

# The Maharashtra Opium Smoking Act

MAHARASHTRA

India

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### Act 20 of 1936

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The Maharashtra Opium Smoking Act No. XX of 1936. An Act to prohibit the smoking of opium and to prevent the assembling of persons for the purpose of such smoking in the State of Bombay. WHEREAS, it is expedient to prohibit the smoking of opium and to prevent the assembling of persons for such smoking in the State of Bombay in the manner hereinafter appearing; It is hereby enacted as follows:—

## Chapter I Preliminary

### 1. Short title and extent.

(1) This Act may be called the Maharashtra Opium Smoking Act. (2) It extends to the whole of the State of Maharashtra. (3) \* \* \* \*

### 2. Definitions.

In this Act, unless there is anything repugnant in the subject or context—(1) "Collector" includes any person appointed by the State Government to exercise all or any of the powers, or to perform or discharge all or any of the duties or functions, of a Collector under this Act; (2) "Commissioner" means the Commissioner of Prohibition and Excise appointed under the Bombay Prohibition Act, 1949, (Bom. XXV of 1949.) and includes any officer on whom the State Government may confer all or any of the powers, duties and functions of the Commissioner under this Act; (3) "Duly empowered" means duly empowered by the State Government by a general or special order; (4) "Instrument of smoking" means any article used for the purpose of smoking opium; (5) "opium" means—(a) the capsules of the poppy (*Papaver Somniferum* L) whether in their original form or cut, crushed or powdered, and whether or not the juice has been extracted

therefrom;(b)the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; and(c)any mixture, with or without neutral materials, of any of the above forms of opium;and includes prepared opium but does not include any preparation (other than prepared opium) containing not more than 0.2 per cent of morphine;(6)"Place" includes a house, building, shop, hut, tent, boat or vessel and any part thereof; and(7)"prepared opium" means any product of opium obtained by any operations designed to transform opium into an extract suitable for smoking; and includes chandul, madat, opium dross or scrapings from the opium pipe or other residue remaining after opium is smoked, and every other preparation or admixture of opium which may be used for smoking.

## **Chapter IA**

### **Establishment**

#### **2A. Commissioner and his powers.**

The Commissioner shall be subject to the control of the State Government and shall subject to such general or special orders as the State Government may, from time to time give or issue, exercise such powers and perform such duties and discharge such functions as are conferred or imposed upon him, by or under the provisions of this Act, and he shall superintend the administration and carry out generally the provisions of this Act.

#### **2B. Powers of Collector.**

(1)A Collector shall, within the limits of his jurisdiction, exercise such powers and perform such duties and discharge such functions as are conferred or imposed upon him by or under the provisions of this Act.(2)The State Government may, by notification in the Official Gazette, appoint any person other than the Collector to exercise in any district or place, all or any of the powers and to perform or discharge all or any of the duties and functions as are assigned by or under this Act to a Collector, subject to such control, if any in addition to that of the Commissioner and of the State Government, as the State Government may from time to time direct.

#### **2C. Control of Commissioner over Officers empowered under Act.**

In the exercise of their powers and the performance or discharge of their duties and functions under the provisions of this Act, or the rules or order made thereunder, all officers (including Collectors) empowered under this Act shall, subject to the general or special orders of the State Government, be subordinate to and under the control of the Commissioner and shall be bound to follow such orders as he may, from time to time, give or issue.

## **Chapter II**

### **Prohibitions**

### **3. Prohibition of opium smoking, etc.**

Subject to the provisions of this section, no person shall—(a)smoke opium, or(b)possess, for the purpose of smoking opium, any instrument of smoking, or(c)keep any apparatus or instrument for the purpose of preparing opium for smoking:Provided that the aforesaid provisions shall not apply to a person who before the commencement of the Bombay Opium Smoking (Extension and Amendment) Act, 1959, (Bom. XIX of 1959.) was duly permitted to possess opium (other than prepared opium) for the purpose of smoking by or under the provisions of any law in force in any part of the State of Bombay so long as such permission has not expired, is not withdrawn or is otherwise in force.

### **4. Opium smoking assembly.**

An assembly of two or more persons is designated an opium smoking assembly, when the common object of the persons composing that assembly is to smoke opium or to prepare opium for smoking purposes.Explanation 1.—An assembly which was not an opium smoking assembly when it assembled may subsequently become such assembly.Explanation 2.—A man and his wife shall be deemed not to be an opium smoking assembly within the meaning of this section even if their common object be to smoke opium or to prepare opium for smoking purposes.

### **5. Member of opium smoking assembly.**

Whoever, being aware of facts which render an assembly an opium smoking assembly intentionally joins that assembly, or continues therein, is said to be a member of that assembly.

### **6. Presumption raised by presence of opium and any instrument of smoking.**

The presence of any opium \* \* \* and of any instrument of smoking or of any apparatus used in the preparation of opium in any place where two or more persons are assembled shall be held sufficient to raise a presumption that each member of such assembly is present at such place for the purpose of smoking opium or of preparing opium for smoking purposes.

## **Chapter III**

## **Offences and penalties**

### **6A. Penalty for smoking opium and for possessing instrument of smoking, etc.**

Whoever in contravention of the provisions of section 3,—(a)Smoke opium, or(b)possess, for the purpose of smoking opium, any instrument of smoking, or(c)keeps any apparatus or instrument for the purpose of preparing opium for smoking,shall, on conviction, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees,

or with both.

## **7. Penalty for being member of opium smoking assembly.**

Whoever is a member of an opium smoking assembly shall, on conviction, be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to Rs. 500, or with both.

## **8. Penalty for opening, keeping or having charge of place of assembly.**

(1) Any person who—(a) opens, keeps or uses any place for the purpose of an opium smoking assembly or in any way assists in conducting the business of any place used or kept for the purpose aforesaid, or (b) being the owner, occupier or having the use or care or management or control of any place knowingly permits it to be opened, kept or used for the purpose of an opium smoking assembly, shall, on conviction, be punished—(i) for a first offence, with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees; (ii) for a second and subsequent offence, with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees: Provided that, in the absence of special and adequate reasons to the contrary, which reasons shall be mentioned in the judgment of the Court, such punishment,—(a) for the first offence, shall not be less than imprisonment for six months and fine of five hundred rupees; (b) for a second offence, shall not be less than imprisonment for nine months and fine of one thousand rupees; (c) for a third and subsequent offence, shall not be less than imprisonment for one year and fine of one thousand rupees. (2) It shall be presumed, until the contrary is proved, that a person accused of an offence under clause (b) of sub-section (1) has committed such offence if the offence committed by the person opening, keeping or using the place referred to in the said clause (b) is proved to have been committed in the place in the immediate possession of such accused person.

## **9. Penalty when owner, occupier, etc. fails to give notice of use of place for such assembly.**

Whoever being the owner or occupier or having the use or care or management or control of any place and knowing or having reason to believe that such place, whether in his actual occupation or otherwise, is being or is about to be used for the purpose of an opium smoking assembly, fails, either himself or through his agent or servant, to give the earliest possible notice of such knowledge or belief to the Collector or the officer in charge of the nearest police station or to an officer empowered under this Act to investigate offences punishable under this Act, shall, on conviction, be punishable with fine which may extend to Rs. 500.

## **9A. Penalty for attempt or abetment.**

Whoever attempts to commit or abets the commission of an offence under this Act shall, on conviction, be punished for such attempt or abetment with the same punishment as is provided for

the principal offence.

## **10. Penalty of subsequent offences.**

Whoever, having been convicted of an offence under sections 6A, 7, 8 or 9 is again convicted of an offence under sections 6A, 7 or 9 shall, on conviction, be liable for any such subsequent offence to an enhanced punishment not exceeding double the punishment which might be imposed on a first conviction for such offence.

## **11. Security for abstaining from offences.**

(1) Whenever any person is convicted of an offence punishable under this Act, the court convicting such person, may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for abstaining from the commission of offences punishable under the provisions of this Act during such period, not exceeding three years, as it may direct. (2) The bond shall be in such form as may be provided under the provisions of the \*Code of Criminal Procedure, 1898, (V of 1898.) and the provisions of the said Code shall, in so far as they are applicable apply to all matters connected with such bond, as if it were a bond to keep the peace ordered to be executed under section 106 of the said Code. (3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void. (4) An order under this section may also be made by an appellate court or by the High Court when exercising its power of revision.

## **Chapter IV Procedure**

### **12. Power to issue warrants.**

(1) The Commissioner, Collector or any officer duly empowered or a Magistrate authorised under section 24 to take cognizance of offences under this Act may issue a warrant for the arrest of any person whom he has reason to believe, to have committed an offence under this Act, or for the search, whether by day or by night, of any place in which he has reason to believe that an offence under this Act has been, or is being or is likely to be committed, or in which opium, an instrument of smoking or an apparatus used in the preparation of opium is kept or concealed. (2) All warrants issued under sub-section (1), shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1898, (V of 1898.) by a Police Officer or an officer of the Prohibition and Excise Department duly empowered in this behalf, or if the officer issuing the warrant deems fit, by any other person.

### **13. Power of entry, search and arrest by certain officer.**

The Commissioner, Collector or any officer duly empowered, who has reason to believe that an offence under Chapter III has been, or is being or is likely to be, committed in any place,

may—(a)enter such place at any time by day or by night with any person whose assistance he may consider necessary,(aa)in case of resistance, break open any lock or any door and remove any obstacle to his entry into any such place.(b)search any such place in which he has reason to believe that any opium, or instrument of smoking, or any apparatus used in the preparation of opium is kept or concealed,(c)detain and search, and, if he thinks proper, arrest any person found in such place or whom he has reason to believe to have committed an offence punishable under Chapter III, and(d)seize all opium and instruments of smoking and any apparatus used in the preparation of opium which may be found in such place or on or about such person and also any document or other article which he has reason to believe may furnish evidence of the commission of an offence under this Act.

### **13A. Power of seizure and arrest in open places.**

The Commissioner, Collector or any officer duly empowered in this behalf may—(a)seize in any open place, or in transit, any opium, or instrument of smoking, or any apparatus used in the preparation of opium for smoking purposes, which he has reason to believe to be liable to confiscation under this Act and also any document or other article which he has reason to believe may furnish evidence of the commission of an offence under this Act;(b)detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has in his possession any opium or instrument of smoking or any apparatus used in the preparation of opium for smoking purposes, arrest him.

### **13. Arrest of offenders and seizure of contraband articles.**

(1)Any officer duly empowered in this behalf may—(a)arrest without a warrant any person whom he has reason to believe to be guilty of an offence under this Act;(b)seize and detain any opium, or instrument of smoking, or any apparatus used in the preparation of opium for smoking purposes which he has reason to believe to be liable to confiscation under this Act and seize any document or other articles which he has reasons to believe may furnish evidence of the commission of an offence under this Act relating to such opium, instrument or apparatus.(2)Any Officer who arrests any person under the provisions of this Act or seizes and detains any article or seizes any document or other article shall forward such person or article or document, as the case may be, without unnecessary delay to an officer empowered under sub-section (1) of section 18, or to the officer in charge of the nearest police station.

### **14. Arrest of persons obstructing officers in execution of duties under the Act.**

The Commissioner, Collector or any officer duly empowered may arrest, without an order from a magistrate and without warrant, any person who obstructs him in the execution of his duty under this Act, or who has escaped or attempts to escape from custody in which he has been or is lawfully detained under this Act.

## **15. Omitted**

## **16. Disposal of persons arrested and of articles seized.**

(1) Every person arrested and all articles seized under a warrant issued under section 12 shall be forwarded without delay to the authority by which the warrant was issued; and every person arrested and thing seized under section 13 or 13A shall be sent without delay to the officer empowered under section 18 or to the officer in charge of the nearest police station and a full report of all the particulars of such arrest or seizure made by the person making the arrest or seizure to his immediate official superior. (2) The authority or officer to whom any person or article is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal, according to law, of such person or article.

## **17. Refusal to give name and residence.**

(1) When any person who, in the presence of the Commissioner, Collector or any officer not below such rank as the State Government may, by general or special order, specify in this behalf, has committed or has been accused of committing an offence under this Act, refuses on demand of such officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name and residence may be ascertained. (2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a magistrate, if so required: Provided that if such person is not resident in \* India the bond shall be secured by a surety or sureties residing in \* India. (3) Should the true name and residence of such person not be ascertained within 24 hours from the time of arrest, and should he fail to execute the bond, or if he is so required to furnish sufficient sureties, he shall be forthwith forwarded to the nearest magistrate having jurisdiction.

## **18. Certain officers empowered to investigate offences under Act.**

(1) The Commissioner, Collector and any officer duly empowered in this behalf shall, within the area for which they are appointed, have power to investigate all offences punishable under this Act. (2) Any officer empowered under sub-section (1) shall in the conduct of such investigation exercise the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of a police station for the investigation of cognizable offences. (3) Any officer to whom such officer is subordinate may, during the course of the investigation, take over the investigation himself or direct any other officer duly empowered to conduct the same. The officer in conducting the investigation shall have the same powers under sub-sections (1) and (2) as if he were the officer appointed for the area or for the purpose of investigating the said offence. (4) If the officer conducting the investigation is of opinion that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate or that the person arrested may be discharged with a warning, such officer shall release him on his executing a bond, with or without sureties, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence and shall

make a full report of the case to his official superior and be guided by the order which he shall receive on such report.(5)The powers of an officer empowered under this section shall be subject to such other modifications or restrictions as the State Government may deem fit.

## **19. Certain offences under Act to be non-bailable and others to be bailable.**

(1)All offences punishable under this Act other than an offence punishable under section 8 shall be bailable.(2)All offences under section 8 shall be non-bailable.(3)Any officer authorised under section 18 to investigate an offence punishable under this Act shall have power to grant bail in accordance with the provisions of the Code of Criminal Procedure, 1898, (V of 1898.) to any person arrested without warrant for an offence punishable under this Act.(4)When any person has been arrested under section 14 any officer empowered to investigate offence under this Act shall have power to grant bail in accordance, with the provisions of the \*Code of Criminal Procedure, 1898. (V of 1898.)

## **20. Articles seized during investigation.**

When anything has been seized by any officer exercising powers under section 18, or has been sent to him in accordance with the provisions of this Act such officer after such inquiry as may be necessary—(a)if it appears that such thing is required as evidence in the case of any person arrested, shall forward the thing to the magistrate to whom such person is forwarded or before whom bail has been taken for his appearance;(b)if it appears that such thing is liable to confiscation, but is not required as evidence as aforesaid, shall send the thing with a report of the particulars of the seizure to his superior officer, if any;(c)if no offence appears to have been committed, shall return the thing to the person from whose possession it was taken and shall report to his. superior officer, if any, accordingly.

## **21. Officers and persons required to assist in detection of offences under the Act.**

Every village officer or servant useful to Government and every officer of any Department of the State Government and any officer or servant of the local authority and the Sarpanch of a village panchayat constituted under the Bombay Village Panchayats Act, 1933, (Bom. VI of 1933.) or under any other law in force in the State of Maharashtra relating to village panchayats and every officer of the Departments of Central Excise and Customs with the consent of the Central Government and such other Department of the Central Government as the State Government with the like consent notifies in the Official Gazette and all persons in the employment of the Bombay Port Trust shall be bound—(a)to give immediate information to any of the officers mentioned in section 12 or section 13 or section 18 of the commission of any offence and of the intention or preparation to commit any offence under this Act which may come to their knowledge;(b)to take all reasonable measures in their power to prevent the commission of any such offence which they may know or have reason to believe is about to be committed; and(c)assist such officer in carrying out the provisions of this Act.



## **22. Penalty for neglecting to assist officers acting under the Act.**

Any officer or person mentioned in the preceding section who without lawful excuse neglects or refuses to give information or to take preventive measures or to give assistance to any of the officers mentioned in section 12 or section 13 or section 18 in the manner required by the preceding section shall, on conviction, be punishable with fine which may extend to Rs. 500.

## **23. Penalty for vexatious search or arrest.**

Any officer empowered under this Act who—(a)without reasonable ground of suspicion enters or searches, or causes to be searched any place, or(b)vexatiously and unnecessarily seizes the property of any person on the pretext of seizing or searching for anything liable to confiscation under this Act, or(c)vexatiously and unnecessarily detains, searches or arrests any person , or(d)in any other way maliciously exceeds or abuses his lawful powers shall, on conviction, be punishable with fine which may extend to Rs. 500.

## **24. Jurisdiction.**

No Magistrate other than a Presidency Magistrate, or a Magistrate of the First Class, or a Magistrate of the Second Class duly empowered in this behalf, shall take cognizance of any offence under this Act.

## **25. Cognizance of offences.**

No Magistrate shall take cognizance of any offence punishable under this Act,—(a)except on the complaint or report of the Commissioner or a Collector or any other officer duly empowered under section 12 or a Police Officer, or(b)except upon his own knowledge or suspicion.

### **25A. Procedure to be followed by Magistrate.**

In all trials for offences under this Act, the Magistrates shall follow the procedure prescribed in the Code of Criminal Procedure, 1898, (V of 1898.) for the trial of summary cases in which an appeal lies.

### **25B. Tender of pardon to accused person turning approver.**

Whenever two or more persons are prosecuted for an offence under this Act, the District Magistrate, a Sub-Divisional Magistrate, or any Magistrate of the first class, may, for reasons to be recorded by him, tender to any accused person a pardon on condition of his making a full and true disclosure of all the facts connected with the offence.

## **25C. Investigation, arrests, searches, etc., how to be made.**

Save as otherwise expressly provided in this Act, all investigations, arrests, detentions in custody and searches shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898: (V of 1898.) Provided that no search shall be deemed to be illegal by reason only of the fact that witnesses for the search were not inhabitants of the locality in which the place searched in situated.

## **25D. Provisions of Criminal Procedure Code with respect to cognizable offences to apply to offences under Act.**

In the absence of any provision to the contrary in this Act, the provisions of the Code of Criminal Procedure 1898, (V of 1898.) with respect to cognizable offences shall apply to offences under this Act,

## **26. Things liable to confiscation.**

(1) Whenever any offence punishable under this Act has been committed, any opium, instrument of smoking or apparatus used in the preparation of opium for smoking purposes,—(i) found in any place or with the persons forming an opium smoking assembly; or (ii) in respect of which the offence has been committed or which has been used in the commission of the offence, shall be liable to confiscation. (2) Any receptacle, package or covering in which any of the articles liable to confiscation under sub-section (1) is found and the other contents of such receptacle, package or covering and the animals, carts, vessels or other conveyances used in carrying any such articles shall likewise be liable to confiscation by the order of the Court.

## **27. Procedure in making confiscation.**

(1) In the trial of offences under this Act, whether the accused is convicted or acquitted, the Court shall decide whether any article seized under this Act is liable to confiscation under the preceding section, and if it decides that the article is so liable, it may order its confiscation accordingly. (2) When any article seized under this Act appears liable to confiscation under the preceding section but the person who committed the offence in connection therewith is not known or cannot be found, the Collector or other officer duly empowered in this behalf may inquire into and decide such liability and may order confiscation accordingly: Provided that no order of confiscation of an article shall be made until the expiry of one month from the date of seizure or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in support of his claim: Provided further that if any such article, other than opium, is liable to speedy and natural decay, or if the Collector or other officer is of opinion that its sale would be for the benefit of its owner, he may at any time direct it to be sold and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale. (3) Any person not convicted who claims any right to property which has been confiscated under this section may appeal to the Court of Session against the order of confiscation.

## **27A. Payment of rewards from fine.**

The Court trying any case for an offence under this Act may direct any portion, not exceeding one fourth, of any fine which may be levied there under to be sent, in Greater Bombay to the Commissioner of Police, and elsewhere to the District Superintendent of Police, for distribution as reward in such manner as he may think proper, among the persons, not being Police Officers, who may have given assistance in the detection or investigation of the offence.

## **Chapter V**

### **Miscellaneous**

## **28. Delegation of powers.**

The powers conferred on the Commissioner or Collector under this Act may, subject to the general or special orders of the State Government, be delegated by the Commissioner or Collector, as the case may be, in whole or in part, to any subordinate officer.

## **29. Power to make rules.**

(1)The State Government may make rules for the purpose of carrying into effect the provisions of this Act.(2)In particular and without prejudice to the generality of the foregoing provisions, such rules may be made for all or any of the following purposes:—(a)regulating the disposal of things confiscated,(b)\*\*\* (c)providing for any other matter for which there is no provision or there is insufficient provision in this Act and for which provision is, in the opinion of the State Government, necessary for giving effect to.the provisions of this Act.(3)Rules made under this section shall be subject to the condition of previous publication in the Official Gazette.(4)All rules made under this section shall be laid for not less than 30 days before each House of the State Legislature as soon as may be after they are made, and shall be subject to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.

## **30. Protection of persons acting in good faith and limitation of suits or prosecutions.**

(1)No suit, prosecution or other legal proceeding shall lie against the Government or against any officer or person empowered to exercise powers or to perform or discharge duties or functions under this Act, for anything which is in good faith done or purporting to be done under this Act or the rules made thereunder.(2)No suit shall be instituted against the Government and no prosecution or suit shall lie against any officer or person in respect of anything done or alleged to have been done in pursuance of this Act, unless such suit or prosecution has been instituted within three months of the date of the Act complained of.

### **31. Sanction for prosecution of persons acting under Act.**

Subject to the provisions of section 197 of the Code of Criminal Procedure, 1898, (V of 1898.) no Court shall take cognizance of an offence committed or alleged to have been committed by any police or other officer or any person, empowered to exercise powers or to perform or discharge duties or functions under this Act, in regard to anything done under this Act until the sanction of the Collector having jurisdiction has been obtained.

### **32. Officers and persons acting under Act to be public servants.**

All officers and persons empowered to exercise any powers or to perform or discharge any duties or functions under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. (XLV of 1860.)

### **33. Repeals and savings.**

On and from the commencement of this Act in that part of the State of Bombay to which it is extended by the Bombay Opium Smoking (Extension and Amendment) Act, 1959, (Bom. 19 of 1959.) the Central Provinces and Berar Opium Smoking Act, 1929 (C. P. and Berar IV of 1929.) and the United Provinces Opium Smoking Act, 1934 (U. P. III of 1934.) as extended to the Kutch area of the State of Bombay shall stand repealed: Provided that such repeal shall not affect—(a) the previous operation of any law so repealed, or anything duly done or suffered thereunder, (b) any right, privilege, obligation or liability already acquired, accrued or incurred under any law so repealed, (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed, or (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Bombay Opium Smoking (Extension and Amendment) Act, 1959, (Bom. 19 of 1959.) had not been passed: Provided further that, but subject to the preceding proviso, anything done or any action taken (including any appointment, notification, order or rule made, or issued or register prepared) under any law so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done, taken, made, issued or prepared under the provisions of this Act unless and until it is superseded by anything done or action taken under this Act

### **Omitted**