

**A BILL FOR AN ACT TO AMEND THE MISUSE OF DRUGS ACT (2017 REVISION) TO DECRIMINALISE THE POSSESSION OF CANNABIS, WHERE THE AMOUNT IS EQUAL TO OR LESS THAN THE STATUTORY THRESHOLD; TO DECRIMINALISE CULTIVATION OF CANNABIS, WHERE THE AMOUNT IS EQUAL TO OR LESS THAN THE STATUTORY THRESHOLD; AND TO PROVIDE FOR DRUG EDUCATION AND TREATMENT OF SUBSTANCE ABUSE, ESPECIALLY FOR MINORS**

**THE MISUSE OF DRUGS LAW (AMENDMENT) BILL, 2021**

**MEMORANDUM OF OBJECTS AND REASONS**

This Bill provides for amendments to the Misuse of Drugs Act (2017 Revision) to decriminalise personal possession of a statutory threshold of 2 ounces of cannabis, allow for any police officer to seize cannabis from any person and inserting a new Schedule 5 establishing the statutory threshold for decriminalised cannabis possession. This Bill also provides for decriminalisation of 5 or less cannabis plants on private premises and inserting a new Schedule 6 establishing the statutory threshold for decriminalisation of cultivation of cannabis plants per household for personal use.

Consideration has been given, among other things, to section 9 of the Constitution's Bill of Rights relating to privacy rights and to section 5 relating to right of liberty, as well as the compatibility with international treaty obligations, among other things, to articles 1, 4, 28 and 36 of the United Nations' Single Convention on Narcotic Drugs 1961 and article 3(2) of the United Nations' Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988,<sup>1</sup> and to section 8 of the European Convention on Human Rights. This Bill is, ultimately, aimed at furthering the PACT Government's stated policy objective of decriminalization of cannabis in order to protect against discrimination against young persons in the education and employment.

Clause 1 provides for the short title.

Clause 2 provides for the insertion of new sections 2B, 2C, 2D, 2E, 2F and 2G which decriminalises the possession and cultivation, where equal or less than the statutory threshold of cannabis, subject to Director of Public Prosecutions discretion to prosecute for intention to supply based on admissible evidence.

Clause 3 provides for the insertion of a new section 10A authorising any police officer to seize any amount of cannabis and that the Cabinet shall make regulations for education and treatment of substance abuse, especially for minors.

Clause 4 provides for the insertion of a new Schedule 5, which establishes the decriminalised statutory threshold of 2 ounces for possession of cannabis, and Schedule 6, which establishes the statutory threshold of 5 cannabis plants that may be grown per household on private premises.

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<sup>1</sup> Please note that, whilst considered generally, but is not relevant based on the precise content covered herein, the United Nations Conventions on Psychotropic Substances 1971 is not of much relevance here – if there were legalization of commercial functions in expansion of functions for the medical cannabis industry, then the 1971 Convention would be more relevant.

**THE MISUSE OF DRUGS LAW (AMENDMENT) BILL, 2021**

**ARRANGMENT OF CLAUSES**

1. Short title
2. Insertion of sections 2B, 2C, 2D, 2E, 2F and 2G - decriminalisation of possession and cultivation of a prescribed statutory threshold in Schedules 5 and 6.
3. Insertion of section 10A – any police officer may seize any amount of cannabis and the Cabinet to provide regulations for education and treatment, especially minors
4. Insertion of Schedule 5 and 6 – authorized statutory threshold of 2 ounces of cannabis for possession and 5 plants for cultivation on private premises

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ENACTED by the Legislature of the Cayman Islands.

1. This Act may be cited as the Misuse of Drugs (Amendment) Act, 2021.
2. The Misuse of Drugs Act (2017 Revision), in this amending Act referred to as the “principal Act”, is amended by inserting after section 2A the following sections –

“2B. (1) Notwithstanding section 3(1), no person shall have a controlled drug in his or her possession, save for cannabis that is less than or equal to two ounces or such other amount as may be specified in the statutory threshold set out in Schedule 5 (whichever is the higher quantity, if amended from time to time), subject to the discretion of the Director of Public Prosecutions to prosecute if the evidence indicates an intention to supply contrary to subsection 3(1).<sup>2</sup>

(2) Where any person is found to be in possession of cannabis on public (not private) premises, without being lawfully authorised, a police officer of any rank shall have lawful authority to seize any amount of cannabis in the possession of any such person and such person may be liable to a fine or be subject to attendance for substance abuse education or treatment.

2C. (1) Nothing in subsection 3(1) or in any other provision of this Act as it relates to the cultivation, gathering or storage of cannabis shall be construed to apply to five (or less than five) cannabis plants found on any private premises or the statutory threshold in Schedule 6 (which is the highest quantity, as amended from time to time), and those plants so found shall be deemed to be grown for the medical or therapeutic use of the leaves and/or for horticultural purposes.<sup>3</sup>

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<sup>2</sup> This section is in line with s.2 of Bermuda’s Misuse of Drugs (Decriminalisation of Cannabis) Amendment Act 2017, which inserts a new subsection 6(1) in Bermuda’s Misuse of Drugs Act 1972.

<sup>3</sup> This section is in line with subsection 7B(4) of Jamaica’s Dangerous Drugs Act 1948 (as amended by section 5 of the Dangerous Drugs (Amendment) Act 2015) – this was carefully drafted to fit within the provisions of article 4.2-3 of the 1961 Convention and, in particular, was so drafted to avoid the provisions of article 4.1 (which then attract the more onerous provisions of article 23) of the 1961 Convention, which require government Agency to be set up to license cultivator of cannabis. Therefore, if cultivation of cannabis in small amounts is legalised, then a government Authority that issues licenses to cultivators is required (art.28.1 of the 1961 Convention read together with art.23), however, if cultivation of small amounts of cannabis is decriminalised, then no such regulatory and licensing Agency is required (art.28.2-3, 1961 Convention).

(2) For the purposes of subsection (1) where there is more than one household on any premises, each household shall be treated as separate premises.<sup>4</sup>

2D. (1) Notwithstanding subsection 3(1) or any other provision of this Act as it relates to consumption or administration of cannabis by adults for personal use, if such consumption or administration of cannabis is carried out on private premises, it shall be deemed to be lawful consumption, except where consumption is carried out on public or as otherwise prohibited.

(2) If consumption is carried out on public premises, outside the parameters of private premises, such persons shall be subject to a fine, seizure of cannabis on public premises or subject to attend substance abuse education or treatment.

2F. (1) Any activity that is deemed not to be a criminal offence or deemed to be lawful if conducted on private premises for the purposes of sections 2B, 2C or 2D, then it shall only be permitted for personal use by adults (not minors).

(2) All activities conducted under sections 2B, 2C and 2D shall not be carried out by minors, unless so authorised by this Act or by any other law, and any person who intentionally and acting in bad faith allows a minor to possess or consume cannabis (unless lawfully authorised to do so) commits an offence and is liable to a fine of five thousand dollars or a custodial sentence of one month, or both.

(3) All activities conducted for the purpose of sections 2B, 2C and 2D shall only apply to personal use by adults (not minors) and, if any such activities are found to be for personal or commercial gain, reward or profit, such person commits an offence and may be prosecuted for such offence, unless otherwise lawfully authorised.

(4) Where it appears that an offence has been committed, which is not decriminalised or is not lawful for the purposes of sections 2B, 2C or 2D, if such person that has committed an offence has a reasonable explanation and can show that he or she did not act in bad faith, then such person may not be penalised if it would not be in the interest of justice, fairness and good conscience or otherwise there is a justification based upon principles in the Constitution and/or human rights and fundamental freedoms enshrined in the Constitution's Bill of Rights.<sup>5</sup>

(5) Any activities conducted by persons for the purposes of sections 2B, 2C or 2D which are found to be done for any purposes amounting to a drug trafficking offence (whether as principal actor or as an accessory) shall be prosecuted to the full extent of the law.

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<sup>4</sup> This is in line with subsection 7B(5) of Jamaica's Dangerous Drugs Act 1948 (as amended by section 5 of the Dangerous Drugs (Amendment) Act 2015).

<sup>5</sup> This is in line with the penalization provisions in art.36 of the 1961 Convention, art.22 of the 1971 Convention and art.3(2) the 1988 Convention (*a.k.a.*, the Vienna Convention).

(6) No person commits an offence for the purposes of 3(2) if the activity is conducted in compliance with sections 2B, 2C or 2D as it relates to personal use of cannabis by adults or as may otherwise be lawfully authorised.

(7) All persons with criminal records for offences, which relate to personal use of cannabis, shall have their criminal records expunged retroactively to avoid oppressively irrational unjustifiable discrimination, inequality and/or social injustice for being criminally penalised for activity that is not inherently criminal *per se*; and, any person so aggrieved, if such criminal record is not expunged, may make an application to a Court of summary jurisdiction to seek an order for expungement and, if unsuccessful, may appeal the Grand Court and, if not successful, may appeal to the Court of Appeal as the final Court of appeal for such purposes; notwithstanding that, if a person is not successful in an application to a Court of summary jurisdiction or on appeal, that person may be at liberty to subsequently apply if good reason or cause is shown to exist or otherwise there is a justification based upon principles in our Constitution and/or human rights or fundamental freedoms enshrined in the Constitution's Bill of Rights.

(8) For the purposes of sections 2B, 2C, 2D and 2F, the following definitions shall apply –

- (a) “cannabis plant” means any plant of the genus *Cannabis* (by whatever name designated);<sup>6</sup>
- (b) “cannabis” means the cannabis flowering or fruiting tops of the cannabis plant or any part of the cannabis plant (excluding seeds and leaves when not accompanied by the flower) from which the resin has not be extracted (by whatever name designated);<sup>7</sup>
- (c) “private premises” includes the residential premises of a person (or their household), real property of which a person is the registered proprietor (or a tenant or licensee thereof), or premises where that person either resides or is in actual occupation, possession or control;
- (d) “public premises” means on premises owned by government or commercial premises or as otherwise so designated by Order-in-Cabinet.

2G. (1) The Cabinet may make Regulations to give effect to the provisions of sections 2B, 2C, 2D, 2F and/or 2G and for anything required to be prescribed under this Act relating to the personal use of cannabis by adults in private (including for purposes of medical, therapeutic and/or scientific use), if required to give effect to the social policy of legalisation, decriminalisation and/or depenalisation (as the case may be) and/or as otherwise required or appropriate from time-to-time.

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<sup>6</sup> This is in line with the definition of “cannabis” in art.1(c), 1961 Convention; and the definition of “cannabis” in Part IV of Schedule 1 to the Cayman’s Misuse of Drugs Act (2017 Revision).

<sup>7</sup> This is in line with the definition of “cannabis” in art.1(b), 1961 Convention; and the definition of “cannabis” in Part IV of Schedule 1 to the Cayman’s Misuse of Drugs Act (2017 Revision).

3. The principal Law is amended by inserting immediately after section 10 the following section -

“10A. (1) A police officer of any rank shall have lawful authority to seize any amount of cannabis in the possession of any person, but not on private premises as provided for within sections 2B, 2C, 2D, 2F and/or 2G.

(2) The Cabinet shall make regulations that provide for substance abuse education or treatment for any person and, in particular, any minor found to be in possession of any amount of cannabis.”<sup>8</sup>

4. The principal Act is amended by inserting two new Schedules immediately after Schedule 4 as follows -

**“SCHEDULE 5**

**STATUTORY AMOUNT OF CANNABIS  
WHERE CRIMINAL SANCTIONS DO NOT APPLY**

<b>Controlled Drug</b>	<b>Weight</b>
(a) Cannabis	2 ounces

**SCHEDULE 6**

**STATUTORY AMOUNT OF CANNABIS PLANTS  
GROWN ON PRIVATE PREMISES  
WHERE CRIMINAL SANCTIONS DO NOT APPLY**

**Cannabis Plants Per Household on Private Premises**  
(a) five”<sup>9</sup>

Passed by the Parliament on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Speaker.

Clerk of the Parliament.

<sup>8</sup> This is in line with section 3 of Bermuda’s Misuse of Drugs (Decriminalisation of Cannabis) Amendment Act 2017 (amending by adding a new section 25A to the Misuse of Drugs Act 1972).

<sup>9</sup> Here Schedule 5 is in line with section 4 of Bermuda’s Misuse of Drugs (Decriminalisation of Cannabis) Amendment Act 2017 (which inserted Schedule 8 into the Misuse of Drugs Act 1972); and Schedule 6 is in line with subsection 7F(3) of Jamaica’s Dangerous Drugs Act 1948 (as amended by section 7 of the Dangerous Drugs (Amendment) Act 2015).





**IN THE MATTER OF SECTION 70 OF THE CAYMAN ISLANDS CONSTITUTION ORDER 2009  
AND IN THE MATTER OF THE DECRIMINALISATION OF CANNABIS FOR PERSONAL USE BY ADULTS (NOT CHILDREN) IN  
PRIVATE (INCLUDING POSSESSION, CONSUMPTION AND CULTIVATION ON PRIVATE PREMISES)  
AND IN THE MATTER OF THE SCOPE OF MEDICAL CANNABIS LEGISLATION (INCLUDING DOMESTIC CULTIVATION AND  
CANNABINOID EXTRACTION, AS WELL AS RESEARCH AND DEVELOPMENT, AND LAWFUL EXPORT OF CANNABIS AND  
CANNABIS PRODUCTS TO AUTHORISED PARTIES IN OTHER RELEVANT JURISDICTIONS)**

**PETITION**

**TO: THE PARLIAMENT, THE CABINET AND THE GOVERNMENT OF THE CAYMAN ISLANDS**

**WHEREAS**, in accordance with section 70 of the Cayman Islands Constitution Order 2009 as amended (“**Constitution**”), our Constitution provides for a voter-initiated referendum (on matters of national importance that do not contravene the Bill of Rights) by Petition addressed to the Cabinet signed by no less than 25% of the persons registered as electors, which (if assented to by more than 50% of such registered electors) shall be binding on the Government and on the Legislature;

**AND WHEREAS**, in accordance with section 70 of the Constitution, the undersigned electors in the prayer below do hereby humbly request the Cabinet to arrange for the holding of a voter-initiated referendum on the scope of proposed cannabis legislation in the Cayman Islands (including decriminalisation of cannabis used by adults in private and expansion of facilities to enhance the licensed medical cannabis industry) and, therefore, a mandate from the Caymanian people to Parliament to take legislative action;

**AND WHEREAS**, in accordance with recent amendments to the Misuse of Drugs Act (2017 Revision), particularly section 2A, which are compatible and compliant with the three existing United Nations drug conventions, providing for use of cannabis extracts and tinctures of cannabis for medical or therapeutic purposes, where prescribed by a medical doctor, and which only allows for lawful importation into the Cayman Islands (but not for domestic cultivation and cannabinoid extraction, nor for lawful exportation of medical cannabis, including extracts and tinctures); and

**AND WHEREAS**, in accordance with the United Nations drug conventions, which provide for constitutional limitation and/or constitutional principles concerning exceptions and case-law supporting constitutional justification of personal use by adults in private (inclusive of consumption, possession and cultivation on private premises), as well as recent legislative changes in other jurisdictions (particularly Commonwealth and CARICOM jurisdictions, including the Caribbean region), that are in line with human rights and fundamental freedoms supporting personal cannabis use in private, as well as for medical and scientific purposes.

**NOW, THEREFORE**, the undersigned current electors of the Cayman Islands hereby pray that the following issues be put to the Caymanian people by way of referendum:

1. decriminalisation of cannabis for personal use by adults on private premises; and
2. establishment of a medical cannabis licensing authority (to issue licenses for the domestic medical cannabis industry exclusively to Caymanian owned and controlled businesses).

