SUID-AFRIKAANSE POLISIEDIENS

SOUTH AFRICAN POLICE SERVICE

Private Bag / Privaatsak **X 57, BRAAMFONTEIN, 2017**

Reference Verwysing	26/1/1
Enquiries Navrae	Lt-Gen Mthombeni Maj Gen Hendricks
Telephone Telefoon	(011) 274-7898/7564
Email address	Hendricks@saps.gov.za

THE OFFICE OF THE PROVINCIAL COMMISSIONER

GAUTENG

A. All Deputy Provincial Commissioners
GAUTENG

B. All District Commissioners
GAUTENG

C. All Provincial Heads
GAUTENG

D. All Station/ Unit Commanders
GAUTENG

PROLIFERATION OF INDIVIDUALS AND SHOPS PURPORTED TO BE LICENSED OR PERMITTED TO DEAL IN CANNABIS AND CANNABIS PRODUCTS

BACKGROUND

1. This directive was prompted by the uncertainty brought by the proliferation of individuals and shops who or which claim to be licensed or permitted to deal in cannabis and cannabis products, due to the declaration of constitutional invalidity of Section 4(b) and 5(b) read with Part III of Schedule 2 of the Drugs and Drug Trafficking Act, 1992 (Act No. 14 of 1992) and Section 22A(9)(a)(i) of the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965) by the Constitutional Court on 2018 September 18.

2. The National Office, as a result of the declaration of the above-mentioned provisions constitutionally invalid in a case of **Minister of Justice and Constitutional Development and Others v Prince; National Director of Public Prosecution and Others v Rubin; National Director of Prosecutions and Others v Acton and Others**, has since issued out several directions to the Provinces, Districts and Stations, directing them as to how a cannabis situation must be address or treated **(Annex A).**

CANNABIS FOR PRIVATE PURPOSE ACT 7 OF 2025

3. Following the declaration of the constitutional invalidity of the above-mentioned provisions, the Parliament has enacted the Cannabis for Private Purpose Act 7 of 2024, in correcting the defects identified in the Drugs and Drug Trafficking Act 140 of 1992 and the Medicines and Related Substances Control Act 101 of 1965, however, the Cannabis for Private Purpose Act 7 of 2024 is not operative or in force yet due to the draft regulations which are still under consideration.

PROLIFERATION OF INDIVIDUALS AND SHOPS PURPORTED TO BE LICENCED OR PERMITTED TO DEAL IN CANNABIS AND CANNABIS PRODUCTS

PRINCE CASE AND THE LEGISLATION

4. The cannabis situation is still managed by the Drugs and Drug Trafficking Act 140 of 1992 and the direction of the National Office (signed on 2019-01-22 by then National Commissioner KJ Sithole) in line with what was said in the Minister of Justice and Constitutional Development and Others v Prince; National Director of Public Prosecutions and Others v Rubin; National Director of Public Prosecutions and Others v Acton case, which is attached for ease of reference **(Annex B).**

5. The Constitutional Court read into the definition of "deal in" in Section 1 of the Drugs and Drug Trafficking Act to read as follows: "Deal in" in relation to drug includes performing any act in connection with the transshipment, importation, cultivation other than the cultivation of cannabis by an adult in a private place for his or her personal consumption in private, collection, manufacture, supply, prescription, administration, sale, transmission or exportation of the drug **(Annex C).**

6. The person will be regarded as dealing in cannabis if he/she sells and/or cultivate cannabis, if that person (an adult) is not cultivating the cannabis in private for his or her own consumption in private. Cultivation of cannabis other than by an adult in private for private consumption is regarded as dealing which is prohibited by Section 5 of the Drugs and Drug Trafficking Act

7. Section 22A(9)(a)(i) of the Medicines and Related Substances Control Act 101 of 1965 states that no person shall – acquire, use, possess, manufacture or supply any Schedule 7 or Schedule 8 substance, or manufacture any specified Schedule 5 or Schedule 6 substance unless, in the case of cannabis he or she, being an adult, uses it or is in possession thereof in private for his or her personal consumption in private or in any other case, or he or she has been issued with a permit by the Director-General for such acquisition, use, possession, manufacture or supply: Provided that the Director-General may subject to such conditions as he may determine, acquire or authorise the use of any Schedule 7 or Schedule 8 substance in order to provide a medical practitioner, analyst, researcher or veterinarian therewith on the prescribed conditions for the treatment or prevention of a medical condition in a particular patient, or for the purposes of education, analysis or research **(Annex D).**

8. In terms of Section 22A(9)(a)(i) above there is no person who will sell, supply, possess cannabis or manufacture or supply any cannabis products without a permit or licence from the Director-General of the Department of Health, in other words from SAHPRA, unless that person is an adult in possession of the cannabis in private for his or her own consumption in private.

9. The permit issued in terms of Section 22A(9)(a)(i) is valid for 12 months and is issued to pharmacists, veterinarians, medical practitioner, dentist or practitioner, veterinary assistant or nurse, manufacturer of, wholesale dealer in pharmaceutical products, importer and exporter or any other person contemplated in the Medicines Act. SAHPRA does not issue a permit or licence to any person who is not registered under the Health Professions Act, 1974 **(Annex E).**

PROLIFERATION OF INDIVIDUALS AND SHOPS PURPORTED TO BE LICENCED OR PERMITTED TO DEAL IN CANNABIS AND CANNABIS PRODUCTS

10. *Section 5 of the Drugs and Drug Trafficking Act 140 of 1992 stipulates that no person shall deal in –*

(a) Any dependence-producing substance; or

(b) Any dangerous dependence-producing substance or any undesirable dependence-producing substance, unless

(i) he/she has acquired or bought any such substance for medical purposes–

(aa) from a medical practitioner, veterinarian, dentist or practitioner acting in his professional capacity and in accordance with the requirements of the Medicines Act or any regulation made thereunder;

(bb) from pharmacist in terms of an oral instruction or a prescription in writing of such medical practitioner, veterinarian, dentist or practitioner; or

(cc) from a veterinary assistant or veterinary nurse in terms of a prescription in writing of such veterinarian, and administers that, substance to a patient or animal under the care or treatment of the said medical practitioner, veterinarian, dentist or practitioner;

(ii) he is the Director-General of Welfare who acquires, buys or sells any such substance in accordance with the requirements of the Medicines Act or any regulation made thereunder;

(iii) he, she or it is a medical practitioner, veterinarian, dentist, practitioner, nurse, midwife, nursing assistant, pharmacist, veterinary assistant, veterinary nurse, manufacturer of, or wholesale dealer in, pharmaceutical products, importer or exporter, or any other person contemplated in the Medicines Act or any regulation made thereunder, who or which prescribes, administers, acquires, buys, tranships, imports, cultivate, collects, manufactures, supplies, sells, transmit or exports any such substance in accordance with the requirements or conditions of the said Act or regulation, or ant permit issued to him, her or it under the said Act or regulation; or

(iv) *he is an employee of a pharmacist, manufacture of, or wholesale dealer in, pharmaceutical products, importer or exporter who acquires, buys, tranships, imports, cultivates, collects, manufactures, supplies, sells, transmits or exports any such substance in the course of his employment and in accordance with the requirements or conditions of the Medicines Act or any regulation made thereunder, or any permit issued to such pharmacist, manufacturer of, or wholesale dealer in, pharmaceutical products, importer or exporter under the said Act or regulation.*

11. Dealing in cannabis and cannabis products remain prohibited unless the person is exempted from dealing by the provision of Section 5 (b)(i) to (iv), is in possession of a permit or licence from SAHPRA or is possession of cannabis in private for his/her own consumption in private **(Annex F).**

PROLIFERATION OF INDIVIDUALS AND SHOPS PURPORTED TO BE LICENCED OR PERMITTED TO DEAL IN CANNABIS AND CANNABIS PRODUCTS

12. Cannabis and certain cannabis products are regulated by Medicines and Related Control Act and some cannabis products are regulated by Foodstuff, Cosmetics and Disinfectant Act 54 of 1972 as amended, therefore there are three role players to deal with cannabis and cannabis products which are SAPS, SAHPRA inspectors and Environmental Health Practitioners who were previously called Environmental Health Inspectors **(Annex G).**

INDIVIDUALS AND SHOPS PURPORTED TO BE LICENSED OR PERMITTED TO SELL CANNABIS/DAGGA

13. The shops and individuals who claim to be authorised under either a licence or permit issued by SAHPRA, authorising them to deal with cannabis and cannabis products must be dealt with in the following manner:
   (a) For the shops which are known to be dealing in cannabis and cannabis products, the police must apply for a search and seizure warrant for that premisses in terms of Section 21 of the Criminal Procedure Act.
   (b) Once the search and seizure warrant is granted, the plan a joint operation with SAHPRA and Environmental Health inspectors.
   (c) The photographer from LCRC where possible must form part of the operation to take photos of the cannabis or cannabis from where they are displayed in the shop or shelves in the shop.
   (d) The police will then handle the cannabis aspect if found.
   (e) SAHPRA inspectors and Environmental Health inspectors will handle the cannabis products aspect.
   (f) If the cannabis/dagga if found and a person if deemed to be selling, such person must be charged for contravening Section 5 (a) of the Drugs and Drug Trafficking Act for dealing in any dangerous dependence-producing substance or undesirable dependence-producing substance.
   (g) The dealer must also be charged with contravention of Section 22A(9)(a)(i) for selling cannabis or dagga or cannabis products without permit.
   (h) Space-cookies are food that are infused with or contain a prohibited substance, therefore a person if found must be charger for contravening Section 2(1)(a)(i) of the Foodstuff, Cosmetics and Disinfectant Act 54 of 1972 for selling foodstuff that contain prohibited substance.

14. Where it is not certain that a person is dealing in cannabis, but there is a believe that a person is dealing in cannabis/dagga the following procedure must be followed:
   (a) The police must apply for Section 252A entrapment and search and seizure warrant at the same time.
   (b) Once the entrapment order and search and seizure warrants are granted, entrap the alleged dealer, if found to be dealing, then utilize a search and seizure warrant to search the entire premisses and seize all the exhibit.
   (c) Arrest the suspect for dealing in cannabis/dagga and book it into the SAPS 13
   (d) If cannabis need to be weighed, do that in the presence of the suspect.

PROLIFERATION OF INDIVIDUALS AND SHOPS PURPORTED TO BE LICENCED OR PERMITTED TO DEAL IN CANNABIS AND CANNABIS PRODUCTS

15. If the person is renting out space for other individuals to plant dagga at that place at a certain cost, the owner of such space will be deemed to be dealing, therefore such practice is not permitted. The Western Cape High Court in the case of **Haze Club (Pty) Ltd and Others v Minister of Police and Others** held that the rented space is not protected by the right to privacy, therefore a person is deemed to be making money form cultivation of cannabis for others which is classified as dealing in cannabis **(Annex H).**

16. Exhibit must be properly collected, recorded and packaged. Chain of evidence must be maintained throughout the process to render the exhibit admissible in court. The North Gauteng High Court in a case of **Official v S** has lambasted SAPS for failing to keep the chain of evidence where some exhibits were not recorded and uncounted for, and the exhibit bag was not recorded. Par 4.4 of the judgment states as follows;

"the so-called chain evidence explains what happened to the exhibit from the time that it was disputed to the time the report was received. It is important that the chain be properly proved..." **(Annex I)**

CLANDESTINE LABORATORIES

17. SAPS members must also enquire from the cannabis dealers about the places or suppliers from which they (dealers) buy their stock (dagga and dagga products), which will lead or assist SAPS to get to clandestine Laboratories. Clandestine Laboratory is any structure or vehicle in which unlawful dealing in dangerous dependent-producing substances or undesirable dependent-producing substances and manufacturing of drugs and drug related products (including cannabis and cannabis products), is taking place. If such laboratories are found the police or first responders must preserve the scene, then call the Provincial Investigating Unit (PIU) responsible for narcotics to the scene. The PIU will then assess, investigate and process the scene, if is found that the scene falls within the mandate of the Directorate for Priority Crime Investigation (DPCI) Narcotics then call them (DPCI) to the scene to take over.

CONCLUSION

18. This directive must be brought to the attention of all members under your command for immediate implementation.

19. Any uncertainties regarding this directive must be directed and be clarified with Provincial Legal Services.

20. Members of the SAPS must follow this directive and the directive of the National Office dated 2019-01-22 which was signed by then National Commissioner KJ Sitole

LIEUTENANT GENERAL
PROVINCIAL COMMISIONER: GAUTENG
D.T. MTHOMBENI

Date: 2026 -10- 21