta' l-artikolu 24D ta' l-Ordinanza dwar il-
Mediċini Perikolużi liema tifsiriet ghandhom jiftiehem skond
it-tifsira mogħtija lil "proprjetà" bl-istess subartikolu (12) u
skond it-tifsira mogħtija lil "reat rilevanti" fis-subartikolu (3).

(3) Għall-finijiet ta' dan l-artikolu, "reat rilevanti"
tfisser kull reat li jkun jikkonsisti f'xi att jew ommissjoni li
jekk isiru f'dawn il-Gzejjer, jew f'ċirkostanzi korrispondenti,
ikunu jikkostitwixxu xi wiehed mir-reati msemmija fil-
paragrafi (a), (b), (c) u (d) tas-subartikolu (1) ta' l-artikolu
120C."

5. Minnufih wara l-artikolu 121 tal-liġi prinċipali ghandhom
jiżiedu dawn l-artikoli godda li ġejjin:

Żieda ta' l-artikoli
godda 121A, 121B,
121C, 121D u 121E
mal-liġi prinċipali.

"L-obbligu
tal-prova.

121A. (1) F'kull proċediment kontra persuna għal
reat kontra din l-Ordinanza, ma jkunx jinhtieg li ssir il-prova
tan-nuqqas ta' liċenza, awtorizzazzjoni jew materja oħra ta'

eċċezzjoni jew difiża, u l-obbligu li jipprova li hemm din il-licenza, awtorizzazzjoni jew materja ta' eċċezzjoni jew difiża jmiss lill-persuna li tkun trid tinqeda biha.

(2) Meta r-reat li bih persuna tkun akkużata jkun dak ta' pussess ta' jew bejgh jew traffikar ta', mediċina kontra d-dispożizzjonijiet ta' din l-Ordinanza l-akkużat ma jkunx jista' jiddefendi ruhu billi jipprova illi huwa haseb li kellu fil-pussess tiegħu, jew li kien qed jidher jew jittraffika, xi haġa li ma kenitx il-mediċina msemmija fl-akkuzata jekk il-pussess ta', jew il-bejgh jew traffikar ta', dik il-haġa ohra kien ikun, fiċ-ċirkostanzi, bi ksur ta' xi dispożizzjoni ohra ta' din l-Ordinanza jew ta' xi liġi ohra.

Dikjarazzjoni tista' tingieb bhala prova.

121B. Minkejja d-dispożizzjonijiet ta' l-artikolu 661 tal-Kodiċi Kriminali, meta persuna tkun involuta f'xi reat kontra din l-Ordinanza, kull dikjarazzjoni magħmula minn dik il-persuna u li tiġi kkonfermata bil-ġurament quddiem maġistrat u kull xieħda li dik il-persuna tagħti quddiem qorti tista' tingieb bi prova kontra kull persuna ohra akkużata b'reat kontra l-imsemmija Ordinanza, kemm-il darba jinsab li dik id-dikjarazzjoni jew xieħda tkun saret jew ingħatat volontarjament, u ma gietx imġieghla jew mehuda b'theddid jew b'biza', jew b'wegħdiet jew bi twebbil ta' vantaġġi.

Konsenja u xiri kontrollati.

121C. Id-dispożizzjonijiet ta' l-artikolu 30B ta' l-Ordinanza dwar il-Mediċini Perikolużi għandhom japplikaw *mutatis mutandis* għal konsenja kontrollata ta' kull mediċina mniżżla fit-Tielet Skeda li tinsab ma' din l-Ordinanza bil-ghan li jiġu identifikati persuni involuti fl-ghemil ta' reati taħt din l-Ordinanza jew taħt il-liġi korrispondenti li tkun isseħh fit-territorju ta' pajjiż ieħor u l-istess dispożizzjonijiet għandhom japplikaw *mutatis mutandis* għall-akkwist jew prokurar ta' xi mediċina bhal dik mill-Pulizija Eżekuttiva.

Persuni trasferiti għal Malta mill-esteru sabiex jixhdu jew jghinu f'investazzjoni eċċ.

121D. Id-dispożizzjonijiet ta' l-artikolu 30C ta' l-Ordinanza dwar il-Mediċini Perikolużi għandhom japplikaw *mutatis mutandis* għal xhud, espert jew persuna ohra f'pajjiż barrani li jaqblu, dwar reat kontra d-dispożizzjonijiet ta' din l-Ordinanza, li jixhdu jew li jghinu kif provdut f'dak l-artikolu wara talba għal assistenza kif ukoll provdut fl-istess artikolu.

Kooperazzjoni fit-trazzin ta' reati rilevanti fuq il-bahar.

121E. (1) Meta l-Avukat Ġenerali jirċievi talba magħmula minn awtorità ġudizzjarja jew prosekuttriċi ta' xi post barra minn Malta (hawnhekk iżjed il quddiem f'dan l-

artikolu msejha "l-awtorità li taghmel it-talba") ghal awtorizzazzjoni biex l-awtoritajiet kompetenti ta' dak il-post jiehdu l-mizuri xierqa dwar biċċa tal-bahar rilevanti raġonevolment suspettata li tkun qed twettaq reat rilevanti l-Avukat Ġenerali jista', bil-qbil tal-Prim Ministru, jawtorizza t-tehid ta' l-imsemmija miżuri mill-awtoritajiet kompetenti hawn qabel imsemmija sugġett ghal dawk il-kondizzjonijiet li jistgħu jiġu miftiehma bejn l-awtorità li taghmel it-talba u l-Avukat Ġenerali, bil-qbil tal-Prim Ministru.

(2) Meta tkun inghatat awtorizzazzjoni mill-Avukat Ġenerali kif imsemmi qabel l-awtoritajiet kompetenti imsemmija fis-subartikolu (1), sugġett għall-kondizzjonijiet li jistgħu ikunu ġew miftiehma kif provdut fis-subartikolu precedenti, ikunu awtorizzati li jiehdu l-mizuri xierqa u li jeżercitaw abbord il-biċċa tal-bahar li dwarha jkunu ġew awtorizzati l-mizuri xierqa taht dan l-artikolu dawk is-setgħat kollha ta' arrest, dhul, perkwizzazzjoni u qbid li huma mogħtija lill-pulizija eżekuttiva ta' Malta.

(3) Għall-finijiet ta' dan l-artikolu:

"biċċa tal-bahar rilevanti" tfisser bastiment jew kull ingeni oħra li jzomm f'wiċċ l-ilma ta' kull deskrizzjoni, inklużi *hovercrafts* u ingeni sommerġibbli, li jtajru l-bandiera Maltija jew juru l-marki ta' registrazzjoni ta' Malta waqt li jkunu jeżercitaw il-libertà ta' navigazzjoni skond id-dritt internazzjonali;

"mizuri xierqa" dwar biċċa tal-bahar tinkludi t-tluġh abbord u l-perkwizzazzjoni fuq dik il-biċċa tal-bahar kif ukoll kull azzjoni xierqa oħra dwar il-biċċa tal-bahar, persuni u tagħbija abbord dik il-biċċa tal-bahar jekk tinsab prova li dik il-biċċa tal-bahar tkun involuta f'reat rilevanti; u

"reat rilevanti" għandha l-istess tifsir kif mogħti lilha bis-subartikolu (3) ta' l-artikolu 120F."

Għanijiet u Raġunijiet

L-għan prinċipali ta' l-Abbozz hu sabiex id-dispożizzjonijiet ta' l-Ordinanza dwar il-Professjoni Medika u l-Professjonijiet li għandom x'jaqsmu magħha dwar l-investigazzjoni, proċessar u penalizzazzjoni ta' reati li jinvolvu drogi psikotropiċi jsiru konformi ma' dawk ta' l-Ordinanza dwar il-Medicini Perikolużi

**A BILL
entitled**

AN ACT of 1997 to amend the Medical and Kindred Professions Ordinance, Cap. 31.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the Medical and Kindred Professions Ordinance (Amendment) Act, 1997 and shall be read and construed as one with the Medical and Kindred Professions Ordinance, hereinafter referred to as “the principal law”.

Amendment of section 2 of the principal law.

2. Section 2 of the principal law shall be amended as follows:

(a) the present section shall be renumbered as subsection (1);

(b) in the English text of subsection (1) thereof, as renumbered, immediately before the definition of “the Medical Council” there shall be added the following new definitions:

““export”, with its grammatical variations and cognate expressions, in relation to Malta, means to take or cause to be taken out of Malta in any manner whatsoever;

“import”, with its grammatical variations and cognate expressions, in relation to Malta, means to bring or cause to be brought into Malta in any manner whatsoever;”;

(c) in the Maltese text of subsection (1) thereof, as numbered, immediately after the words “kemm-il darba r-rabta tal-kliem ma tehtiegħ xort’ohra –” there shall be added the following new definitions:

“ “esportazzjoni”, bil-varjazzjonijiet grammatikali tagħha u bl-espressjonijiet imnislin minnha, tfisser, rigward Malta, tiehu jew iġġieghel li jittiehed barra minn Malta b’kull mod li jkun;

“importazzjoni”, bil-varjazzjonijiet grammatikali tagħha u bl-espressjonijiet imnislin minnha, tfisser, rigward Malta, iġġib jew iġġieghel li jingieb f’Malta b’kull mod li jkun;”;

(d) immediately after subsection (1) thereof, as renumbered, there shall be added the following new subsection:

“(2) In this Ordinance, unless the context otherwise requires, any reference to this Ordinance shall be deemed to include a reference to rules or regulations made thereunder.”.

3. Section 120A of the principal law shall be amended as follows:

Amendment of
section 120A of
the principal law.

(a) in subparagraph (d) of subsection (1) thereof, for the words “in force in that place, or” there shall be substituted the words “in force in that place, or who with another one or more persons conspires in Malta for the purpose of committing such an offence,”;

(b) in subsection (1A) thereof, for the words “referred to in paragraph (f)” there shall be substituted the words “referred to in paragraphs (d) and (f)”;

(c) for subsection (1B) thereof there shall be substituted the following:

“(1B) For the purpose of this section the word “dealing” (with its grammatical variations and cognate expressions) with reference to dealing in a drug, includes cultivation, importation, manufacture, exportation, distribution, production, administration, supply, the offer to do any of these acts, and the giving of information intended to lead to the purchase of such a drug contrary to the provisions of this Ordinance.”;

(d) immediately after subsection (1B) thereof there shall be added the following new subsections:

“(1C) A person shall also be guilty of an offence against this Ordinance who manufactures, transports or distributes any equipment or materials knowing that they are to be used in or for the production or manufacture of any drug contrary to the provisions of this Ordinance and any such conduct as is prohibited under this subsection shall be deemed for the purpose of this Ordinance as constituting an offence of selling or dealing in a drug against this Ordinance.

(1D) (a) A person shall also be guilty of an offence against this Ordinance who uses, transfers the possession of, sends or delivers to any person or place, acquires, receives, keeps, transports, transmits, alters, disposes of or otherwise deals with, in any manner or by any means, any money, property (whether movable or immovable) or any proceeds of any such money or property with intent to conceal or convert that money or property or those proceeds and knowing or suspecting that all or a part of that money or property, or of those proceeds, was obtained or received, directly or indirectly, as a result of —

(i) the commission of any of the offences mentioned in subsections (1) and (1C) of this section; or

(ii) any act of commission or omission in any place outside these Islands which if committed in these Islands would constitute an offence under subsections (1) or (1C) of this section.

(b) In proceedings for an offence under paragraph (a) of this subsection, where the prosecution produces evidence that no reasonable explanation was given by the person charged or accused showing that such money, property or proceeds was not money, property or proceeds described in the said paragraph, the burden of showing the lawful origin of such money, property or proceeds shall lie with the person charged or accused.

(1E) A person shall also be guilty of an offence against this Ordinance who sells or otherwise deals in a substance mentioned in the Third Schedule to the Dangerous Drugs Ordinance knowing or suspecting that the substance is to be used in or for the production of a drug listed under Part A of the Third Schedule to this Ordinance contrary to the provisions

of this Ordinance; and the definition of "dealing" in subsection (1B) shall apply, *mutatis mutandis*, to this subsection.";

(e) for subsection (2) thereof there shall be substituted the following:

"(2) Every person charged with an offence against this Ordinance shall be tried in the Criminal Court or before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the Attorney General may direct, and if he is found guilty shall, in respect of each offence be liable —

(a) on conviction by the Criminal Court —

(i) where the offence consists in selling or dealing in a drug listed under Part A of the Third Schedule to this Ordinance contrary to the provisions of this section, or in an offence under paragraph (f) of subsection (1), or of the offence of possession of a drug, contrary to the provisions of this Ordinance, under such circumstances that the court is satisfied that such possession was not for the exclusive use of the offender, or of the offences mentioned in subsections (1C) or (1D) or (1E), to imprisonment for life:

Provided that:

(aa) where the Court is of the opinion that, when it takes into account the age of the offender, the previous conduct of the offender, the quantity of the drug and the nature and quantity of the equipment or materials, if any, involved in the offence and all other circumstances of the offence, the punishment of imprisonment for life would not be appropriate; or

(bb) where the verdict of the jury is not unanimous,

then the Court may sentence the person convicted to the punishment of imprisonment of a term of not less than four years but not exceeding thirty years and to a fine (*multa*) of not less than one thousand Maltese liri but not exceeding fifty thousand Maltese liri; and

(ii) for any other offence to imprisonment for a term of not less than twelve months but not exceeding ten years and to a fine (*multa*) of not less than two hundred Maltese liri, but not exceeding ten thousand Maltese liri; or

(b) on conviction by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) —

(i) where the offence consists in selling or dealing in a drug listed under Part A of the Third Schedule to this Ordinance contrary to the provisions of this section, or in an offence under paragraph (f) of subsection (1), or of the offence of possession of a drug, contrary to the provisions of this Ordinance, under such circumstances that the court is satisfied that such possession was not for the exclusive use of the offender, or of the offences mentioned in subsections (1C) or (1D) or (1E), to imprisonment for a term of not less than six months but not exceeding ten years and to a fine (*multa*) of not less than two hundred Maltese liri but not exceeding five thousand Maltese liri; and

(ii) for any other offence, in the case of a conviction, to a fine (*multa*) of not less than one hundred Maltese liri but not exceeding one thousand Maltese liri or to imprisonment for a term of not less than three months but not exceeding twelve months, or to both such fine and imprisonment,

and in every case of conviction for an offence against this Ordinance, all articles in respect of which the offence was committed shall be forfeited to the Government, and any such forfeited article shall, if the court so orders, be destroyed or otherwise disposed of as may be provided in the order:

Provided that for the purposes of this subsection, when the person charged has not attained the age of sixteen years and unless he is charged jointly with any other person who has attained the age of sixteen years, any reference to the Court of Magistrates (Malta) or to the Court of Magistrates (Gozo) shall be construed as a reference to the Juvenile Court:

Provided further that where a person is convicted as provided in subparagraph (i) of paragraph (a) or

subparagraph (i) of paragraph (b) and the offence has taken place in, or within 100 metres of the perimeter of, a school, youth club or centre, or such other place where young people habitually meet, or the offence consists in the sale, supply, administration or offer to do any of these acts, to a minor, to a woman with child or to a person who is following a programme for cure or rehabilitation from drug dependence, the punishment shall be increased by one degree.”;

(f) in subsection (2A) thereof, for the words “in respect of such drug,” there shall be substituted the words “in respect of such drug, or with the offence of possession of a drug, contrary to the provisions of this Ordinance, under such circumstances that the court is satisfied that such possession was not for the exclusive use of the offender, or with the offences mentioned in subsections (1C) or (1D),”;

(g) for subsection (6) thereof there shall be substituted the following:

“(6) Where it results to the court that the offender, other than an offender convicted of an offence as is referred to in subparagraph (i) of paragraph (a) or subparagraph (i) of paragraph (b) of subsection (2), is in need of care and assistance for his rehabilitation from dependence on any drug listed in the Third Schedule to this Ordinance the court may, instead of applying any of the punishments provided for in the foregoing subsections, place the offender on probation in accordance with the provisions of the Probation of Offenders Act, so however that such probation order may be made notwithstanding that the offender, who has attained the age of fourteen years, has not expressed his willingness to comply with the requirements thereof as provided in subsection (5) of section 5 of that Act.”;

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(h) immediately after subsection (6) thereof there shall be added the following new subsections:

“(7) The provisions of sections 21 and 28A of the Criminal Code and the provisions of the Probation of Offenders Act shall not be applicable in respect of any person convicted of an offence as is referred to in subparagraph (i) of paragraph (a) or subparagraph (i) of paragraph (b) of subsection (2).

(8) Where, in the case of a person convicted of an offence referred to in subsection (7), the court is satisfied that

such person is in need of treatment for his rehabilitation from dependence on any drug listed in the Third Schedule to this Ordinance, the provisions of subsections (10) to (14) of section 22 of the Dangerous Drugs Ordinance shall be applicable in the same manner and to the same extent as if that person were a person convicted of an offence referred to in subsection (10) of the said section 22."

Addition of new sections 120B, 120C, 120D, 120E and 120F to the principal law.

Cap. 101.

4. Immediately after section 120A of the principal law there shall be added the following new sections:

"Definition of expression 'corresponding law'".

120B. For the purposes of sections 120A and 121C the expression "corresponding law" shall have the same meaning assigned to it by section 23 of the Dangerous Drugs Ordinance and the provisions of the said section 23 shall apply thereto.

Additional powers of investigation.

120C. (1) Where, upon information received, the Attorney General has reasonable cause to suspect that a person (hereinafter referred to as "the suspect"):

(a) is guilty of selling or dealing in a drug contrary to the provisions of this Ordinance, or

(b) is guilty of any of the offences mentioned in paragraphs (e) or (f) of subsection (1) of section 120A or

(c) is guilty of an offence mentioned in paragraph (d) of subsection (1) of section 120A with reference to any of the offences referred to in the foregoing paragraphs of this subsection, or

(d) is guilty of the offence mentioned in subsection (1D) of section 120A,

the Attorney General may apply to the Criminal Court for an investigation order or an attachment order or for both and the provisions of section 24A of the Dangerous Drugs Ordinance shall *mutatis mutandis* apply to that application and to the suspect and to any investigation or attachment order made by the Court as a result of that application.

Cap. 101.

(2) The words "investigation order" in subsection (2) and (5) of section 24A of the Dangerous Drugs Ordinance

shall be read and construed as including an investigation order made under the provisions of this section.

(3) The words "attachment order" in subsection (6A) of section 24A of the Dangerous Drugs Ordinance shall be read and construed as including an attachment order made under the provisions of this section.

Powers of investigation in connection with offences cognizable by Courts outside Malta.

120D. (1) Where the Attorney General receives a request made by the judicial or prosecuting authority of any place outside Malta for investigations to take place in Malta in respect of a person (hereinafter referred to as "the suspect") suspected by that authority of an act or omission which if committed in these Islands, or in corresponding circumstances, would constitute any of the offences mentioned in paragraphs (a), (b), (c) and (d) of subsection (1) of section 120C the Attorney General may apply to the Criminal Court for an investigation order or an attachment order or for both and the provisions of section 24A of the Dangerous Drugs Ordinance shall *mutatis mutandis* apply to that application and to the suspect and to any investigation or attachment order made by the Court as a result of that application. Cap. 101.

(2) The words "investigation order" in subsections (2) and (5) of the same section 24A shall be read and construed as including an investigation order made under the provisions of this section.

Freezing of property of person accused with offences cognizable by Courts outside Malta.

120E. (1) Where the Attorney General receives a request made by a judicial or prosecuting authority of any place outside Malta for the temporary seizure of all or any of the moneys or property, movable or immovable, of a person (hereinafter in this section referred to as "the accused") charged or accused in proceedings before the courts of that place of an offence consisting in an act or an omission which if committed in these Islands, or in corresponding circumstances, would constitute any of the offences mentioned in paragraphs (a), (b), (c) and (d) of subsection (1) of section 120C, the Attorney General may apply to the Criminal Court for an order (hereinafter referred to as a "freezing order") having the same effect as an order as is referred to in subsection (1) of section 22A of the Dangerous Drugs Ordinance and the provisions of the said section 22A shall, subject to the provisions of subsection (2) of this section, apply *mutatis mutandis* to that order. Cap. 101.

(2) The provisions of subsections (2) to (5) of section 24C of the Dangerous Drugs Ordinance shall apply to an order made under this section as if it were an order made under the said section 24C.

(3) Section 22B of the Dangerous Drugs Ordinance shall also apply to any person who acts in contravention of a freezing order under this section.

Cap. 101.

Enforcement of confiscation orders made by Courts outside Malta following conviction for offences cognizable by those Courts.

120F. (1) A confiscation order made by a court outside Malta providing or purporting to provide for the confiscation or forfeiture of proceeds from the commission of a relevant offence shall be enforceable in Malta in accordance with the provisions of subsections (2) to (11) of section 24D of the Dangerous Drugs Ordinance.

(2) For the purposes of this section, but subject to the provisions of subsection (3), "confiscation order" and "proceeds" shall have the same meanings assigned to them by subsection (12) of section 24D of the Dangerous Drugs Ordinance which meanings shall be construed in accordance with the meaning assigned to "property" by the same subsection (12) and in accordance with the meaning assigned to "relevant offence" in subsection (3).

(3) For the purposes of this section "relevant offence" means any offence consisting in any act or omission which if committed in these Islands, or in corresponding circumstances, would constitute any of the offences mentioned in paragraphs (a), (b), (c) and (d) of subsection (1) of section 120C."

Addition of new sections 121A, 121B, 121C, 121D and 121E to the principal law.

5. Immediately after section 121 of the principal law there shall be added the following new sections:

"Burden of proof.

121A. (1) In any proceedings against any person for an offence against this Ordinance, it shall not be necessary to negative by evidence any licence, authority or other matter of exception or defence, and the burden of proving any such matter shall lie on the person seeking to avail himself thereof.

(2) When the offence charged is that of possession of, or of selling or dealing in, a drug contrary to the provisions of this Ordinance it shall not be a defence to such charge for the accused to prove that he believed that he was in possession of, or was selling or dealing in, some thing other

than the drug mentioned in the charge if the possession of, or the selling or dealing in, that other thing would have been, in the circumstances, in breach of any other provision of this Ordinance or of any other law.

Statement
may be
admitted as
evidence.

121B. Notwithstanding the provisions of section 661 of the Criminal Code, where a person is involved in any offence against this Ordinance, any statement made by such person and confirmed on oath before a magistrate and any evidence given by such person before any court may be received in evidence against any other person charged with an offence against the said Ordinance, provided it appears that such statement or evidence was made or given voluntarily, and not extorted or obtained by means of threats or intimidation, or of any promise or suggestion of favour.

Controlled
delivery
and
purchase.

121C. The provisions of section 30B of the Dangerous Drugs Ordinance shall apply *mutatis mutandis* to a controlled delivery of any drug listed under the Third Schedule to this Ordinance with a view to identifying persons involved in the commission of offences under this Ordinance or under the corresponding law in force in the territory of another country and the same provisions shall also apply *mutatis mutandis* to the acquisition or procurement of any such drug by the Executive Police.

Persons
transferred
to Malta
from abroad
for the
purpose of
giving
evidence or
assisting in
an investi-
gation etc.

121D. The provisions of section 30C of the Dangerous Drugs Ordinance shall apply *mutatis mutandis* to a witness, expert or other person in a foreign country who consents, in respect of an offence contrary to the provisions of this Ordinance, to give evidence or to assist as provided in that section following a request for assistance as also provided in the same section.

Co-operation
in the
suppression
of relevant
offences
at sea.

121E. (1) Where the Attorney General receives a request made by a judicial or prosecuting authority of any place outside Malta (hereinafter in this section referred to as the "requesting authority") seeking authorization for the competent authorities of that place to take appropriate measures in regard to a relevant vessel reasonably suspected to be engaged in the commission of a relevant offence the Attorney General may, with the concurrence of the Prime Minister, authorise the taking of the said measures by the aforesaid competent authorities subject to such conditions as may be agreed between the requesting authority and the Attorney General, with the concurrence of the Prime Minister.

(2) Where authorisation has been given by the Attorney General as aforesaid the competent authorities referred to in subsection (1), subject to the conditions as may have been agreed upon as provided in the preceding subsection, shall be authorised to take the appropriate measures and to exercise on board the vessel in regard to which appropriate measures have been authorised under this section all such powers of arrest, entry, search and seizure as are vested in the executive police of Malta.

(3) For the purposes of this section:

“relevant offence” shall have the same meaning assigned to it by subsection (3) of section 120F;

“relevant vessel” means a ship or any other floating craft of any description, including hovercrafts and submersible crafts, flying the flag of Malta or displaying the marks of registry of Malta and exercising freedom of navigation in accordance with international law; and

“appropriate measures” with regard to a vessel include the boarding of and carrying a search on such vessel as well as such other appropriate action with respect to the vessel, persons and cargo on board such vessel if evidence of involvement of the vessel in a relevant offence is found.”.

Objects and Reasons

The main object of the Bill is to bring the provisions of the Medical and Kindred Professions Ordinance concerning the investigation, trial and punishment of offences involving psychotropic drugs into line with those of the Dangerous Drugs Ordinance.