

South Africa

## Cannabis for Private Purposes Act, 2024

### Act 7 of 2024

Legislation as at 3 June 2024

Note: This Act has **not yet come into force**.

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## South Africa

# Cannabis for Private Purposes Act, 2024

## Act 7 of 2024

Published in Government Gazette 50744 on 3 June 2024

Assented to on 28 May 2024

Not commenced

*[This is the version of this document from 3 June 2024.]*

(English text signed by the President)

## ACT

To—

- respect the right to privacy of an adult person to use or possess cannabis;
- regulate the use or possession of cannabis by an adult person;
- provide for an alternative manner by which to address the issue of the prohibited use, possession of, or dealing in, cannabis by children, with due regard to the best interest of the child;
- prohibit the dealing in cannabis;
- provide for the expungement of criminal records of persons convicted of possession or use of cannabis or dealing in cannabis on the basis of a presumption;
- amend provisions of certain laws; and
- provide for matters connected therewith.

Parliament of the Republic of South Africa enacts, as follows:—

### 1. Definitions and interpretation

(1) In this Act, unless the context indicates otherwise—

“**adult person**” means a person who is 18 years or older;

“**cannabis**” means the flowering or fruiting tops of a cannabis plant and includes products made therefrom, but excludes any seed, seedling, the stalk, leaves and branches without any fruit or flower, and the roots of a cannabis plant, including products made therefrom;

“**child**” means a person who is under the age of 18 years;

“**consideration**” means any form of compensation, gift, reward, favour or benefit;

“**cultivate**” includes to plant, propagate, nurture, tend, grow or harvest a cannabis plant, and “cultivation” has a corresponding meaning;

“**deal in**” means to provide for consideration, receive for consideration, sell, buy, offer for sale, offer to purchase, import, advertise for sale, export, cultivate for the purposes of dealing, and any other conduct to facilitate selling cannabis, but does not include any such activity that is authorised in terms of this Act, or in terms of a permit or licence issued under any other national legislation;

“**Director-General**” means the Director-General: Justice and Constitutional Development;

“**Minister**” means the Cabinet member responsible for the administration of justice;

**“private place”** means—

- (a) any place, including a building, house, room, shed, hut, tent, mobile home, caravan, boat or land or any portion thereof, to which the public does not have access as of right; and
- (b) any part or portion of communal land as defined in section 1 of the Communal Land Rights Act, 2004 ([Act No. 11 of 2004](#)), which, in terms of the rules or custom of a community or the standard rules contemplated in section 19(5) of that Act, is a place which is exclusively used to cultivate or use cannabis in a private place, by an adult person as a member of such a community;

**“private purpose”** means for the exclusive use, possession and cultivation of cannabis by an adult person with the intention to keep, store, transport or be in control of cannabis, in a manner that conceals it from public view;

**“public place”** means—

- (a) any place to which the public has right of access; and
- (b) any part or portion of communal land which is not exclusively used to cultivate cannabis, as contemplated in paragraph (b) of the definition of “private place”;

**“public road”** means a public road as defined in section 1 of the National Road Traffic Act, 1996 ([Act No. 93 of 1996](#));

**“responsible adult”** means an adult person who is in a position of authority, supervision or care of a child;

**“smoke”** means to—

- (a) inhale or exhale the smoke produced by ignited cannabis or holding or otherwise having control of ignited cannabis or any device or object that contains ignited cannabis; or
- (b) inhale or exhale the vapour or aerosol of cannabis produced by a vaping device or holding or otherwise having control of a vaping device producing cannabis vapour or aerosol;

**“this Act”** includes the regulations;

**“use of cannabis”** means the consumption of cannabis, including but not limited to the eating, drinking, or smoking of cannabis, or to otherwise self-administer cannabis and “use cannabis” has a corresponding meaning; and

**“vehicle”** means a vehicle as defined in section 1 of the National Road Traffic Act, 1996.

- (2) Offences in section [4\(1\)](#), [\(4\)](#) and [\(5\)](#) do not apply to any such activities that are expressly authorised in this Act or in terms of a permit or licence issued under any other national legislation.

## 2. Cannabis for private purpose by adult person

(1) An adult person may—

- (a) use or possess cannabis; and
- (b) without the exchange of consideration per occasion provide to, or obtain from, another adult person, cannabis,

in a private place for a private purpose.

(2) Notwithstanding subsection [\(1\)](#), no adult person may use cannabis in a private place for a private purpose—

- (a) in the presence of a child or non-consenting adult person; or

- (b)
  - (i) within a reasonable distance from a window of, ventilation inlet of, doorway to, or entrance into, another place; or
  - (ii) that forms part of any public place where persons congregate within close proximity of one another and where the smoke is likely to cause a disturbance or nuisance to any person at that place.
- (3) An adult person may possess cannabis in a public place: Provided that such cannabis may not be used in a public place.

### 3. Protection of child

- (1) In all matters regarding a child, the best interest of the child must prevail in the legal response where the child is suspected or alleged to have contravened any legislation relating to the—
  - (a) use or possession of cannabis, the child must be dealt with in terms of—
    - (i) the Children’s Act, 2005 ([Act No. 38 of 2005](#));
    - (ii) the Prevention of and Treatment from Substance Abuse Act, 2008 ([Act No. 70 of 2008](#)); or
    - (iii) any other relevant legislation; or
  - (b) dealing in cannabis, the child must be dealt with in terms of the—
    - (i) legislation referred to in paragraph (a); or
    - (ii) Child Justice Act, 2008 ([Act No. 75 of 2008](#)).
- (2)
  - (a) No adult person may knowingly—
    - (i) permit a child to use or possess cannabis; or
    - (ii) supply a child with cannabis or a product containing cannabis.
  - (b) Notwithstanding paragraph (a), a responsible adult may administer cannabis to a child, with or without consent or knowledge of the child, if prescribed by a medical practitioner.
- (3) An adult person who is in possession of cannabis must take reasonable measures to ensure that such cannabis is inaccessible to a child whether that child is under the authority, supervision or care of that adult person or not.
- (4) No person may engage a child to deal in cannabis.

### 4. Offences and penalties

- (1) Any person who deals in cannabis, is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.
- (2) An adult person who knowingly permits a child to use or possess cannabis as contemplated in section [3\(2\)\(a\)\(i\)](#), is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 12 months or to both such fine and imprisonment.
- (3) An adult person who is in possession of cannabis at any place and who fails to store such cannabis in a secure space that is inaccessible to a child, as contemplated in section [3\(3\)](#), is guilty of an offence and is liable on conviction to a fine not exceeding R2 000.
- (4) Any person who is in possession of cannabis, either in a private or public place, in an amount which exceeds the maximum amount prescribed for private purpose, is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding five years or to both such fine and imprisonment.

- (5) Any person who cultivates cannabis plants which exceed the maximum number prescribed for private purpose, is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding five years or to both such fine and imprisonment.
- (6) Any person who engages a child to deal in cannabis, as contemplated in section 3(4), is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.
- (7) Any adult person who provides or administers cannabis to a child, unless prescribed by a medical practitioner, as contemplated in section 3(2)(b), is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 12 months or to both such fine and imprisonment.
- (8)
  - (a) Any person who transports cannabis in an amount which exceeds the maximum amount, as prescribed for private purpose, is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding five years or to both such fine and imprisonment.
  - (b) Any person who transports cannabis and contravenes or fails to comply with any condition, restriction, prohibition, obligation, requirement or standard regarding the transportation of such cannabis, as may be prescribed, is guilty of an offence and is liable on conviction to a fine not exceeding R2 000.
  - (c) Any person who uses cannabis in a vehicle on a public road, is guilty of an offence and is liable on conviction to a fine not exceeding R2 000.
  - (d) Any person who is a passenger in a vehicle on a public road, and who contravenes or fails to comply with any condition, restriction, prohibition, obligation, requirement or standard regarding the transportation of cannabis, that may be prescribed in respect of such a passenger, is guilty of an offence and is liable on conviction to a fine not exceeding R2 000.
- (9) Any person who uses cannabis in a public place as contemplated in section 2(3), is guilty of an offence and is liable on conviction to a fine not exceeding R2 000.
- (10) Any person who uses cannabis in a private place in the immediate presence of a child or non-consenting adult person as contemplated in section 2(2)(a), is guilty of an offence and is liable on conviction to a fine not exceeding R2 000.
- (11) Any person who smokes cannabis in a private place—
  - (a) within a reasonable distance from a window of, ventilation inlet of, doorway to, or entrance into, another place as contemplated in section 2(2)(b)(i); or
  - (b) forming part of any public place where persons congregate within close proximity of one another and where the smoke is likely to cause a disturbance or nuisance to any person at that place as contemplated in section 2(2)(b)(ii),is guilty of an offence and is liable on conviction to a fine not exceeding R2 000.
- (12) A penalty imposed for payment of a fine without an alternative of imprisonment does not constitute a previous conviction as contemplated in Chapter 27 of the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#)).

## **5. Expungement of criminal records of persons convicted of possession or use of cannabis or dealing in cannabis on the basis of a presumption**

- (1)
  - (a) Where a court has convicted a person of a contravention of—
    - (i) section 2(b) of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 ([Act No. 41 of 1971](#)), in that the person used or possessed the dependence-producing drug or plant of cannabis (dagga);

*Not commenced*

- (ii) section 4(b) of the Drugs and Drug Trafficking Act, 1992 ([Act No. 140 of 1992](#)) in that the person used or possessed the undesirable dependence producing substance of cannabis (dagga); or
  - (iii) any law of the former Republics of Transkei, Bophuthatswana, Ciskei or Venda, or of any former self-governing territory, as provided for in the Self-governing Territories Constitution Act, 1971 ([Act No. 21 of 1971](#)), before the commencement of the Constitution of the Republic of South Africa, 1993 ([Act No. 200 of 1993](#)), that criminalised the use or possession of cannabis (dagga), the criminal record, containing the conviction and sentence in question, of that person in respect of that offence must be expunged automatically by the Criminal Record Centre of the South African Police Service.
- (b) Where the criminal record of a person referred to in paragraph (a) has not been expunged automatically as provided for in that paragraph, the criminal record of that person must, on that person's written application to the Director-General, in the prescribed form and manner, be expunged.
  - (c) The Director-General must, on receipt of the written application of a person referred to in paragraph (b), issue a prescribed certificate of expungement, directing that the conviction and sentence of the person be expunged, if the Director-General is satisfied that the person complies with the criteria set out in paragraph (a).
  - (d) An applicant to whom a certificate of expungement has been issued as provided for in paragraph (c) must, in the prescribed manner, submit the certificate to the head of the Criminal Record Centre of the South African Police Service, to be dealt with in accordance with subsection (3).
- (2) (a) Where a court has convicted a person of a contravention of—
    - (i) section 2(a) of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971, on the basis of the operation of any presumption in section 21(1)(a) (i), (b), (d) or (e) of that Act, in terms of which it is presumed that the person dealt in the dependence-producing drug or plant of cannabis (dagga);
    - (ii) section 5(b) of the Drugs and Drug Trafficking Act, 1992, on the basis of the operation of any presumption in section 21(1)(a)(i), (b), (c) or (d) of that Act, in terms of which it is presumed that the person dealt in the undesirable dependence-producing substance of cannabis (dagga); or
    - (iii) any law of the former Republics of Transkei, Bophuthatswana, Ciskei or Venda, or of any former self-governing territory, as provided for in the Self-governing Territories Constitution Act, 1971, before the commencement of the Constitution of the Republic of South Africa, 1993, on the basis of the operation of any presumption similar to the laws in subparagraph (i) and (ii), in terms of which it is presumed that the person dealt in cannabis (dagga),

the criminal record, containing the conviction and sentence in question, of that person in respect of that offence must, subject to paragraph (b), on that person's written application, be expunged.

- (b) The Director-General must, on receipt of the written application, in the prescribed form, of a person referred to in paragraph (a), issue a prescribed certificate of expungement, directing that the criminal record of the person be expunged, if the Director-General is satisfied from the application that the person applying for expungement was convicted of the offence of dealing in the undesirable dependence producing substance of cannabis (dagga), on the basis of the operation of any presumption referred to in paragraph (a).
- (c) The Director-General must, in the prescribed manner, submit every certificate of expungement that has been issued as provided for in paragraph (b), to the head of the

Criminal Record Centre of the South African Police Service to be dealt with in accordance with subsection (3).

- (d) Notwithstanding the provisions of the Child Justice Act 2008 ([Act No. 75 of 2008](#)), a person whose particulars appear in the diversion record administered by the Director-General: Social Development for having used, possessed, cultivated or dealt in cannabis may apply to the Director-General concerned to have that record expunged.
- (3) (a) The head of the Criminal Record Centre of the South African Police Service or a senior person or person at the rank of Director or above, employed at the Centre, who has been authorised, in writing, by the head of the Centre to do so, must expunge the criminal record of a person if that head or person is furnished with a certificate of expungement as provided for in subsection (1)(d) or (2)(c).
- (b) The head of the Criminal Record Centre of the South African Police Service must, on the written request of an applicant, in writing, confirm that the criminal record of the person has been expunged.
- (4) Where the Director-General has, in terms of subsections (1)(c) and (2)(b), issued a certificate of expungement, and it subsequently appears that the applicant did not qualify for the expungement of that criminal record, the Director-General must—
- (a) inform the applicant in writing of the information that has come to the Director-General's attention and that the Director-General intends to revoke the certificate of expungement;
  - (b) afford the applicant an opportunity to furnish compelling written reasons to the Director-General within 90 working days after the applicant is informed of the intention to revoke, why the applicant's record should remain expunged;
  - (c) inform the applicant in writing within 30 working days after a decision is made of—
    - (i) that decision; and
    - (ii) the reasons for revoking the certificate of expungement; and
  - (d) inform the head of the Criminal Record Centre of the South African Police Service, in writing within 14 working days after the decision was made, to revoke the certificate of expungement and to reinstate the convictions and sentences in question.
- (5) If the applicant fails to furnish compelling reasons contemplated in subsection (4)(b), the Director-General may, subject to the Promotion of Administrative Justice Act, 2000 ([Act No. 2 of 2000](#)), revoke the certificate of expungement.
- (6) (a) The Director-General may delegate any power or assign any duty conferred upon or assigned to the Director-General in terms of subsection (1)(c), (2)(c) or (4), to an appropriately qualified official in the employ of the Department of Justice and Constitutional Development at the rank of Deputy Director-General.
- (b) A delegation or assignment in terms of paragraph (a)—
- (i) is subject to any limitation, condition and direction which the Director-General may impose;
  - (ii) must be in writing; and
  - (iii) does not divest the Director-General of the responsibility concerning the exercise of the power or the performance of the duty.
- (c) The Director-General may—
- (i) confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this subsection, subject to any rights that may have accrued to a person as a result of the decision; and



- (ii) at any time withdraw a delegation or assignment.

## 6. Regulations

- (1) The Minister must make regulations to prescribe—
  - (a) the maximum amounts contemplated in section 4(4), (5) and (8)(a);
  - (b) the conditions, restrictions, prohibitions, obligations, requirements or standards regarding the transportation of cannabis, by the person transporting cannabis as well as in respect of the passenger in such transport, as contemplated in section 4(7)(a) and (d);
  - (c) the form on which a person's written application for the expungement of a criminal record must be made, as provided for in section 5(1)(b) and (2)(a);
  - (d) the certificate of expungement to be issued by the Director-General as provided for in section 5(1)(c) and (2)(b); and
  - (e) the manner in which the Director-General must submit certificates of expungement that have been issued, to the head of the Criminal Record Centre of the South African Police Service, as provided for in section 5(1)(d) and (2)(c).
- (2)
  - (a) The Minister may make regulations to prescribe any matter which is necessary or expedient to achieve the objects of this Act.
  - (b) Any regulation made in terms of paragraph (a) and subsection (1)(a) or any amendment thereto must, before publication in the *Gazette*, be approved by Parliament.

## 7. Amendment of laws

The laws mentioned in the Schedule are hereby amended to the extent reflected in the fourth Column of the Schedule.

## 8. Short title and commencement

- (1) This Act is called the Cannabis for Private Purposes Act, 2024, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.
- (2) For purposes of subsection (1) different dates may be proclaimed in respect of different provisions of the Act and the different items of the Schedule to the Act.

*Not commenced***Schedule (Section 7)****Laws Amended**

Item No.	Number and year of law	Short title	Extent of repeal or amendment
1.	<a href="#">Act No. 140 of 1992</a>	Drugs and Drug Trafficking Act, 1992	<p>(a) Part II of Schedule 2 is amended by the deletion of the item:</p> <p>“Dronabinol [(–)-transdelta-9-tetrahydrocannabinol].”</p> <p>(b) Part III of Schedule 2 is amended by the deletion of the items:</p> <p>(i) “Cannabis (dagga), the whole plant or any portion or product thereof, except dronabinol [(–)-transdelta-9-tetrahydrocannabinol]”; and</p> <p>(ii) “Tetrahydrocannabinol”.</p>

*Not commenced*

Item No.	Number and year of law	Short title	Extent of repeal or amendment
2.	<a href="#">Act No. 93 of 1996</a>	National Road Traffic Act, 1996	<p>(a) The Index to the Act is amended by—</p> <p>(i) the substitution for the heading to Chapter XI of the following heading:</p> <p>“RECKLESS OR NEGLIGENT DRIVING, INCONSIDERATE DRIVING, DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR, <u>THC OR A DRUG HAVING A NARCOTIC EFFECT, AND MISCELLANEOUS OFFENCES</u>”;</p> <p>and</p> <p>(ii) the substitution for item 65 of Chapter XI of the following item:</p> <p>“Driving or occupying driver’s seat while under the influence<sup>9</sup> of intoxicating liquor</p>