

Act on the Trade in Narcotic Drugs

Narcotic Drugs Act

(Gesetz über den Verkehr mit Betäubungsmitteln – Betäubungsmittelgesetz)

Non-official translation

Last amended by Articles 1 and 2 in the Ordinance of 18th December 2009 I 3944

The Act was adopted as Article 1 of the Law of 28th July 1981 I 681 by the *Bundestag* with the consent of the *Bundesrat*. It entered into force on 1st January 1982 according to Article 7 subsection 1 of the Act on the Reform of the Narcotic Drug Legislation of 28th July 1981 *BGBI.* (*Bundesgesetzblatt*- Federal Law Gazette) I p. 681, 1187.

The provisions authorising the issue of ordinances will enter into force according to Article 7 subsection 1 of the Act on the Reform of the Narcotic Drug Legislation of 28th July 1981 *BGBI.* (Federal Law Gazette) I p. 681, 1187, on the day following publication. The Act was published on 31st July 1981.

Contents

Chapter I Definitions

- Section 1 Narcotic drugs
- Section 2 Other definitions

Chapter II Licence and licensing procedure

- Section 3 Licence for the trade in narcotic drugs
- Section 4 Exemptions from the obligation to obtain a licence
- Section 5 Refusal of the licence
- Section 6 Expertise
- Section 7 Application
- Section 8 Decision
- Section 9 Restrictions, time limit, conditions and obligations
- Section 10 Withdrawal and revocation
- Section 10a Licence to operate drug consumption rooms

Chapter III Obligations in the context of the trade in narcotic drugs

- Section 11 Import, export and transit
- Section 12 Supply and acquisition
- Section 13 Prescribing and dispensing on prescription
- Section 14 Labelling and advertising
- Section 15 Security measures

- Section 16 Destruction
- Section 17 Records
- Section 18 Notifications
- Section 18a Prohibitions

Chapter IV Monitoring

- Section 19 Implementing authority
- Section 20 Special authorisation in a state of tension or in a state of defence
- Section 21 Participation of other authorities
- Section 22 Monitoring measures
- Section 23 Sampling
- Section 24 Submission and cooperation requirements
- Section 24a Notice of cultivation of commercial hemp
- Section 25 Costs

Chapter V Provisions for authorities

- Section 26 Federal Armed Forces, Federal Police, Riot Police and Civil Defence
- Section 27 Notifications and information
- Section 28 Annual report to the United Nations

Chapter VI Criminal offences and administrative offences

- Section 29 Criminal offences
- Section 29a Criminal offences
- Section 30 Criminal offences
- Section 30a Criminal offences
- Section 30b Criminal offences
- Section 30c Property fine
- Section 31 Mitigation of or refraining from punishment
- Section 31a Refraining from prosecution
- Section 32 Administrative offences
- Section 33 Extended forfeiture and confiscation
- Section 34 Supervision of conduct

Chapter VII Drug-addicted offenders

- Section 35 Deferment of the execution of a sentence
- Section 36 Offsetting against the sentence and suspension of the sentence on probation
- Section 37 Refraining from prosecution
- Section 38 Juveniles and adolescents

Chapter VIII Transitional and final provisions

Section 39 Transitional regulation

Section 39a Transitional regulation occasioned by the Act amending medicinal products law
and other provisions

Section 40 and section 40a (no longer applicable)

Section 41 (deleted)

Chapter I Definitions

Section 1 Narcotic drugs

(1) For the purpose of this Act, narcotic drugs means the substances and preparations listed in Annexes I to III.

(2) The Federal Government shall be authorised to amend or supplement, upon the hearing of experts by means of an ordinance adopted with the consent of the *Bundesrat*, Annexes I to III as is necessary

1. on the basis of scientific knowledge because of the effect of a substance, especially in view of the creation of an addiction,
2. because of the possibility of producing narcotic drugs from a substance or by use of a substance or
3. for the security or control of the trade in narcotic drugs or other substances or preparations because of the extent of abuse and the indirect or direct danger to health.

In the ordinance pursuant to sentence 1, specific substances or preparations may be exempted, in whole or in part, from the application of this Act or an ordinance issued on the basis of this Act, as long as the security and control of the trade in narcotic drugs remain guaranteed.

(3) In urgent cases concerning the security or control of the trade in narcotics, the Federal Ministry of Health shall be authorised to include, by means of an ordinance adopted without the consent of the *Bundesrat*, in Annexes I to III substances and preparations which are not medicinal products, if such a step is necessary because of the extent of abuse and the indirect or direct danger to health. An ordinance issued on the basis of this provision shall lose its validity after the expiration of one year.

(4) The Federal Ministry of Health (Federal Ministry) shall be authorised to amend, by means of an ordinance adopted without the consent of the *Bundesrat*, Annexes I to III or the ordinances issued on the basis of this Act insofar as this is required due to amendments to the Schedules annexed to the Single Convention on Narcotic Drugs, 1961, in the version as promulgated on 4 February 1977 (Federal Law Gazette II, p. 111) and the Convention on Psychotropic Substances, 1971 (Federal Law Gazette 1976 II, p. 1477) (International Narcotics Conventions) in their respective versions that are binding on the Federal Republic of Germany.

Section 2 Other definitions

(1) For the purposes of this Act

1. Substance means:

- a) chemical elements and chemical compounds as well as their naturally occurring mixtures and solutions,
- b) plants, algae, fungi and lichens as well as their parts and components in a processed or unprocessed state,
- c) bodies of animals, also live animals, as well as human and animal body parts, components and metabolites in a processed or unprocessed state,
- d) microorganisms including viruses as well as their components or metabolites;

2. Preparation means:

without regard to its aggregate state, a mixture of substances or the solution of one or several substances except the natural mixtures and solutions;

3. Exempt preparation means:

a preparation listed in Annexes I to III which is exempted, in whole or in part, from the legislation governing narcotic drugs;

4. Production means:

extraction, manufacture, preparation, treatment or processing, purification or conversion.

(2) Any other transfer into or from the territorial scope of application of this Act shall be equivalent to the import or export of a narcotic drug.

Chapter II Licence and licensing procedure

Section 3 Licence for the trade in narcotic drugs

(1) A licence issued by the Federal Institute for Drugs and Medical Devices shall be required by any person who wishes

1. to cultivate, produce or trade in narcotic drugs or without engaging in their trade, to import, export, supply, sell, otherwise place them on the market, acquire them or
2. to produce exempt preparations (section 2 subsection 1 number 3).

(2) The Federal Institute for Drugs and Medical Devices may issue a licence for the narcotic drugs listed in Annex I only by way of exception for scientific or other purposes in the public interest.

Section 4 Exemptions from the obligation to obtain a licence

A licence pursuant to Section 3 shall not be required by any person who

1. as part of the operation of a public pharmacy or a hospital pharmacy (pharmacy)
 - a) produces narcotic drugs listed in Annex II or III or preparations there exempted,
 - b) acquires narcotic drugs listed in Annex II or III,
 - c) dispenses narcotic drugs listed in Annex III on the basis of a prescription from a physician, dentist or veterinarian or
 - d) returns narcotic drugs listed in Annex II or III to holders of a licence for the acquisition of these narcotic drugs or supplies them to the successor in the pharmacy,
 - e) takes delivery of narcotic drugs listed in Annex I, II or III for the purpose of analysis, forwarding to a place authorised for the analysis of narcotic drugs or for destruction,
2. as part of the operation of a veterinary house dispensary
 - a) mixes narcotic drugs in the form of finished medicinal products with each other for an animal treated by him, or mixes them with other finished medicinal products or with medically non active ingredients for the purpose of administration by him or for the immobilisation of a wild animal, an animal kept in a zoo or game enclosure that is treated by him,
 - b) acquires them,
 - c) dispenses them for an animal treated by him or dispenses mixtures as specified in letter 'a' for the immobilisation of a wild animal, an animal kept in a zoo or game enclosure that is treated by him or
 - d) returns them to the holder of a licence for the acquisition of these narcotic drugs or supplies them to the successor in the operation of the veterinary house dispensary,
3. acquires narcotic drugs listed in Annex III
 - a) on the basis of a prescription from a physician, dentist or veterinarian or
 - b) to be administered to an animal, from a person who treats this animal and operates a veterinary house dispensary,
4. exports or imports narcotic drugs listed in Annex III
 - a) as a physician, dentist or veterinarian as part of cross-border services or
 - b) as travel necessities after having acquired them on the basis of a prescription from a physician, dentist or veterinarian
5. on a commercial basis
 - a) is involved in the transportation of narcotic drugs between authorised participants in the trade in narcotic drugs, or assumes the storage and safekeeping of narcotic drugs in connection with such transportation or for an authorised participant in the trade in narcotic drugs or

- b) takes care of the shipment by others of narcotic drugs between authorised participants in the trade in narcotic drugs, or has such shipment arranged or

6. acquires narcotic drugs listed in Annex I, II or III as a subject or patient in the context of a clinical trial or in hardship cases pursuant to section 21 subsection 2 sentence 1 number 6 of the Medicinal Products Act in conjunction with Article 83 of Regulation (EC) No. 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ L 136/1 of 30 April 2004).

(2) For the sphere of their official duties, Federal and Land authorities as well as the authorities entrusted by them with the analysis of narcotic drugs shall not require a licence pursuant to section 3.

(3) A person who does not require a licence pursuant to subsection 1 numbers 1 and 2 and wishes to participate in the trade in narcotic drugs shall notify the Federal Institute for Drugs and Medical Devices in advance. The notification shall include

1. the name and addresses of the notifier as well as of the pharmacy or the veterinary house dispensary,
2. the date of issue and the public authority issuing the licence for the pharmacy or the licence to practice as a veterinarian and
3. the date of commencement of participation in the trade in narcotic drugs.

The Federal Institute for Drugs and Medical Devices shall inform the competent highest Land authority without delay of the contents of the notifications insofar as they relate to veterinary house dispensaries.

Section 5 Refusal of the licence

(1) The issue of a licence pursuant to section 3 shall be refused if

1. it is not guaranteed that one person will be appointed to be responsible for compliance with the legislation governing narcotic drugs and the orders of the monitoring authorities (responsible person) at the site and, if there are additional sites in non-neighbouring municipalities, in each of these sites; the applicant himself may be appointed a responsible person,
2. the designated responsible person does not have the required expertise or is incapable of permanently meeting the obligations incumbent upon him,
3. facts exist which raise doubts about the reliability of the responsible person, the applicant, his legal representative or, in case of legal persons or associations without

- legal capacity, persons authorised to act as representatives or managers pursuant to the law, articles of association or deed of partnership,
4. suitable premises, installations and security measures for the participation in the trade in narcotic drugs or the production of exempt preparations are not available,
 5. the security or control of the trade in narcotic drugs or the production of exempt preparations is not guaranteed for reasons other than those outlined in numbers 1 to 4,
 6. the kind and purpose of the trade for which application has been made do not comply with the purpose of this Act to ensure the required medical care of the population, but at the same time to preclude, as far as possible, the abuse of narcotic drugs or the improper production of exempt preparations as well as the development or maintenance of an addiction to narcotic drugs or
 7. in cases where there is an objection to the submitted application documents, a deficiency is not remedied within the set time limit (section 8 subsection 2).

(2) The licence may be refused if it conflicts with the implementation of the international narcotics conventions or with resolutions, orders or recommendations of intergovernmental institutions of narcotics control or if this is imperative due to acts adopted by the institutions of the European Communities.

Section 6 Expertise

(1) The proof of the required expertise (section 5 subsection 1 number 2) shall be supplied

1. with respect to the production of narcotic drugs or exempt preparations which are medicinal products, by proving the expertise pursuant to the provisions of section 15 subsection 1 of the Medicinal Products Act,
2. with respect to the production of narcotic drugs which are not medicinal products, by the certificate of an examination passed upon completion of a scientific university education in biology, chemistry, pharmacy, human or veterinary medicine and by documentation confirming a period of practical work involving the production or testing of narcotic drugs of at least one year,
3. in the event of use for scientific purposes, by the certificate of an examination passed upon completion of a scientific university education in biology, chemistry, pharmacy, human or veterinary medicine and
4. in all other cases, by the certificate of completed vocational training as a merchant in wholesale and foreign trade in the fields of chemistry or pharmacy and by documentation confirming a period of practical work in the trade in narcotic drugs of at least one year.

(2) The Federal Institute for Drugs and Medical Devices may, in individual cases, deviate from

the expertise requirements specified in subsection 1, if the security and control of the trade in narcotic drugs or of the production of exempt preparations are guaranteed.

Section 7 Application

The application for the issue of a licence pursuant to section 3 shall be submitted in duplicate to the Federal Institute for Drugs and Medical Devices which shall transmit one copy to the competent highest Land authority. The following information and documents shall be attached to the application:

1. the names, first names or the firm's name and the addresses of the applicant and the responsible persons,
2. with regard to the responsible persons, the proof of the required expertise and statements as to whether and why they are able to permanently meet the obligations incumbent upon them,
3. a description of the location of the sites by place (if appropriate, parcel designation), street, house number, building and part of the building, as well as the type of construction of the building,
4. a description of the precautions taken against the removal of narcotic drugs by unauthorised persons,
5. the kind of the trade in narcotic drugs (section 3 subsection 1),
6. the kind and the probable annual quantity of narcotic drugs to be produced or required,
7. in the case of production (section 2 subsection 1 number 4) of narcotic drugs or exempt preparations, a short description of the production process indicating the kind and quantity of the precursors or precursor preparations, the intermediate and finished products, even if precursors or precursor preparations, intermediate or finished products are not narcotic drugs; in case of non-apportioned preparations, additionally the percentages by weight, in case of apportioned preparations, the weight of the narcotic drugs contained in each such portion and
8. in the case of use for scientific or other purposes in the public interest, an explanation of the purpose pursued including references to the relevant scientific literature.

Section 8 Decision

(1) The Federal Institute for Drugs and Medical Devices shall, within three months of receipt of the application, decide on the issue of a licence. It shall notify the competent highest Land authority of the decision without delay.

(2) If the Federal Institute for Drugs and Medical Devices gives the applicant the opportunity to

remedy deficiencies in the application, the time limit provided for in subsection 1 will be suspended until removal of the deficiencies or until expiration of the time limit set for removal of the deficiencies. The suspension shall commence on the day on which the request for remedy is served on the applicant.

(3) The holder of the licence shall inform the Federal Institute for Drugs and Medical Devices without delay of any changes in the information specified in section 7. An application for a new licence shall be required in the case of an expansion with regard to the kind of narcotic drugs or of the trade in narcotic drugs as well as in the case of changes in respect of the person holding the licence or the location of the sites except inside a building. In the other cases, the licence shall be amended. The competent highest Land authority shall be informed of the amendment to the licence without delay.

Section 9 Restrictions, time limit, conditions and obligations

(1) To ensure the security and control of the trade in narcotic drugs or of the production of exempt preparations, the licence shall be restricted to the extent necessary in each case. It shall regulate, in particular

1. the kind of narcotic drugs and of the trade in narcotic drugs,
2. the probable annual quantity and the stock of narcotic drugs,
3. the location of the sites and
4. the production process and the starting, intermediate and finished products involved, even if they are not narcotic drugs.

(2) The licence may

1. have a time limit, be subject to conditions or include obligations or
2. after its issue be amended with regard to subsection 1 sentence 2, or be provided with other restrictions or obligations

if this is required for the security or control of the trade in narcotic drugs or for the production of exempt preparations or if the licence conflicts with the implementation of the international narcotics conventions or resolutions, orders or recommendations of intergovernmental institutions of drug control or if this is imperative due to acts adopted by the institutions of the European Communities.

Section 10 Withdrawal and revocation

(1) The licence may also be revoked if it has not been used within a period of two calendar years. The time limit may be extended if *prima facie* evidence is furnished of a justified interest.

(2) The competent highest Land authority shall be informed of the withdrawal or revocation of the licence without delay.

Section 10a Licence to operate drug consumption rooms

(1) A licence of the competent highest Land authority shall be required by any person who wishes to operate a facility in the premises of which drug-addicted persons are afforded or granted an opportunity to use narcotic drugs that they bring with them and that have not been medically prescribed (drug consumption room). A licence may only be issued if the Land government has laid down the prerequisites for such issue in an ordinance according to subsection 2.

(2) The Land governments are authorized to lay down, by means of an ordinance, the prerequisites for the issue of a licence pursuant to subsection 1. The provisions shall regulate, in particular, the following minimum standards for the security and control of the use of narcotic drugs in drug consumption rooms:

1. Appropriate equipment of the premises that are to serve as drug consumption rooms;
2. Arrangements to ensure the immediate provision of medical emergency care
3. Medical counselling and assistance for the purpose of reducing the risks involved in the use of the narcotic drugs brought by drug-addicted persons;
4. Placement in follow-up and abstinence-oriented counselling and therapy services;
5. Measures to prevent criminal offences under this Act from being committed in drug consumption rooms, other than the possession of narcotic drugs pursuant to section 29 subsection 1 sentence 1 number 3 for personal use in small quantities;
6. Required forms of co-operation with the local authorities responsible for public order and safety to prevent, as far as possible, any criminal offences from being committed in the immediate surroundings of drug consumption rooms;
7. A precise definition of the group of persons entitled to use drug consumption rooms, especially with regard to their age, the kind of narcotic drugs they may bring with them and the consumption patterns that are tolerated; obvious first-time or occasional users are to be excluded from using these rooms;
8. Documentation and evaluation of the work done in the drug consumption rooms;
9. Permanent presence of a sufficient number of personally reliable staff whose professional training qualifies them to comply with the requirements specified in numbers 1 to 7;
10. Appointment of a competent person who shall be responsible for compliance with the requirements specified in numbers 1 to 9, the obligations imposed by the authority issuing the licence and the orders issued by the monitoring authority (responsible person) and who is able to permanently meet the obligations incumbent on him;

(3) Section 7, sentences 1 and 2 numbers 1 to 4 and 8, sections 8, 9 subsection 2 and section 10 shall apply *mutatis mutandis* to the licensing procedure; for the purpose of the latter, the competent highest Land authority shall take the place of the Federal Institute for Drugs and Medical Devices, and the Federal Institute for Drugs and Medical Devices shall take the place of the highest Land authority.

(4) A licence pursuant to subsection 1 shall not entitle the staff working in a drug consumption room to conduct assays of the narcotic drugs brought by drug-addicted persons or to provide active assistance in the actual use of these narcotic drugs.

Chapter III Obligations in the context of the trade in narcotic drugs

Section 11 Import, export and transit

(1) Any person who wishes to import or export narcotic drugs in an individual case shall require an authorization from the Federal Institute for Drugs and Medical Devices in addition to the licence required pursuant to section 3. Any transit of narcotic drugs through the territorial scope of application of this Act may be effected only under customs control, with the narcotic drugs not remaining in it any longer than is necessary for the transportation or transshipment, and without the narcotic drugs at any time during the transfer being actually available to the person carrying out the transit or to a third person. Exempt preparations may not be exported to countries which have prohibited their import.

(2) The Federal Government shall be authorised to regulate, by means of an ordinance adopted without the consent of the *Bundesrat*, the procedure for the issue of the authorization and to lay down provisions on import, export and transit, insofar as this is required for the security or control of the trade in narcotic drugs, for the implementation of the international narcotics conventions or of legal acts of the organs of the European Communities. In particular,

1. the import, export or transit may be limited to certain narcotic drugs and quantities, and their import into and export from as well as the transit through certain countries may be prohibited,
2. exceptions to subsection 1 may be permitted for tourist travel and the shipment of samples in the context of international cooperation,
3. regulations may be issued for the carrying of narcotic drugs by physicians, dentists and veterinarians in the context of cross-border services and
4. the form, contents, preparation, issue and safekeeping of the official forms to be used may be determined.

Section 12 Supply and acquisition

(1) Narcotic drugs may only be supplied to

1. persons or associations of persons who hold a licence for acquisition pursuant to section 3 or who operate a pharmacy or veterinary house dispensary,
2. the authorities or facilities specified in section 4 subsection 2 or section 26,
3. (deleted)

(2) The person supplying narcotic drugs shall notify the Federal Institute for Drugs and Medical Devices, except in the cases referred to in section 4 subsection 1 number 1(e), without delay of each individual act of supply by indicating the person acquiring the narcotic drugs and the kind and quantity of the narcotic drugs. The person acquiring the narcotic drugs shall give the supplier a confirmation of the receipt of the narcotic drugs.

(3) Subsections 1 and 2 shall not apply to

1. the dispensing of narcotic drugs listed in Annex III

- a) on the basis of a prescription from a physician, dentist or veterinarian as part of the operation of a pharmacy,
- b) as part of the operation of a veterinary house dispensary for an animal treated by the person operating such a dispensary,

2. the export of narcotic drugs and

3. the supply and acquisition of narcotic drugs between the authorities or facilities specified in section 4 subsection 2 or section 26.

(4) The Federal Ministry shall be authorised to regulate, by means of an ordinance adopted without the consent of the *Bundesrat*, the procedure for notification and confirmation of receipt, especially the form, contents, issue and safekeeping of the official forms to be used insofar as this is necessary for the security or control of the trade in narcotic drugs.

Section 13 Prescribing and dispensing on prescription

(1) The narcotic drugs listed in Annex III may be prescribed only by physicians, dentists and veterinarians and may be prescribed, administered or put at the disposal of another person for immediate use as part of medical, dental or veterinary treatment, including the medical treatment of narcotic drug addiction, only if their use on or in the human or animal body is justified. Such use shall not be justified, in particular, if the intended purpose can be

attained in another way. The narcotic drugs listed in Annexes I and II may not be prescribed, administered or put at the disposal of another person for immediate use.

(2) The narcotic drugs prescribed pursuant to subsection 1 may be dispensed only as part of the operation of a pharmacy and on presentation of the prescription. Diamorphine may only be supplied by a pharmaceutical entrepreneur and only to recognised facilities as stipulated in subsection 3 sentence 2 number 2a against presentation of the prescription. As part of the operation of a veterinary house dispensary, only narcotic drugs listed in Annex III may be dispensed, and only for use in an animal treated by the person operating the veterinary house dispensary.

(3) The Federal Government shall be authorised to regulate, by means of an ordinance adopted with the consent of the *Bundesrat*, the prescribing of narcotic drugs listed in Annex III, their dispensing on the basis of a prescription and the recording of their disposition and of the stocks kept by physicians, dentists, veterinarians, in pharmacies, veterinary house dispensaries, hospitals and animal hospitals, insofar as this is required for the security or control of the trade in narcotic drugs. In particular,

1. prescribing may be limited to certain preparations, purposes or quantities,
2. prescribing of substitute drugs for drug-addicted persons may be made dependent on minimum qualification requirements for prescribing physicians, and the medical associations may be entrusted with laying down the minimum requirements,
 - 2a. diamorphine may only be prescribed in facilities that have been granted an authorisation by the competent Land authority,
 - 2b. the minimum requirements for the equipment of the facilities in which the treatment with the substitute drug diamorphine takes place may be specified,
3. notifications
 - a) by the prescribing physicians to the Federal Institute for Drugs and Medical Devices on the prescription of a substitute drug for a patient may be required to be made in an anonymized form,
 - b) by the medical associations to the Federal Institute for Drugs and Medical Devices on physicians who fulfil the minimum requirements pursuant to number 2 may be required and reports

- c) by the Federal Institute for Drugs and Medical Devices to the competent monitoring authorities and to the prescribing physicians on patients who have already received a substitute drug upon prescription by another physician may be required to be made in an anonymized form,
 - d) by the Federal Institute for Drugs and Medical Devices to the competent monitoring authorities of the Laender on physicians who fulfil the minimum requirements pursuant to number 2 may be required,
 - e) by the Federal Institute for Drugs and Medical Devices to the highest health authorities of the Laender on the number of patients who have been prescribed a substitute, the number of physicians who may prescribe a substitute, the number of physicians who have prescribed a substitute, the substitute drugs prescribed and the kind of prescriptions may be required,
and the kind of anonymization, the form and contents of the notifications and reports may be prescribed,
4. the form, contents, preparation, issue, safekeeping and return of the official form to be used for the prescription and of the records of the disposition and stocks may be laid down and
5. exceptions to the provisions of section 4 subsection 1 number 1(c) may be introduced for the outfitting of merchant vessels.

Section 7 sentence 2 numbers 1 to 4, section 8 subsection 1 sentence 1, subsections 2 and 3 sentences 1 to 3, section 9 subsection 2 and section 10 shall apply *mutatis mutandis* to the procedure for the granting of a licence pursuant to sentence 2 number 2a. For the purpose of the latter, the competent Land authority shall take the place of the Federal Institute for Drugs and Medical Devices, and the Federal Institute for Drugs and Medical Devices shall take the place of the highest Land authority. The recipients pursuant to sentence 2 number 3, may not use the data transmitted to them for any other purpose than the one specified in sentence 1. In the performance of the tasks assigned to it through an ordinance pursuant to sentence 2, the Federal Institute for Drugs and Medical Devices shall act as an organ of the Land competent in each case that is made available by the Federal Government; details including a reimbursement of costs to the Federal Government shall be regulated by agreement.

Section 14 Labelling and advertising

(1) In the trade in narcotic drugs, the narcotic drugs shall be labelled by using the non-proprietary names listed in the Annexes. The labelling shall be made in clearly legible writing,

in the German language and in a durable manner.

(2) The labelling shall also include

1. in the case of crude, unpurified and non-apportioned narcotic drugs, the percentage by weight, and in the case of apportioned narcotic drugs, the weight of the pure substance contained in the narcotic drug,
2. on containers for narcotic drugs and - insofar as used - on the outer packaging for substances and non-apportioned preparations, the weight contained therein, in the case of apportioned preparations, the number of units contained therein; this shall not apply to storage containers in scientific laboratories or to small containers and ampoules intended to be used for supply.

(3) Subsections 1 and 2 shall not apply to storage containers in pharmacies and veterinary house dispensaries.

(4) Subsections 1 and 2 shall apply analogously to the designation of narcotic drugs in catalogues, price lists, advertisements or similar printed material intended for expert circles participating in the trade in narcotic drugs.

(5) No advertising shall be permitted for narcotic drugs listed in Annex I. Advertising for narcotic drugs listed in Annexes II and III shall be permitted only within expert circles of trade and industry and among persons and associations of persons operating a pharmacy or veterinary house dispensary, and for narcotic drugs listed in Annex III also among physicians, dentists and veterinarians.

Section 15 Security measures

Any person participating in the trade in narcotic drugs shall keep the narcotic drugs in his possession in a separate place and secure them against unauthorised removal. The Federal Institute for Drugs and Medical Devices may order security measures insofar as is required by the kind and extent of the trade in narcotic drugs, the degree of the risk or the quantity of narcotic drugs.

Section 16 Destruction

(1) The owner of narcotic drugs that are no longer marketable shall destroy them at his expense in the presence of two witnesses in a manner which excludes any even partial recovery of the narcotic drugs and ensures the protection of human beings and the environment against harmful effects. A written record of the destruction shall be made and

retained for three years.

(2) The Federal Institute for Drugs and Medical Devices, and in the cases referred to in section 19 subsection 1, sentence 3, the competent Land authority, may request the owner to send the narcotic drugs to these authorities for destruction at his own expense. If there is no owner or if he cannot be traced or if the owner does not comply with his obligation to destroy the narcotic drugs or with the request to send in the narcotic drugs pursuant to sentence 1 within a previously determined time limit of three months, the authorities designated in sentence 1 shall take the measures necessary for destruction. The owner or possessor of the narcotic drugs shall be obliged to surrender the narcotic drugs to the persons charged with their destruction or to tolerate their removal.

(3) Subsection 1 and subsection 2 sentences 1 and 3 shall apply accordingly, if the owner wishes to dispose of narcotic drugs no longer needed.

Section 17 Records

(1) The holder of a licence pursuant to section 3 shall be obliged to continuously keep records on the following, separately for each site and each narcotic drug, and for each increase and decrease in stock:

1. the date
2. the name or firm's name and address of the supplier or recipient or any other origin or disposition,
3. the quantity received or supplied and the resulting stock,
4. in the case of cultivation, also the cultivated area by location and size as well as the date of sowing,
5. in the case of production, also a specification of the narcotic drugs used or produced, the substances not subject to the Act or the exempt preparations by kind and quantity and
6. in cases of a supply of exempt preparations by their producer, also the name or the firm's name and the address of the recipient.

Instead of the records designated in number 6, copies of the sales invoices in which the exempt preparations are marked may be filed in the order of the dates of the invoices.

(2) The quantities to be indicated in the records or invoices shall be

1. the weight in case of substances and non-apportioned preparations and
2. the number of units in case of apportioned preparations.

(3) The records or copies of invoices shall be retained in a separate place for three years, reckoned from the last recording or from the date of the last invoice.

Section 18 Notifications

(1) The holder of a licence pursuant to section 3 shall be obliged to notify the Federal Institute for Drugs and Medical Devices, separately for each site and for each narcotic drug, of the respective quantity which

1. was obtained from cultivation, by indicating the cultivated area by location and size,
2. was produced, broken down by precursors,
3. was used for the production of other narcotic drugs, broken down by these narcotic drugs,
4. was used for the production of substances not falling under this Act, broken down by these substances,
5. was used for the production of exempt preparations, broken down by these preparations,
6. was imported, broken down by exporting countries,
7. was exported, broken down by importing countries,
8. was acquired,
9. was supplied,
10. was destroyed,
11. was used for purposes other than those stated in numbers 1 to 10, broken down by the respective purposes and
12. existed as stock at the end of the respective calendar half-year.

(2) The quantities to be indicated in the notifications shall be

1. the weight in case of substances and non-apportioned preparations and
2. the number of units in case of apportioned preparations.

(3) The notifications pursuant to subsection 1 numbers 2 to 12 shall be submitted to the Federal Institute for Drugs and Medical Devices by 31 January and 31 July for the preceding calendar half-year, and the notification pursuant to subsection 1 number 1 shall be submitted by 31 January for the preceding calendar year.

(4) The official forms issued by the Federal Institute for Drugs and Medical Devices shall be used for the notifications designated in subsection 1.

Chapter IV Monitoring

Section 19 Implementing authority

(1) The trade in narcotic drugs and the production of exempt preparations shall be subject to monitoring by the Federal Institute for Drugs and Medical Devices. This body shall also be responsible for the preparation, issue and evaluation of the official forms stipulated for the prescription of narcotic drugs. The trade in narcotic drugs involving physicians, dentists and veterinarians, pharmaceutical entrepreneurs in the case of diamorphine supply and in pharmacies, veterinary house dispensaries, hospitals and animal hospitals shall be subject to monitoring by the competent authorities of the Laender. These authorities shall also monitor compliance with the minimum standards listed in section 10a subsection 2; the persons charged with monitoring shall have the powers regulated in sections 22 and 24.

(2) The Federal Institute for Drugs and Medical Devices shall also be the special administration within the meaning of the international narcotics conventions.

(3) The cultivation of commercial hemp within the meaning of letter (d) of the exemption provision on cannabis (marihuana) in Annex I Part B shall be subject to monitoring by the Federal Office for Agriculture and Food. Article 33 subsections 1 and 5 in conjunction with Annex I of Commission Regulation (EC) No. 796/2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ L 141/18 of 30 April 2004), as amended, as well as section 25 subsections 1 and 3 and section 29 of the Ordinance on the Integrated Administration and Control System (*InVeKoSVerordnung*) shall apply *mutatis mutandis*. The Federal Office for Agriculture and Food may use the data transmitted to it by the competent Land bodies under section 31 of the Ordinance on the Integrated Administration and Control System as well as the results of THC monitoring performed under the regulations on the single farm payment scheme for the purpose of monitoring according to this Act.

Section 20 Special authorisation in a state of tension or in a state of defence

(1) The Federal Government shall be authorised to amend, by means of an ordinance adopted without the consent of the *Bundesrat*, this Act or the ordinances issued on the basis of this Act for defence purposes in order to ensure the medical supply of narcotic drugs for the population, if the security and control of the trade in narcotic drugs or the production of exempt preparations remain assured. In particular,

1. duties of the Federal Institute for Drugs and Medical Devices pursuant to this Act and ordinances issued on the basis of this Act may be transferred to the Federal Ministry,
2. the trade in narcotic drugs and the production of exempt preparations may be adapted to the special requirements described in sentence 1 and
3. notifications of the stocks of
 - a) narcotic drugs,
 - b) exempt preparations and
 - c) precursors or preparations required for the production of narcotic drugs, even if these are not narcotic drugs,

may be ordered. Furthermore, the ordinance may oblige the person with the power of disposal over the stocks designated in sentence 2, number 3, to hand these stocks over to certain persons or bodies.

(2) The ordinance pursuant to subsection 1 may only be applied in accordance with Article 80a, paragraph 1 of the Basic Law.

(3) (deleted)

Section 21 Participation of other authorities

(1) The Federal Ministry of Finance and the customs offices designated by it shall participate in the monitoring of the import, export and transit of narcotic drugs.

(2) The Federal Ministry of Finance, in agreement with the Federal Ministry of the Interior, can entrust the Federal Police officers who are responsible for frontier protection pursuant to section 2 of the Act on the Federal Police (*Bundespolizeigesetz*) and, in agreement with the Bavarian State Minister of the Interior, the officers of the Bavarian Border Police with the performance of duties which are incumbent upon the customs offices pursuant to subsection 1. Where the officers designated in sentence 1 perform these duties, section 67 subsection 2 of the Act on the Federal Police shall apply *mutatis mutandis*.

(3) Where suspicions arise in the context of clearance that prohibitions and restrictions laid down in this Act have been violated, the participating authorities shall inform the Federal Institute for Drugs and Medical Devices without delay.

Section 22 Monitoring measures

(1) The persons charged with monitoring shall be authorised

1. to inspect documents relating to the trade in narcotic drugs or to the production of

exempt preparations or their placing on the market following such production, and to make copies or photocopies thereof insofar as they may be of importance to the security and control of the trade in narcotic drugs or the production of exempt preparations,

2. to request all necessary information from natural and legal persons and associations without legal capacity,
3. to enter and inspect pieces of land, buildings, parts of buildings, installations and transport vehicles in which the trade in narcotic drugs or the production of exempt preparations is carried out, whereby the persons charged with monitoring have to satisfy themselves that the provisions governing the trade in narcotic drugs or the production of exempt preparations are complied with. In order to avert imminent danger to public security, especially if a frustration of the control of the trade in narcotic drugs or the production of exempt preparations is to be feared, these locations may also be entered outside operating and business hours as also may rooms used as living quarters; in this regard, the basic right to the inviolability of the home (Article 13 of the Basic Law) shall be restricted. Insofar as industrial production plants and wholesale firms are involved, the inspections, as a rule, shall be performed every two years,
4. to make provisional orders insofar as this is imperative for the prevention of imminent dangers to the security and control of the trade in narcotic drugs or the production of exempt preparations. For the same purpose, they may also prohibit, in whole or in part, the further participation in the trade in narcotic drugs or the further production of exempt preparations and place under official seal the stocks of narcotic drugs or stocks of exempt preparations. The competent authority (section 19 subsection 1) shall make its final decision within a month of the issue of a provisional order.

(2) The competent authority may order measures pursuant to subsection 1 numbers 1 and 2 also in writing.

Section 23 Sampling

(1) Where necessary for the implementation of the provisions governing the trade in narcotic drugs or the production of exempt preparations, the persons charged with monitoring shall be authorised to request or take, against receipt, samples of their choice for testing purposes. A fraction of the sample or, if the sample is not divisible or divisible into parts of equal quality without endangering the purpose of testing, a second fraction of the same type as that taken as a sample must be left *in situ*, unless such action is expressly waived.

(2) Samples to be left *in situ* must be officially closed or sealed. A note of the date of taking the sample and of the date after which the closure or seal no longer applies must be affixed to

it.

(3) Appropriate compensation shall be provided for samples taken unless this requirement is expressly waived.

Section 24 Submission and cooperation requirements

(1) Each participant in the trade in narcotic drugs or each producer of exempt preparations must submit to measures pursuant to sections 22 and 23 and support the persons charged with monitoring in the performance of their duties, in particular to indicate to them upon request those locations where the trade in narcotic drugs or the production of exempt preparations takes place, to permit access to enclosed pieces of land, buildings, rooms, receptacles and containers, to supply information and to make possible an inspection of records and the taking of samples.

(2) The person required to provide information can refuse to give information on questions which, if answered, would expose him, or one of his family members, as designated in section 383 subsection 1 numbers 1 to 3 of the Code of Civil Procedure, to the risk of criminal prosecution or proceedings under the Act on Administrative Offences.

Section 24a Notice of cultivation of commercial hemp

The cultivation of commercial hemp as set out in letter (d) of the exemption provision on cannabis (marihuana) in Annex I Part B shall be notified in triplicate to the Federal Institute for Agriculture and Food by 1 July of the year of cultivation so that the latter may perform its tasks specified under section 19 subsection 3. The official form supplied by the Federal Institute for Agriculture and Food shall be used for the notice. The notice shall include

1. the name, first name and the address of the farmer, in the case of legal persons the names of the agricultural enterprise and the legal representative,
2. the membership/land register reference number assigned to the agricultural enterprise by the competent occupational accident insurance fund,
3. the species sown, including the official labels, where these have not been submitted to the competent Land authority within the framework of the regulations on the single farm payment scheme,
4. the area under cultivation in hectare and are, indicating the area identification number; failing this, the land register reference or other particulars specifying the area under cultivation that are recognised by the Federal Office for

Agriculture and Food, such as '*Gemarkung*' (local subdistrict), *Flur* (cadastral unit) and *Flurstück* (parcel).

The Federal Office for Agriculture and Food shall send a copy of the notice signed by it to the applicant without delay. Furthermore, it shall send a copy of the notice to the competent police authorities and public prosecution offices at their request if this is necessary for the prosecution of criminal offences under this Act. If the Federal Office for Agriculture and Food has grounds to suppose that the cultivation of commercial hemp is not in line with the preconditions set out in letter (d) of the exemption provision on cannabis (marihuana) in Annex I Part B, it shall inform the public prosecution office with local jurisdiction accordingly.

Section 25 Costs

(1) The Federal Institute for Drugs and Medical Devices shall levy charges (fees and expenses) for the official acts, tests and analyses it performs pursuant to this Act and the ordinances issued on the basis of this Act.

(2) The Federal Ministry of Health shall be authorised to specify, by means of an ordinance adopted without the consent of the *Bundesrat*, the chargeable acts, providing for fixed rates or rate schedules.

Chapter V Provisions for authorities

Section 26 Federal Armed Forces, Federal Police, Riot Police and Civil Defence

(1) With the exception of the provisions on the licence pursuant to section 3, this Act shall apply accordingly to facilities providing the Federal Armed Forces and the Federal Police with narcotic drugs, and to the stocking of narcotic drugs listed in Annex II or III for the purpose of civil defence.

(2) In the fields of the Federal Armed Forces and the Federal Police, the execution of this Act and the monitoring of the trade in narcotic drugs shall be incumbent upon the bodies and experts of the Federal Armed Forces and the Federal Police that are competent in each case. In the field of civil defence, the execution of this Act shall be incumbent upon the Federal and Land authorities competent for the stocking of medical supplies.

(3) In agreement with the Federal Ministry, the Federal Ministry of Defence may permit exemptions from this Act and the ordinances issued on the basis of this Act in individual cases for its portfolio insofar as such exemptions do not conflict with the international narcotics

conventions and are required by compelling reasons of defence.

(4) With the exception of the provisions on the licence pursuant to section 3, this Act shall apply *mutatis mutandis* to facilities providing the riot police of the Laender with narcotic drugs.

(deleted)

Section 27 Notifications and information

(1) The Federal Criminal Police Office shall notify the Federal Institute for Drugs and Medical Devices annually by 31 March for the preceding calendar year of the seizures of narcotic drugs which have become known to it by kind and quantity and, where appropriate, of the further use made of the narcotic drugs. In the case of exploitation, the name or the firm's name and address of the person acquiring the narcotic drugs shall be indicated.

(2) Upon request, the authorities designated in section 26 shall inform the Federal Institute for Drugs and Medical Devices on the trade in narcotic drugs within their remit insofar as this is required for the implementation of the international narcotics conventions.

(3) In criminal proceedings dealing with offences as defined in this Act, the following shall be transmitted:

1. to the competent Land authority, for the monitoring and control of the trade in narcotic drugs involving the persons and facilities designated in section 19 subsection 1 sentence 3, the final decision including the reasons given where a penalty or a measure of reform and prevention has been imposed or the accused has been acquitted because of a lack of criminal responsibility,
2. to the Federal Institute for Drugs and Medical Devices for the performance of the tasks set out in section 19 subsection 1 sentence 2, in cases where public charges are brought against physicians, dentists and veterinarians
 - a) the bill of indictment or, in lieu, a written application;
 - b) the application to issue a penal order and
 - c) the decision terminating the proceedings including the reasons given; where this decision dismisses an appeal or where it contains a reference to the contested decision, the latter shall also be transmitted.

Transmission shall be effected at the instigation of the law enforcement or prosecuting authority.

(4) The decision, including the reasons given, terminating the proceedings in other criminal

matters may be transmitted to the competent Land authority if there is a connection between the criminal offence and the trade in narcotic drugs and knowledge of the decision is, in the view of the transmitting body, necessary for monitoring the trade in narcotic drugs; subsection 3 sentence 1 number 2(c), second part, shall apply *mutatis mutandis*.

Section 28 Annual report to the United Nations

(1) The Federal Government shall submit an annual report to the Secretary-General of the United Nations on the implementation of the international narcotics conventions by 30 June for the preceding calendar year using a form adopted by the Narcotic Drugs Commission of the United Nations. The competent authorities of the Laender shall participate in the compilation of the report and submit their contributions to the Federal Institute for Drugs and Medical Devices by 31 March for the preceding calendar year. Estimates shall be made where it is not possible to ascertain the information required in the form.

(2) The Federal Government shall be authorised to specify, by means of an ordinance adopted with the consent of the *Bundesrat*, the persons and bodies obliged to supply material, namely statistics, other data and information required for the implementation of the international narcotics conventions. In the ordinance, provision may be made for the kind, form, time and the recipient of the material.

Chapter VI Criminal offences and administrative offences

Section 29 Criminal offences

- (1) A term of imprisonment of up to five years or a fine shall be imposed on any person who
1. illicitly cultivates, produces and trades in narcotic drugs or, without engaging in their trade, imports, exports, sells, supplies, otherwise places them on the market or acquires or procures them in any other way,
 2. produces an exempt preparation (section 2 subsection 1 number 3) without a licence pursuant to section 3 subsection 1 number 2,
 3. possesses narcotic drugs without being in possession of a written licence for their acquisition,
 4. (deleted)
 5. contrary to section 11 subsection 1 sentence 2, carries narcotic drugs in transit,
 6. contrary to section 13 subsection 1
 - a) prescribes narcotic drugs
 - b) administers narcotic drugs or puts them at the disposal of another person for immediate use,

7. contrary to section 13 subsection 2
 - a) supplies narcotic drugs in a pharmacy or in a veterinary house dispensary,
 - b) supplies diamorphine as a pharmaceutical entrepreneur,
8. contrary to section 14 subsection 5 promotes narcotic drugs,
9. gives incorrect or incomplete information to obtain a prescription for a narcotic drug for himself, for another person or for an animal,
10. affords or grants another person an opportunity for the unauthorized acquisition or unauthorized supply of narcotic drugs, informs about such an opportunity publicly or out of selfish motives or entices another person into using narcotic drugs in an unauthorized manner,
11. affords or grants another person an opportunity for the unauthorized use of narcotic drugs without holding a licence pursuant to section 10a or informs about an opportunity for such use which exists outside a facility pursuant to section 10a out of selfish motives or publicly,
12. publicly, at a meeting or by disseminating written material (section 11 subsection 3 of the Criminal Code) encourages the use of narcotic drugs which have not been prescribed as permitted,
13. makes available financial means or other assets to another person for the commission of an unlawful act as defined in numbers 1, 5, 6, 7, 10, 11 or 12,
14. acts in contravention of an ordinance pursuant to section 11 subsection 2 sentence 2 number 1 or section 13 subsection 3 sentence 2 number 1, 2a or 5 where such ordinance refers to the present penal provision in respect of a specific offence.

The supply of sterile disposable syringes to drug-addicted persons and public information about this supply shall not constitute an affording of and public information about an opportunity for use within the meaning of sentence 1 number 11.

(2) In the cases mentioned in subsection 1, sentence 1, number 1, 2, 5 or 6 (b), the attempt shall be punishable.

(3) In particularly serious cases, the punishment shall be imprisonment of not less than one year. A particularly serious case is usually deemed to exist if the perpetrator

1. acts on a commercial basis in the cases mentioned in subsection 1, sentence 1, number 1, 5, 6, 10, 11 or 13,
2. endangers the health of several human beings by one of the actions designated in subsection 1, sentence 1, number 1, 6 or 7.

(4) If the perpetrator acts negligently in the cases under subsection 1 sentence 1 number 1, 2,

5, 6(b), number 10 or 11, the punishment shall be imprisonment of up to one year or a fine.

(5) The court may refrain from imposing punishment pursuant to subsections 1, 2 and 4 if the offender cultivates, produces, imports, exports, carries in transit, acquires, otherwise procures or possesses narcotic drugs merely in small quantities for his personal use.

(6) Insofar as they concern trading, supplying or selling, the provisions of subsection 1, sentence 1, number 1, shall also be applied if the act relates to substances or preparations which are not narcotic drugs, but which are presented as such.

Section 29a Criminal offences

(1) A term of imprisonment of not less than one year shall be imposed on any person who

1. as a person over the age of 21 illicitly supplies narcotic drugs to a person under the age of 18 or, in contravention of section 13 subsection 1, administers them to such a person or puts them at their disposal for immediate use, or
2. illicitly trades in narcotic drugs in quantities which are not small, produces or supplies them in quantities which are not small or possesses them without having obtained them on the basis of a licence pursuant to section 3 subsection 1.

(2) In less serious cases, the sentence shall be imprisonment ranging from three months to five years

Section 30 Criminal offences

(1) A term of imprisonment of not less than two years shall be imposed on any person who

1. illicitly cultivates, produces or trades in narcotic drugs (section 29 subsection 1 sentence 1 number 1) , acting as a member of a gang formed in order to commit such offences repeatedly,
2. in the case of section 29a subsection 1 number 1, acts on a commercial basis,
3. supplies narcotic drugs, administers them to or puts them at the disposal of another person for immediate use and thereby recklessly causes their death or
4. imports narcotic drugs in quantities which are not small without a licence pursuant to section 3 subsection 1 number 1.

(2) In less serious cases, the sentence shall be imprisonment ranging from three months to five years.

Section 30a Criminal offences

(1) Anyone who illicitly cultivates, produces, trades in or imports or exports narcotic drugs in quantities which are not small (section 29 subsection 1 sentence 1 number 1), acting as a member of a gang formed in order to commit such offences repeatedly, shall be punished by a term of imprisonment of not less than five years.

(2) Such punishment shall also be imposed on anyone who

1. as a person over the age of 21 causes a person under the age of 18 to illicitly trade in narcotic drugs or, without engaging in their trade, to import, export, sell or supply or otherwise place them on the market or to encourage one of these acts, or
2. illicitly trades in narcotic drugs in quantities which are not small, or without engaging in their trade, imports, exports or procures them and, in so doing, carries a firearm or other articles which by their nature are suited and intended to inflict bodily injury.

(3) In less serious cases, the sentence shall be imprisonment ranging from six months to ten years.

Section 30b Criminal offences

Section 129 of the Criminal Code shall also apply in cases where an association, whose purpose or activities are aimed at the unauthorised distribution of narcotic drugs within the meaning of section 6 number 5 of the Criminal Code, does not or does not only exist within the domestic territory.

Section 30c Property fine

(1) In the cases mentioned in section 29 subsection 1 numbers 1, 5, 6, 10, 11 and 13, section 43a of the Criminal Code shall be applied. This shall not be the case where the offender sells, supplies, acquires or in any other way procures narcotic drugs without trading in them.

(2) In the cases mentioned in sections 29a, 30, 30a and 30b, section 43a of the Criminal Code shall be applied.

Section 31 Mitigation of or refraining from punishment

The court may mitigate the punishment pursuant to section 49 subsection 1 of the Criminal Code or, unless the offender has been sentenced to imprisonment of more than three years,

refrain from imposing punishment, if the offender

1. by voluntary disclosure of his knowledge has substantially contributed to the offence being uncovered beyond his own contribution to the offence, or
2. voluntarily discloses his knowledge of planned offences to an office so timely that criminal offences pursuant to section 29 subsection 3, section 29a subsection 1, section 30 subsection 1, section 30a subsection 1 can still be prevented.

Section 46b subsections 2 and 3 of the Criminal Code shall apply *mutatis mutandis*.

Section 31a Refraining from prosecution

1) If the subject matter of the proceedings is an offence pursuant to section 29 subsection 1, 2 or 4, the public prosecutor's office may refrain from prosecution if the offender's guilt could be regarded as minor, if there is no public interest in a criminal prosecution and if the offender cultivates, produces, imports, exports, carries in transit, acquires, otherwise procures or possesses narcotic drugs in small quantities exclusively for his personal use. Prosecution should be refrained from if the offender possesses narcotic drugs in a drug consumption room in small quantities exclusively for his personal use, which may be tolerated pursuant to section 10a, without being in possession of a written licence for acquisition.

(2) If legal proceedings have already been initiated, the court may, with the consent of the public prosecutor's office and of the accused, discontinue the proceedings at any stage subject to the prerequisites laid down in subsection 1 above. The accused person's consent shall not be required if the trial cannot be conducted for the reasons stipulated in section 205 of the Code of Criminal Procedure or if, in the cases referred to in section 231 subsection 2, section 232 and section 233 of the Code of Criminal Procedure, the trial is conducted in his absence. The decision shall be made by court order. The order shall not be subject to appeal.

Section 32 Administrative offences

(1) An administrative offence shall be deemed to be committed by anyone who, intentionally or negligently

1. contrary to section 4 subsection 3 sentence 1, fails to notify participation in the trade in narcotic drugs,
2. makes incorrect statements in or attaches incorrect documents to an application pursuant to section 7, also in conjunction with section 10a subsection 3, or section 13 subsection 3 sentence 3,
3. contrary to section 8 subsection 3 sentence 1, also in conjunction with section 10a subsection 3, fails to notify a change correctly, completely or immediately,

4. contravenes an enforceable requirement pursuant to section 9 subsection 2, also in conjunction with section 10a subsection 3,
5. contrary to section 11 subsection 1, sentence 1, imports or exports narcotic drugs without an authorization,
6. contravenes an ordinance pursuant to section 11 subsection 2 sentence 2 numbers 2 to 4, section 12 subsection 4, section 13 subsection 3 sentence 2 number 2, 3 or 4, section 20 subsection 1 or section 28 subsection 2, insofar as it refers to this provision for a specific offence,
7. contrary to section 12 subsection 1, supplies narcotic drugs or, contrary to section 12 subsection 2, fails to notify the supply or acquisition correctly, completely or immediately or fails to confirm receipt,
8. contrary to section 14 subsections 1 to 4, fails to label narcotic drugs as prescribed,
9. contravenes an enforceable order pursuant to section 15 sentence 2,
10. contrary to section 16 subsection 1, fails to destroy narcotic drugs as prescribed, to prepare a written record or to retain it or, contrary to section 16 subsection 2 sentence 1, fails to send in narcotic drugs for destruction, each also in conjunction with section 16 subsection 3,
11. contrary to section 17 subsection 1 or 2, fails to keep records, to keep records correctly or completely or contrary to section 17 subsection 3, fails to retain records or copies of invoices,
12. contrary to section 18 subsections 1 to 3, fails to submit notifications correctly, completely or in time,
13. contrary to section 24 subsection 1 does not comply with a submission or cooperation requirement,
14. contrary to section 24a, fails to notify the cultivation of commercial hemp correctly, completely or in time, or
15. sends narcotic drugs by post although it is prohibited by the World Postal Convention or an agreement of the Universal Postal Union to use postal services for that purpose; the privacy of posts pursuant to Article 10 paragraph 1 of the Basic Law shall be restricted insofar as is necessary for the prosecution and punishment of the administrative offence.

(2) The administrative offence can be punished with a fine of up to twenty-five thousand euros.

(3) Administrative authority as specified in section 36 subsection 1 number 1 of the Regulatory Offences Act is the Federal Institute for Drugs and Medical Devices insofar as the Act is implemented by it, in cases falling under section 32 subsection 1 number 14 it is the Federal Office for Agriculture and Food.

Section 33 Extended forfeiture and confiscation

(1) Section 73d of the Criminal Code shall be applied

1. in the cases mentioned in section 29 subsection 1, sentence 1, numbers 1, 5, 6, 10, 11 and 13, insofar as the offender acts on a commercial basis, and
2. in the cases mentioned in sections 29a, 30 and 30a.

(2) Objects related to a criminal offence pursuant to sections 29 to 30a or an administrative offence pursuant to section 32 can be confiscated. Section 74a of the Criminal Code and section 23 of the Regulatory Offences Act shall be applied.

Section 34 Supervision of conduct

In the cases mentioned in section 29 subsection 3, sections 29a, 30 and 30a, the court may order supervision of conduct (section 68 subsection 1 of the Criminal Code).

Chapter VII Drug-addicted offenders

Section 35 Deferment of the execution of a sentence

(1) If an offender has been sentenced to imprisonment not exceeding two years and if the reasons for the judgment reveal or it is otherwise ascertained that he committed the criminal offence due to an addiction to narcotic drugs, the authority in charge of executing the sentence may, with the consent of the court of first instance, defer execution of the sentence, of a remaining sentence or of a measure of reform and prevention involving commitment to a withdrawal institution for a maximum of two years, if the convicted person is undergoing addiction rehabilitation treatment or promises to undergo such a treatment and its commencement is guaranteed. A stay in a state-recognized facility that serves to remove an addiction or to prevent recidivism shall also be considered as treatment.

(2) In accordance with Book 3, Chapter 2, of the Code of Criminal Procedure, the executing authority shall have the right to lodge an appeal against the refusal by the court of first instance to give consent. Under Articles 23 to 30 of the Introductory Act to the Courts Constitution Act, the convicted person may appeal against such refusal only in conjunction with the rejection of postponement by the executing authority. In this case, the Higher Regional Court shall decide also on the refusal of consent; it may itself give consent.

(3) Subsection 1 shall apply accordingly if

1. a cumulative prison sentence not exceeding two years has been imposed or
2. a prison sentence or cumulative prison sentence exceeding two years has been imposed and a remainder of this prison sentence or cumulative prison sentence that has to be served does not exceed two years

and if, in addition, the prerequisites of subsection 1 above are met by that part of the criminal offences for which sentence was passed, which constitutes the major part in terms of significance.

(4) The convicted person shall be obliged to supply proof of the commencement and continuation of treatment at dates fixed by the authority in charge of execution; the persons or institutions providing treatment shall inform the authority in charge of execution of a discontinuance of treatment.

(5) The authority in charge of execution shall revoke the deferment of the execution of a sentence if treatment is not commenced or continued and it is not to be expected that the convicted person will commence or resume treatment of the same kind without delay, or if the convicted person does not supply proof as required under subsection 4. It shall be possible to refrain from revocation of deferment if the convicted person subsequently proves that he is undergoing treatment. Revocation pursuant to sentence 1 shall not preclude a new deferment of execution.

(6) The deferment of execution shall also be revoked if,

1. in cases where a cumulative sentence is formed subsequently, the execution of such sentence is not equally deferred pursuant to subsection 1 in conjunction with subsection 3, or
2. additional imprisonment imposed upon the convicted person or a measure of reform and prevention involving deprivation of liberty is to be executed.

(7) In cases where the authority in charge of execution has revoked deferment, it shall be authorised to issue an arrest warrant for the execution of imprisonment or the commitment to an institution for curing drug addicts. A decision by the court of first instance may be obtained against the revocation. Recourse to the court shall not impede the continuation of execution. Section 462 of the Code of Criminal Procedure shall apply accordingly.

Section 36 Offsetting against the sentence and suspension of the sentence on probation

(1) If execution has been deferred and if the convicted person has undergone treatment at a state-recognized institution, the period of his stay in such an institution, of which the convicted

person has to supply proof, shall be offset against the sentence up to a point where, as a result of such offsetting, two-thirds of the sentence shall be served. The decision on the possibility of offsetting shall be pronounced by the court together with the consent pursuant to section 35 subsection 1. If, due to the offsetting, two-thirds of the sentence are served or if treatment at the institution is no longer required at an earlier date, the court shall suspend the execution of the remaining sentence on probation as soon as this is justifiable in the light of the public interest in security.

(2) If execution has been deferred and the convicted person has undergone treatment to cure his addiction other than that specified in subsection 1, the court shall suspend the execution of imprisonment or of the remaining sentence on probation as soon as this is justifiable in the light of the public interest in security.

(3) In cases where, after the offence, the convicted person has undergone treatment to cure his addiction, the court may order, if the prerequisites of subsection 1 sentence 1, are not met that the period of treatment shall be offset, in whole or in part, against the sentence, if this is indicated in consideration of the demands that the treatment has made upon the convicted person.

(4) Sections 56a to 56g and 57 subsection 5, sentence 2, of the Criminal Code shall apply *mutatis mutandis*.

(5) The decisions pursuant to subsections 1 to 3 shall be taken by the court of first instance in the form of an order without oral proceedings. The authority in charge of execution, the convicted person and the persons or institutions providing the treatment shall be heard. Immediate appeal against the decisions shall be possible. Section 454 subsection 4 of the Code of Criminal Procedure shall apply accordingly to the decisions pursuant to subsection 1, sentence 3, and subsection 2; instructions concerning the suspension of the remaining sentence shall be given by the court.

Section 37 Refraining from preferring public charges

(1) If a defendant is suspected of having committed a criminal offence due to an addiction to narcotic drugs and if punishment not exceeding two years of imprisonment is to be expected, the public prosecutor's office may tentatively refrain from preferring charges, with the consent of the court competent to open the trial, provided that the defendant supplies proof that he is undergoing treatment to cure his addiction as designated in section 35 subsection 1 and his social rehabilitation is to be expected. The public prosecutor's office shall determine the dates on which the defendant has to supply proof of the continuation of treatment. The proceedings

shall be continued if

1. treatment is discontinued before it is completed as foreseen,
2. the defendant fails to supply proof pursuant to sentence 2,
3. the defendant commits a criminal offence and thereby demonstrates that the expectation which was the basis for refraining from preferring charges has not been met or
4. on the basis of new facts or evidence, imprisonment of more than two years is to be expected.

In the cases mentioned in sentence 3, numbers 1 and 2 it is possible to refrain from the continuation of proceedings if the defendant subsequently proves that he is still undergoing treatment. The offence may no longer be prosecuted if proceedings are not continued within two years.

(2) If charges have already been preferred, the court may, with the consent of the public prosecutor's office, suspend the proceedings until the end of the trial in which the factual findings can be reviewed for the last time. The decision shall be rendered by an incontestable court order. Subsection 1, sentences 2 to 5, shall apply accordingly. A statement to the effect that the proceedings are not to be continued shall also be incontestable (subsection 1, sentence 5).

(3) The regulations made in section 172 subsection 2, sentence 3, section 396 subsection 3 and section 467 subsection 5 of the Code of Criminal Procedure with reference to section 153a of the Code of Criminal Procedure shall apply accordingly.

Section 38 Juveniles and adolescents

(1) Sections 35 and 36 shall apply analogously to a sentence of youth custody. In addition to the promise of the juvenile pursuant to section 35 subsection 1, sentence 1, the consent of the person in charge of the juvenile's upbringing and of the legal representative shall also be required. Section 83 subsection 2 number 1, subsection 3, sentence 2, of the Youth Courts Act shall apply analogously in the case of Section 35 subsection 6, sentence 2. In deviation from section 36 subsection 4, sections 22 to 26a of the Youth Courts Act apply accordingly. With regard to the decisions pursuant to section 36 subsection 1, sentence 3, and subsection 2, sections 58 and 59 subsections 2 to 4 and section 60 of the Youth Courts Act shall be applied in addition to section 454 subsection 4 of the Code of Criminal Procedure. Section 37 shall apply analogously also to juveniles and adolescents.

Chapter VIII Transitional and final provisions

Section 39 Transitional regulation

The operation of facilities in the premises of which the use of not medically prescribed narcotic drugs that persons brought with them was tolerated before 1 January 1999, may be continued without a licence from the competent highest Land authority only if, at the latest 24 months after the entry into force of the Third Law Amending the Narcotic drugs Act of 28 March 2000 (Federal Law Gazette I, page 302), an ordinance pursuant to section 10a subsection 2 is issued and an application for a licence pursuant to section 10a subsection 1 filed. Pending an unappealable decision on an application, the operation of these facilities may only be continued if the requirements pursuant to section 10a subsection 2 or of an ordinance issued in accordance with this provision are met. Section 29 subsection 1, sentence 1, numbers 10 and 11 shall also apply to facilities pursuant to sentence 1.

Section 39a Transitional regulation occasioned by the Act amending medicinal products law and other provisions

A person who does not have the expertise specified in section 5 subsection 1 number 2, but meets the requirements set out in section 141 subsection 3 of the Medicinal Products Act on 22nd July 2009, shall be deemed to have supplied proof of the required expertise pursuant to section 6 subsection 1 number 1.

Section 40 and section 40a

(no longer applicable)

Section 41

(deleted)