



# **LAWS OF MALAYSIA**

REPRINT

**Act 165**

## **LAW REFORM (ERADICATION OF ILLICIT SAMSU) ACT 1976**

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**LAW REFORM (ERADICATION OF ILLICIT  
SAMSU) ACT 1976**

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# LAWS OF MALAYSIA

## Act 165

### LAW REFORM (ERADICATION OF ILLICIT SAMSU) ACT 1976

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# LAWS OF MALAYSIA

## Act 165

### LAW REFORM (ERADICATION OF ILLICIT SAMSU) ACT 1976

An Act to provide for the eradication of the manufacture, trafficking and consumption of illicit samsu and for purposes incidental thereto.

[16 April 1976, P.U. (B) 206/76]

**BE IT ENACTED** by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

#### PART I

#### PRELIMINARY

#### **Short title and application**

1. (1) This Act may be cited as the Law Reform (Eradication of Illicit Samsu) Act 1976.

(2) This Act shall apply throughout Malaysia.

#### **Interpretation**

2. In this Act, unless the context otherwise requires—

“alcohol” means ethyl alcohol;

“approved denatured alcohol” means any alcohol denatured in accordance with Part VIII of the Excise Regulations 1962 [*L.N. 115 of 1962*] and approved by the Director General of Customs and Excise for any specified purpose;

“authorization” means any licence, permit or other form of authority issued under any written law;

“deleterious substance” means any matter—

- (a) which is unfit for human consumption; or
- (b) the consumption of which is harmful to human beings,

as certified by a Government chemist or a Government medical officer;

“gallon” means the imperial gallon;

“illicit samsu” means any intoxicating liquor which has been manufactured without authorization;

“intoxicating liquor” includes any alcohol or any liquid of any description containing more than two per centum of proof spirit but does not include any approved denatured alcohol;

“manufacture” with its grammatical variations and cognate expressions means, in relation to intoxicating liquor, making, producing, distilling, brewing, fermenting, bottling, and includes the addition of any substance (other than water) to such liquor and the blending, compounding or otherwise varying its composition;

“manufacturing apparatus” means any still or part of a still for manufacturing illicit samsu or any utensil or other apparatus for such purpose;

“proof spirit” means that mixture of alcohol and distilled water which at the temperature of fifty-one degrees Fahrenheit weighs exactly twelve-thirteenth parts of an equal measure of distilled water at the same temperature;

“proper officer” means—

- (a) any police officer appointed under the Police Act 1967 [Act 344]; or
- (b) any officer of customs so defined in subsection 2(1) of the Customs Act 1967 [Act 235],

and includes any senior officer;

“senior officer” means—

- (a) any police officer of the rank of Inspector and above; or
- (b) any senior officer of customs so defined in subsection 2(1) of the Customs Act 1967;

“ship” means every description of vessel used in the navigation of water and includes any vessel exclusively propelled by oars, paddles or poles;

“trafficking”, in relation to illicit samsu, includes the doing, even on one occasion only, of any of the following acts otherwise than under the authorization of any written law, that is to say, importing, exporting, selling, buying, receiving, keeping, concealing, storing, giving, carrying, transporting, sending, delivering, procuring, supplying or distributing.

## PART II

### PROSCRIPTION OF ILLICIT SAMSU

#### **No person to manufacture illicit samsu**

3. (1) No person shall—

- (a) manufacture illicit samsu;
- (b) offer to manufacture illicit samsu; or
- (c) do or offer to do an act preparatory to or for the purpose of manufacturing illicit samsu.

(2) Any person who contravenes any provision of subsection (1) commits an offence against this Act and shall, on conviction, be punished with—

- (a) \*imprisonment for a term not exceeding ten years and not less than four years; and
- (b) \*\*whipping of not less than two strokes.

(3) Where the illicit samsu, if any, which is the subject matter of an offence under this section contains any deleterious substance, the offender shall be punished with—

- (a) †imprisonment for a term not exceeding twenty years and not less than seven years; and

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\*NOTE—Previously “imprisonment for a term not exceeding five years and not less than two years”—see Law Reform (Eradication of Illicit Samsu) (Amendment) Act 1988 [Act A711].

\*\*NOTE—Previously “a fine not exceeding twenty thousand ringgit”—see Law Reform (Eradication of Illicit Samsu) (Amendment) Act 1988 [Act A711].

†NOTE—Previously “imprisonment for a term not exceeding ten years and not less than four years”—see Law Reform (Eradication of Illicit Samsu) (Amendment) Act 1988 [Act A711].

- (b) *(Deleted by Act A711)*;
- (c) whipping of not less than six strokes.

### **No person to traffic in illicit samsu**

#### **4. (1) No person shall—**

- (a) traffic in illicit samsu;
- (b) offer to traffic in illicit samsu; or
- (c) do or offer to do an act preparatory to or for the purpose of trafficking in illicit samsu.

(2) Any person who contravenes any provision of subsection (1) commits an offence against this Act and shall, on conviction, be punished with—

- (a) \*imprisonment for a term not exceeding ten years and not less than four years; and
- (b) \*\*whipping of not less than two strokes.

(3) Where the illicit samsu, if any, which is the subject matter of an offence under this section contains any deleterious substance, the offender shall be punished with—

- (a) †imprisonment for a term not exceeding twenty years and not less than seven years; and
- (b) *(Deleted by Act A711)*;
- (c) whipping of not less than six strokes.

### **Possession of illicit samsu**

**5. (1) No person shall have in his possession, custody or control illicit samsu otherwise than under the authorization of any written law.**

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\*NOTE—Previously “imprisonment for a term not exceeding five years and not less than two years”—see Law Reform (Eradication of Illicit Samsu) (Amendment) Act 1988 [*Act A711*].

\*\*NOTE—Previously “a fine not exceeding twenty thousand ringgit”—see Law Reform (Eradication of Illicit Samsu) (Amendment) Act 1988 [*Act A711*].

†NOTE—Previously “imprisonment for a term not exceeding ten years and not less than four years”—see Law Reform (Eradication of Illicit Samsu) (Amendment) Act 1988 [*Act A711*].

(2) Any person who contravenes the provisions of subsection (1) commits an offence against this Act and shall on conviction, be punished with—

- (a) imprisonment for a term not exceeding ten years and not less than four years; and
- (b) whipping of not less than two strokes.

(3) Where the illicit samsu, if any, which is the subject matter of an offence under this section contains any deleterious substance, the offender shall be punished with—

- (a) imprisonment for a term not exceeding twenty years and not less than seven years; and
- (b) whipping of not less than six strokes.

### **Keeping, using or permitting use of premises for manufacture of illicit samsu**

6. (1) Any person who being the owner or occupier of any premises keeps, uses or permits the use of the premises for the manufacture of illicit samsu commits an offence against this Act and shall, on conviction, be punished with—

- (a) \*imprisonment for a term not exceeding ten years and not less than four years; and
- (b) †whipping of not less than two strokes.

(2) In any prosecution for an offence under this section the onus of proving that the owner or occupier of the premises had no knowledge that the premises was being kept, used or permitted to be used for the manufacture of illicit samsu shall lie on the person seeking to avail himself of such defence.

### **Possession of manufacturing apparatus**

7. Any person who, without authorization, knowingly keeps or knowingly has in his possession any manufacturing apparatus commits an offence against this Act and shall, on conviction, be punished with—

- (a) \*imprisonment for a term not exceeding ten years and not less than four years; and
- (b) †whipping of not less than two strokes.

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\*NOTE—Previously “imprisonment for a term not exceeding five years and not less than two years”—see Law Reform (Eradication of Illicit Samsu) (Amendment) Act 1988 [Act A711].

†NOTE—Previously “a fine not exceeding twenty thousand ringgit”—see Law Reform (Eradication of Illicit Samsu) (Amendment) Act A1988 [Act A711]

**Owner, master or person in charge of ship or aircraft deemed to be trafficking in illicit samsu**

8. (1) If any illicit samsu is found on board any ship or aircraft, the owner, master or person in charge of the ship or aircraft shall be deemed to be trafficking in such samsu contrary to section 4 unless he proves to the satisfaction of the court that he was not implicated in the trafficking and that the offence was committed without his knowledge, consent and connivance.

(2) The finding of any illicit samsu on board any ship or aircraft shall be *prima facie* evidence that the ship or aircraft has been used in the trafficking of such samsu contrary to this Act and the ship or aircraft may be detained by order of court until the furnishing of sufficient security for its release.

**PART III****POWERS OF SEARCH, SEIZURE AND ARREST****Search warrant**

9. (1) Whenever it appears to any Magistrate, upon written information on oath and after such inquiry as he deems necessary, that there is reasonable cause to believe that in any premises there is concealed, kept, deposited or stored any illicit samsu or manufacturing apparatus liable to forfeiture under this Act or as to which an offence under this Act has been committed, or any book or document directly or indirectly relating to or connected with any transaction or dealing which was, or any intended transaction or dealing which would be, an offence under this Act, that Magistrate may issue a warrant authorizing any named senior officer, by day or night and with or without assistance—

- (a) to enter the premises and there to search for and seize such samsu, manufacturing apparatus, book or document;
- (b) to arrest any person being in or on the premises in whose possession such samsu, manufacturing apparatus, book or document is found, or whom the officer reasonably believes to have trafficked in such samsu or brought, received, concealed, kept, deposited or stored such samsu, manufacturing apparatus, book or document.

(2) Such officer may if it is necessary so to do, with or without assistance—

- (a) break open any door or window or part of the premises to have ingress thereinto;
- (b) forcibly enter the premises and every part of it;
- (c) remove by force any obstruction to entry, search, seizure and removal as he is empowered to effect; and
- (d) detain every person found in or on the premises until the premises have been searched.

### **Circumstances for search without warrant**

**10.** (1) Whenever it appears to any senior officer that there is reasonable cause to believe that in or on any premises there is concealed, kept, deposited or stored, in contravention of the provisions of this Act, any illicit samsu, manufacturing apparatus, book or document as is described in subsection 9(1) and he has good ground for believing that by reason of the delay in obtaining a search warrant the object of the search is likely to be frustrated, he may exercise in, upon and in respect of the premises all the powers mentioned in section 9 in as full and ample a manner as if he had been so empowered by warrant.

(2) Any proper officer may stop and search, and seize if necessary, any conveyance which he has reasonable ground for believing to be used for the carriage of any illicit samsu, manufacturing apparatus or any other thing liable to forfeiture under this Act.

### **Inspection by senior officer**

**11.** Any senior officer may, for the purposes of this Act, enter the premises of any person carrying on the authorized business of a producer, manufacturer, seller or distributor of any intoxicating liquor and demand the production of, and inspect, any book or document relating to dealing in such liquor, and inspect any stock thereof.

### **Obstruction of inspection, search or investigation of an offence**

**12.** Any person who—

- (a) refuses any proper officer authorized to enter or search any premises or conveyance access thereto;

- (b) assaults, obstructs, impedes or delays any proper officer in effecting any entrance which he is entitled to effect under this Act, or in the execution of any duty imposed or power conferred by this Act;
- (c) fails to comply with any lawful demand or order of any proper officer in the execution of his duty under this Act;
- (d) refuses or neglects to give to any proper officer any information which may reasonably be required and which he has it in his power to give;
- (e) furnishes to any proper officer as true, information which he knows or has reason to believe to be false;
- (f) fails to produce or conceals or attempts to conceal any illicit samsu, manufacturing apparatus, book or document in relation to which there is reasonable ground for suspecting the commission of an offence against this Act;
- (g) escapes or attempts to escape from lawful custody after having been arrested for an offence against this Act;
- (h) rescues or attempts to rescue or causes to be rescued any person who has been duly arrested or anything which has been duly seized; or
- (i) before or after any seizure breaks or destroys anything to prevent its seizure,

commits an offence against this Act and shall, on conviction, be punished with imprisonment for a term not exceeding five years and a fine not exceeding five thousand ringgit.

### **Indemnity of Government and public officer**

**13.** The Government or any public officer shall not be liable to indemnify any person who has suffered any damage to or loss of property resulting from any entry, search or seizure under this Act unless the damage or loss shall have been caused by the wilful neglect or wilful default of a public officer.

### **Seizure and forfeiture of illicit samsu, etc.**

**14.** (1) Any illicit samsu, manufacturing apparatus, book or document in respect of which any proper officer reasonably believes that an offence under this Act has been or is being committed, together with any receptacle or conveyance in which the same is found or which is reasonably suspected of having been used in the commission of the offence, may be seized by the officer.

(2) Anything liable to seizure under this section shall be liable to forfeiture.

(3) Whenever any conveyance is seized under this section the seizing officer shall forthwith give notice in writing of the seizure and the grounds for seizure to the owner of the conveyance, if known, either by delivering the notice to him personally or by registered post at his last known address:

Provided that no notice shall be necessary where the seizure is effected in the presence of the offender or the owner of the conveyance or his agent.

(4) Subsection (1) shall not apply to any conveyance being a ship of more than two hundred tons net registered tonnage or an aircraft:

Provided that any such ship or aircraft may be seized by a senior officer pending an application to court for an order under section 8, which application shall be made as soon as practicable after the seizure.

(5) When any conveyance has been seized under this section, a senior officer may return the conveyance to the owner on sufficient security being furnished to the satisfaction of that officer that the conveyance shall be surrendered to him on demand.

(6) An order for the forfeiture or for the release of anything liable to forfeiture under this section shall be made by the court before which the prosecution with regard thereto has been held, and an order for the forfeiture of the thing shall be made if it is proved to the satisfaction of the court that an offence under this Act has been committed and that the thing was the subject matter or was used in the commission of the offence notwithstanding that no person may have been convicted of the offence.

(7) If there is no prosecution with regard to anything seized under this section, that thing shall be taken and deemed to be forfeited at the expiration of one month from the date of seizure unless a claim for it is made before that date in accordance with this section.

(8) Any person asserting that he is the owner of anything liable to forfeiture under subsection (7) and that it is not so liable may personally or by his agent authorized in writing give written notice to a senior officer that he claims the same.

(9) On receipt of any notice given under subsection (8), the senior officer shall refer the claim to the Sessions Court Judge for his decision.

(10) The Sessions Court Judge to whom reference is made under subsection (9) shall issue a summons requiring the person asserting that he is the owner of the thing and the person from whom it was seized to appear before him, and upon their appearance or default in appearing, due service of the summons being proved, the Sessions Court Judge shall proceed to the examination of the matter and on proof that an offence under this Act has been committed and that the thing was the subject matter or was used in the commission of the offence, shall order the same to be forfeited, or may in the absence of such proof order its release.

(11) The Minister may upon application made to him in writing order anything seized under this Act, whether forfeited or taken and deemed to be forfeited, to be delivered to the owner or other person entitled to it upon any terms and conditions the Minister may deem fit to impose:

Provided that the application shall be made before the expiration of one month from the date of forfeiture of the thing or from the date on which it shall be taken and deemed to be forfeited, as the case may be.

### **Mode of seizure not to affect case adversely**

**15.** In any proceeding before any court relating to the seizure of anything subject to forfeiture under this Act, the court shall proceed with the trial or the appeal, as the case may be, on the merits of the case only without inquiring into the manner or form of making the seizure except in so far as the manner and form of seizure may be evidence on such merits.

### **Offences to be seizable**

**16.** (1) Any proper officer may arrest without warrant an person whom he reasonably believes to have committed or to be committing an offence against this Act.

(2) Every person so arrested shall, together with anything as to which an offence may have been committed or is being committed or which is otherwise reasonably believed by the officer making the arrest to be liable to forfeiture under this Act, be taken to a police station or to a customs office and may be searched, provided a female shall not be searched except by a female.

(3) Subject to subsection 14(4), any proper officer making an arrest under this section may seize anything which he has reasonable grounds for believing is liable to forfeiture under the said section.

### **No bail to be granted in respect of certain offences**

**16A.** Notwithstanding any other written law or any rule of law to the contrary, bail shall not be granted to an accused person charged with an offence under this Act—

- (a) where the offence is punishable with imprisonment for more than seven years; or
- (b) where the offence is punishable with imprisonment for \*seven years or less and the Public Prosecutor certifies in writing that it is not in the public interest to grant bail to the accused person.

## **PART IV**

### **EVIDENTIARY AND TRIAL PROVISIONS**

#### **Burden of proof**

**17.** In any proceedings under this Act the prosecution shall not be required to negate by evidence any licence, permit, authorization, authority or other matter of exception or defence, and the burden of proving any such matter shall be on the person seeking to avail himself of it.

#### **Presumptions**

**18.** In all proceedings under this Act—

- (a) any premises shall be deemed to be used for a purpose if it is used for that purpose even on one occasion only;

\*NOTE—Previously “five years”—see Law Reform (Eradication of Illicit Samsu) (Amendment) Act 1988 [Act A711].

- (b) a person shall, until the contrary is proved, be deemed to be the occupier of any premises if he has, or appears to have, the care or management of the premises;
- (c) if any illicit samsu is found in any premises, it shall be presumed, until the contrary is proved, that the owner or occupier of the premises is trafficking in such samsu knowing it to be illicit;
- (d) if any manufacturing apparatus is found in any premises it shall be presumed, until the contrary is proved, that the owner or occupier of the premises knowingly keeps or knowingly has in his possession that manufacturing apparatus;
- (e) any person who is found to have or to have had in his custody or under his control anything whatsoever containing illicit samsu shall, until the contrary is proved, be deemed to be or to have been trafficking in such samsu knowing it to be illicit;
- (f) if any illicit samsu is found concealed in any compartment specially constructed for the purpose on any vehicle, it shall, until the contrary is proved, be deemed to have been so concealed with the knowledge of the owner of the vehicle and of the person in charge of the vehicle for the time being;
- (g) evidence by a Government chemist in his report or by a senior officer that any apparatus is for manufacturing illicit samsu shall, until the contrary is proved, be deemed to be sufficient evidence of the fact;
- (h) when any suspected illicit samsu has been seized and such samsu is contained in a number of receptacles, it shall be sufficient to analyse samples of the contents of not less than ten per centum of the receptacles of each description and if the analysis establishes that the samples are all of the same nature, quantity and quality, it shall be presumed, until the contrary is proved, that the contents of all the other receptacles of the like description are of the same nature, quantity and quality as the samples so analysed.

**Statement to be admissible in evidence**

**19.** (1) Where any person is charged with any offence against this Act any statement, whether the statement amounts to a confession or not or is oral or in writing, made at any time, whether before or after the person is charged and whether in the course of a police investigation or not and whether or not wholly or partly in answer to questions, by the person to or in the hearing of any senior officer and whether or not interpreted to him by any proper officer or any other person concerned, or not, in the arrest shall, notwithstanding the provisions of any written law to the contrary, be admissible at his trial in evidence and, if the person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit:

Provided that—

(a) no such statement shall be admissible or used as aforesaid—

- (i) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against such person, proceeding from a person in authority and sufficient in the opinion of the court to give the person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him; or
- (ii) in the case of a statement made by the person after his arrest, unless the court is satisfied that he was cautioned in the following words or words to the like effect:

*“It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say, whether in answer to a question or not, may be given in evidence.”; and*

- (b) a statement made by any person before there is time to caution him shall not be rendered inadmissible in evidence merely by reason of his not having been cautioned if he is cautioned as soon as possible.

(2) Notwithstanding the provisions of any written law to the contrary, a person accused of an offence to which subsection (1) applies shall not be bound to answer any question relating to the case after he has been cautioned.

**Evidence of agent provocateur admissible**

**20.** Notwithstanding any rule of law or the provisions of any written law to the contrary, no agent provocateur shall be presumed to be unworthy of credit by reason only of his having abetted the commission of any offence against this Act if such abetment was for the sole purpose of securing evidence against the person abetted.

**Protection of informers**

**21.** (1) Subject to subsection (3), no complaint by an informer as to an offence under this Act shall be admitted in evidence in any civil or criminal proceeding whatsoever, and no witness shall be obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his discovery.

(2) If any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding whatsoever contain any entry in which any informer is named or described or which might lead to his discovery, the court before which the proceeding is held shall cause all such entries and passages relating to such entries to be concealed from view or to be obliterated so far as is necessary to protect the informer from discovery, but no further.

(3) If in a trial for any offence under this Act the court, after full inquiry into the case, is of opinion that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceeding the court is of opinion that justice cannot be fully done between the parties thereto without the discovery of the informer, the court may require the production of the original complaint, if in writing, and permit inquiry and require full disclosure concerning the informer.

**Sessions Court to have full jurisdiction**

**22.** Notwithstanding the provisions of any written law to the contrary a Sessions Court shall have jurisdiction to try all offences against this Act and impose the full penalty or punishment provided therefor and adjudicate in all other proceedings under this Act.

### **Conduct of prosecutions and other proceedings**

**23.** Any senior officer may conduct prosecutions in respect of all offences against this Act and appear in all other proceedings under this Act.

### **When provisions relating to criminal procedure and evidence to apply**

**24.** Where otherwise not expressly provided for, the provisions of written law relating to criminal procedure and evidence shall be applicable in all proceedings under this Act.

## **PART V**

### **ADVISORY COMMITTEE**

#### **Appointment of Advisory Committee**

**25.** (1) The Minister may, by notification in the *Gazette*, appoint for a specified period of time a committee consisting of a chairman and such number of members as he considers necessary to advise him with regard to the carrying out of the provisions of this Act.

(2) The committee appointed under subsection (1) shall be styled the “Law Reform (Eradication of Illicit Samsu) Advisory Committee”, hereinafter referred to as “the Advisory Committee”.

#### **Appointment of advisory sub-committees**

**26.** (1) For the purposes of this Act, the Advisory Committee may set up advisory sub-committees at regional or State level consisting of such number of members as the Advisory Committee may deem necessary:

Provided that there shall be only one advisory sub-committee for any one region which may consist of a number of States or for any one State which is not included in a region.

(2) The appointment of members of advisory sub-committees shall be for a specified period of time and gazetted under the hand of the chairman of the Advisory Committee.

**Recommendations to Minister**

27. The Advisory Committee and its sub-committees may consider representations from the public in relation to the carrying out of this Act and make recommendations thereon to the Minister.

**Power to make regulations**

28. The Minister may make regulations providing for matters connected with the functions of the Advisory Committee and its sub-committees and for other matters related to this Act.

## PART VI

## GENERAL PROVISIONS

**Public servant**

29. Any person performing any duty under this Act or regulations made thereunder shall be deemed to be a public servant for the purposes of the Penal Code [*Act 574*].

**Exemptions**

30. (1) Nothing in this Act shall apply so as to deem anything done *bona fide* by a public officer in the course of his duties to be an offence under this Act.

(2) The Minister may, by notification in the *Gazette*, exempt any person or class or group of persons from any of the provisions of this Act subject to any restrictions or qualifications he may impose in such exemption.

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**LAWS OF MALAYSIA****Act 165****LAW REFORM (ERADICATION OF ILLICIT  
SAMSU) ACT 1976**

## LIST OF AMENDMENTS

Amending law	Short title	In force from
P.U. (A) 357/1980	Subordinate Courts Act (Extension) Order 1980	01-06-1981
Act A532	Law Reform (Eradication of Illicit Samsu) (Amendment) Act 1982	23-02-1982
Act A671	Subordinate Courts (Amendment) Act 1987	22-5-1987
Act A711	Law Reform (Eradication of Illicit Samsu) (Amendment) Act 1988	09-10-1997

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**LAWS OF MALAYSIA****Act 165****LAW REFORM (ERADICATION OF ILLICIT  
SAMSU) ACT 1976**

## LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
2	Act A711	09-10-1997
3	Act A711	09-10-1997
4	Act A711	09-10-1997
5	Act A711	09-10-1997
6	Act A711	09-10-1997
7	Act A711	09-10-1997
14	P.U. (A) 357/1980 Act A671	01-06-1981 22-05-1987
16-16A	Act A532 Act A711	23-2-1982 09-10-1997
22	P.U. (A) 357/1980 Act A671	01-06-1981 22-05-1987

