



KHYBER PAKHTUNKHWA

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PROVINCIAL ASSEMBLY SECRETARIAT KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 24th July, 2020.

No. PA/Khyber Pakhtunkhwa/Bills-105/2020/1879.— The Khyber Pakhtunkhwa Control of Narcotics Substances (Second Amendment) Bill, 2020 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 13th July, 2020 and assented to by the Governor of the Khyber Pakhtunkhwa on 22nd July, 2020 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA CONTROL OF NARCOTICS SUBSTANCES (SECOND AMENDMENT) ACT, 2020. (KHYBER PAKHTUNKHWA ACT NO. XXVI OF 2020)

*(First published after having received the assent of the Governor of the
Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa,
(Extraordinary), dated the 24th July, 2020).*

AN ACT

*further to amend the Khyber Pakhtunkhwa Control of
Narcotic Substances Act, 2019.*

WHEREAS it is expedient to amend the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 (Khyber Pakhtunkhwa Act No. XXXI of 2019), comprehensively for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. **Short title and commencement.**---(1) This Act may be called the Khyber Pakhtunkhwa Control of Narcotic Substances (Second Amendment) Act, 2020.
(2) It shall come into force at once.

2. Amendment of section 2 of Khyber Pakhtunkhwa Act No. XXXI of 2019.---In the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 (Khyber Pakhtunkhwa Act No. XXXI of 2019), hereinafter referred to as the said Act, in section 2,-

- (a) in clause (e), in sub-clause (i), for the word "Sub-Inspector", the word "Inspector" shall be substituted;
- (b) after clause (g), the following new clause shall be inserted, namely:
 "(g-i) "Circle Officer" means an Officer not below the rank of Assistant Excise, Taxation and Narcotics Control Officer;"; and
- (c) clause (am) shall be deleted.

3. Amendment of section 4 of Khyber Pakhtunkhwa Act No. XXXI of 2019.---In the said Act, in section 4, for the word "Government", the word "Department" shall be substituted.

4. Amendment of section 9 of Khyber Pakhtunkhwa Act No. XXXI of 2019.---In the said Act, in section 9, in sub-section (1),-

- (a) in clause (a), after the words "psychotropic substance", the words "except methamphetamine" shall be inserted; and
- (b) in clause (a), as so amended, for the semi-colon and the word "or", appearing at the end, shall be replaced by a colon and thereafter the following proviso shall be inserted, namely:

"Provided that offences relating to or involving methamphetamine, as provided in section 10, shall be dealt in accordance with section 11 of this Act; or".

5. Amendment of section 22 of Khyber Pakhtunkhwa Act No. XXXI of 2019.---In the said Act, in section 22, after sub-section (3), the following new sub-sections shall be added, namely:

"(4) Notwithstanding the repeal of the Control of Narcotic Substances Act, 1997 (Act No. XXV of 1997), under section 59 of this Act, hereinafter referred to as the repealed Act, the Court, functioning under the repealed Act, shall continue to entertain and dispose of matters under this Act till the time of necessary establishment or designation of Special Court and conferment of powers thereupon under this Act.

(5) Notwithstanding anything contained in sub-section (1), Government may, in consultation with the Chief Justice of the Peshawar High Court, designate and confer the powers of a Special Court referred to-

- (a) in sub-section (2), in clause (a), on any Sessions Judge or Additional Sessions Judge; and
- (b) in sub-section (2), in clause (b), on any Judicial Magistrate, First Class.":

Provided that any consultation of Government or consent of the Chief Justice in pursuance to the provisions of Khyber Pakhtunkhwa Control of Narcotic Substances (Amendment) Ordinance, 2020 (Ordinance No. II of 2020) shall be deemed to be sufficient for the purposes of this sub-section.”.

6. Substitution of section 26 of Khyber Pakhtunkhwa Act No. XXXI of 2019.---In the said Act, for section 26, the following shall be substituted, namely:

“26. Application of the Code.---(1) Except as otherwise provided in this Act, the provisions of the Code shall mutatis mutandis apply to all proceedings under this Act.

(2) In the case of offences punishable under this Act, bail shall not ordinarily be granted unless the Special Court is of the opinion that it is a prima facie case for the grant of bail and against the security of a substantial amount.”.

7. Insertion of new sections to the Khyber Pakhtunkhwa Act No. XXXI of 2019.---In the said Act, after section 34, the following new sections shall be inserted, namely:

“34A. Articles connected with narcotics.---(1) Whenever any offence has been committed which is punishable under this Act, the narcotic drug, psychotropic substance or controlled substance, materials, apparatus and utensils in respect of which or by means of which such offence has been committed shall be liable to confiscation.

(2) Any narcotic drug, psychotropic substance or controlled substance imported, transported, manufactured, possessed or sold lawfully or otherwise alongwith, or in addition to, any narcotic drug, psychotropic substance or controlled substance, which is liable to confiscation under sub-section (1) and the receptacles or packages and the vehicles, vessels and other conveyances, used in carrying such drugs and substances, shall likewise be liable to confiscation:

Provided that no vehicle, vessel or other conveyance shall be liable to confiscation unless it is proved that the owner knew that the offence was being, or was to be, committed.

34B. Procedure for making confiscation.---(1) In the trial of offences under this Act, whether the accused is convicted or acquitted, the Special Court shall decide whether any article frozen or seized in connection with such offence is liable to confiscation.

(2) Where any article seized under this Act, appears to be liable to confiscation under section 34A, but the person who committed the offence, in connection therewith, is not known or cannot be found, the Special Court may inquire into and decide such liability and may order confiscation accordingly:

Provided that no order of confiscation of an article shall be made until the expiry of one month from the date of freezing or seizure or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

Provided further that if any such article other than a narcotic drug, psychotropic substance or controlled substance is liable to speedy and natural decay or in case of a vehicle, the Director General or any other officer authorized by him through notification in the official Gazette, is of opinion that the sale of such article or vehicle is for the benefit of its owner, he may, with the approval of the Special Court, after due notice to the owner and by public auction, direct that the article or, as the case may be, the vehicle be sold in accordance with the rules made under this Act and the sale proceeds shall be deposited in Government Treasury for drug abuse till the final judgment of the Special Court.

(3) If on adjudication, or as the case may be, in case of appeal the vehicle or, as the case may be, an article so sold is found not to have been liable to such confiscation, the entire sale proceeds shall be handed over to the owner.

(4) Unless otherwise prescribed a narcotic drug, psychotropic substance or controlled substance, seized under this Act, shall be disposed of under section 516A of the Code.”.

8. Amendment of section 44 of Khyber Pakhtunkhwa Act No. XXXI of 2019.---In the said Act,-

- (a) the existing section 44 shall be numbered as sub-section (1) of section 44 and thereafter in sub-section (1), as so numbered, for the word “Government” the words “Department with the approval of Chief Minister” shall be substituted;
- (b) after sub-section (1), as so numbered, the following new sub-sections shall be added, namely:

“(2) The Department, in consultation with Secretary to Government, Home and Tribal Affairs Department may declare one or more existing police stations under the Khyber Pakhtunkhwa Police Act, 2017, as Police Station for the purposes of this Act.

(3) Upon establishment of new Excise Police Stations, the Circle Officers shall be designated for the purpose of management of one or more such police stations in the manner as may be prescribed.”.

9. Amendment of section 45 of Khyber Pakhtunkhwa Act No. XXXI of 2019.---In the said Act, in section 45, in sub-section (1), for the word “Government” the word “Department” shall be substituted.

10. Amendment of section 46 of Khyber Pakhtunkhwa Act No. XXXI of 2019.---In the said Act, in section 46, in sub-section (3), for the word “Government” the word “Department” shall be substituted.

11. Amendment of section 59 of Khyber Pakhtunkhwa Act No. XXXI of 2019.---In the said Act, in section 59, after sub-section (2), the following new sub-section shall be added, namely:

“(3) All actions taken, proceedings commenced and things done, by the Department or Police, from 4th of September, 2019 till the commencement of the Khyber Pakhtunkhwa Control of Narcotic Substances (Amendment) Ordinance, 2020 (Khyber Pakhtunkhwa Ordinance No. II of 2020), shall be deemed to have been validly taken, commenced and done under this Act.”

12. Repeal and savings of the Khyber Pakhtunkhwa Ord. No. II of 2020.---(1) The Khyber Pakhtunkhwa Control of Narcotic Substances (Amendment) Ordinance, 2020 (Khyber Pakhtunkhwa Ord. No. II of 2020), is hereby repealed.

(2) Notwithstanding the aforesaid repeal, anything done, action taken, rules made and notification or order issued under the aforesaid Ordinance, shall, so far not inconsistent with the provisions of this Act, be deemed to have been done, taken, made or issued, under this Act and shall have effect accordingly.

13. Repeal of Khyber Pakhtunkhwa Ord. X of 2020.-----The Khyber Pakhtunkhwa Control of Narcotic Substances (Second Amendment) Ordinance, 2020 (Khyber Pakhtunkhwa Ord. No X of 2020), is hereby repealed.

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(NASRULLAH KHAN KHATTAK)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa