

AMENDMENTS IN ESSENTIAL COMMODITIES ACT, 1955 RECOMMENDED BY WORKING GROUP ON CONSUMER AFFAIRS

Sl. No.	Section in E.C. Act 1955	Existing Provisions	Proposed Amendments	Reasons for Amendment
1	Insertion of New Provisions	N.A.	<p>1. Insertion below Section 2 shall be as under: (a) Clause (ia) shall be re-numbered as clause (iia), and before clause (iia) as so re-numbered, the following clause shall be inserted namely: '(ia) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974); and ' (b) After Clause (f), the following clause shall be inserted, namely: "(g) words and expressions used but not defined in this act and defined in the Code shall have the meaning respectively assigned to them in that Code." 2. The word "foodstuffs" to be defined in Section 2 of the EC Act under the heading "definitions" as clause (f) as under: 2(f) Notwithstanding anything contained in the Food Safety and Standards Act, 2006 (34 of 2006), "foodstuffs means- any substance, whether perishable or non-perishable, which is used as a final food product by human beings and will also include raw food articles, which may after processing be used as food by human beings"; (i) the "foodstuffs" as defined above to be read with Section 2A as specified in the schedule. provided that the Central Government may, in the public interest and for reasons to be specified, by notification in the official gazette, include such commodities as "foodstuffs" as deemed necessary</p>	<p>This amendment to define the word "Code" has become essential to avoid any ambiguity for administrative and legal purposes.</p> <p>This amendment to define the word "foodstuffs" has become essential to avoid any ambiguity for administrative and legal purposes. At the same time the definition is broad enough to include any food article if necessary to keep intact its efficacy.</p>

			<p>Central Government. However, trading in future of other agricultural commodities may be permitted unless otherwise directed by the Central Government.</p> <p>3. Insertion below Section 3(2)(h) shall be as under:</p> <p>3(2)(hh): for securing the interests of farmers, Central Government may from time to time prescribe that all farmer-trader transactions including electronics be reported to such an authority and in such a manner as may be specified.</p>	<p>This is the enabling provision to improve transparency in trading/storage of essential commodities.</p>
4.	6B (2)	<p>Without prejudice to the provisions of sub-section (1), no order confiscating any animal, vehicle, vessel or other conveyance shall be made under section 6A if the owner of the animal, vehicle, vessel or other conveyance proves to the satisfaction of the Collector that it was used in carrying the essential commodity without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, vehicle, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.</p>	<p>A clause in Sub-Section 2(i) to be added as, "Prima-facie the owner(s) of the vehicles involved in offences are liable to be punished if fails to establish innocence to the satisfaction of the Collector".</p> <p>2(ii) without prejudice to the provisions of sub-section(1), no order confiscating any animal, vehicle, vessel or other conveyance shall be made under section 6A if the owner of the animal, vehicle, vessel or other conveyance proves to the satisfaction of the Collector that it was used in carrying the essential commodity without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, vehicle, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.</p>	<p>The proposal to amend section 6 B(2) appears to be necessary as the existing provision provides the escape route to owners of the vehicle seized since it is vaguely worded. Vehicles owners are the crucial link in the offences under EC Act, 1955 committed by the unscrupulous elements.</p>
5.	10 A	<p>Offences to be cognizable*– Notwithstanding anything contained in (the Code of Criminal Procedure, 1973 (2 of 1974)every offence punishable under this Act shall be</p>	<p>In Section 10A of the principle Act, after the word, "cognizable" the words "and non-bailable" to be inserted.</p>	<p>The offences under Section 10A of the Essential Commodities Act needs to be amended suitably to make it non-bailable. This would provide stronger deterrent for</p>

		<p>'cognizable'*</p> <p>*After the word "cognizable" the words "and non-bailable" were ins. by Act 18 of 1981, sec. 9 as amended by Act 34 of 1993, sec. 3 for a period of fifteen years, now they stand ceased to have effect after the expiry of fifteen years.</p>	<p>Insertion below Section 10A shall be as under: 10AA: notwithstanding anything contained in Section 10A and the Code of Criminal Procedure 1973 (2 of 1974), every offence committed and as may be prescribed from time to time by the Central Government shall be punishable under this act as cognizable and non-bailable.</p> <p>Insertion below Section 10AA shall be as under: 10AB: All offences shall be non-bailable except the contravention of orders on Clauses(h) and (i) of sub section 2 of section 3 of the EC Act 1955 which will be bailable, but the same shall be non-bailable for second and subsequent contravention.</p> <p>Insertion below Section 10AA shall be as under: 10AAA: Power to arrest.- notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), no officer below the rank of an officer in-charge of a police station or any police officer authorized by him in this behalf in writing shall arrest any person accused of committing of any offence punishable under this Act.</p>	<p>offences under the EC Act, 1955 and thereby ensuring the availability of essential commodities to the general public especially to vulnerable sections of the society.</p> <p>The addition of the words "non-bailable" would also save the Government from re-enactment of any Essential Commodities (Special Provisions) Act.</p> <p>Inbuilt safeguards needs to be incorporated in the Act itself so as to obviate any undue harassment to persons for minor offences of technical nature.</p>
6.	Insertion of New Provision	N.A.	<p>After Section 12A, the provision for constitution of special courts/special designated courts and procedure for offences triable by special court/special designated courts to be added as Section 12AA:</p> <p>12AA. Constitution of Special Courts/Special Designated Courts.(1) The State government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special courts as may be necessary for such area or areas as may be specified in the notification.</p> <p>(2) A Special court shall consist of a single judge who shall be appointed by the High Court upon a request made by the State Government.</p>	

Explanation (i) - In this sub-section, the word "appoint" shall have the meaning given to it in the explanation to section 9 of the Code.

(ii) Special Court/Special Designated Court as per provisions of the court

(3) A person shall not be qualified for appointment as a judge of a Special Court unless:-

(a) he is qualified for appointment as a judge of a High Court, or

(b) he has , for a period of not less than one year, been a Sessions Judge or an Additional Sessions Judge.

12AB. Offences triable by Special Courts.-(1) Notwithstanding anything contained in the Code,-

(a) all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code, such Magistrate may authorize the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers-

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the

			<p>period of detention authorized by him,</p> <p>That the detention of such person is unnecessary, he may, if he is satisfied that the case falls under the provision to section 8, order the release of such person on bail and if he is not so satisfied, he shall order such person to be forwarded to the Special Court having jurisdiction;</p> <p>(c) the Special court may, subject to the provisions of clause (d) of this sub-section, exercise, in relation to the person forwarded to it under clause (b), the same power which is Magistrate having Code in relation to an accused person in such case who has been forwarded to him under that section;</p> <p>(d) save as aforesaid no person accused of or suspected of the commission of an offence under this Act shall be released on bail by any court other than a Special Court or the High Court: Provided that a Special Court shall not release any such person on bail-</p> <p>(i) without giving the prosecution an opportunity to oppose the application for such release unless the Special Court, for reasons to be recorded in writing, is of opinion that it is not practicable to give such opportunity; and</p> <p>(ii) where the prosecution opposes the application, if the Special court is satisfied that there appear reasonable grounds for believing that he has been guilty of the offence concerned: Provided further that the Special Court may direct that any such person may be released on bail if he is under the age of sixteen years or is a woman or is a sick or infirm person, or if the Special court is satisfied that it is just and proper so to do for any other special reason to be recorded in writing;</p>	
--	--	--	--	--

(e) a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act 1[(or upon a complaint made by the officer of the Central Government or a State Government authorized in this behalf by the Government concerned] 2[or any person aggrieved or any recognized consumer association, whether such person is a member of that association or not,] take cognizance of that offence without the accused being committed to it for trial;

(f) all offences under this Act shall be tried in a summary way and the provisions of sections 262 (both inclusive) of the Code shall, as far as may be, apply to such trial;
Provided that in the case of any conviction in a summary trial under this section, it shall in the case of any conviction in a summary trial under this section, it shall be lawful for the Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act, with which the accused may, under the Code, be charged at the same trial;

Provided that such other offence is under any other law for the time being in force, triable in a summary way;

Provided further that in the case of any conviction for such other offence in such trial, it shall not be lawful for the Special Court to pass a sentence of imprisonment for a term exceeding the term provided for conviction in a summary trial under such other law.

(3) A Special Court may, with a view to obtaining

the evidence of any person suspected to have been directly or indirectly concerned in, or privy to, an offence under this Act, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(4) Nothing contained in this section shall be deemed to affect the special powers of the high Court regarding bail under section 439 of the Code and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 12AA.

12AC. Appeal and revision.- The High Court may exercise, so far as may be applicable, all the persons conferred by Chapters XXIX and XXX of the Code on a High court, as if a Special court within the local limits of the jurisdiction of the High Court were a Court of Sessions trying cases within the local limits of the jurisdiction of the High Court.

12AD. Application of code to proceedings before a Special Court. - Save as otherwise provided. in this Act, the provisions of the code (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purpose of the said provisions, the Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a

			Public Prosecutor'.	
7.	Insertion of New Provision	N.A.	<p>Insertion of Sections and Re-numbering after Section 15A shall be as under:</p> <p>16. Central Government to give directions: Notwithstanding anything contained in other sections of the Act, the Central Government may give such directions as it may consider necessary to a State Government as to the carrying into execution of the provisions of this Act.</p> <p>17. Power to make rules: Notwithstanding the powers of the Central Government to notify orders under section 3(2) of this Act in respect of various aspects of production, supply, distribution etc. and also delegation of powers to the State Governments under Section 5 of this Act, the following provisions are expressly given to enable the Central Government to work out details in the rules, if necessary:</p> <p>(i) The Central Government may, by notification in the official Gazette, make rules for carrying out the purposes, objects and reasons of this Act. (ii) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before both Houses of Parliament.</p> <p>18. Section 16 shall be Re-numbered as Section 18 with the same existing content i.e.</p> <p>18. Repeals and savings.–(1) The following laws are hereby repealed:-</p> <p>(a) the Essential Commodities Ordinance, 1955(1 of 1955);</p>	<p>This will facilitate effective implementation of the Act.</p> <p>This will facilitate detailing of rules for the implementation of the Act at ground level and also remove ambiguities and practical difficulties.</p>

(b) any other law in force in any State immediately before the commencement of this Act in so far as such law controls or authorizes the control of the production, supply and distribution of, and trade and commerce in, any essential commodity.

(2) Notwithstanding such repeal, any order made or deemed to be made by any authority whatsoever, under any law repealed hereby and in force immediately before the commencement of this Act, shall, in so far as such order may be made under this Act, be deemed to be made under this Act and continue in force, and accordingly any appointment made, licence or permit granted or direction issued under any such order and in force before such commencement shall continue in force until and unless it is superseded by any appointment made, licence or permit granted or direction issued under this Act.

(3) The provision of sub-section (2) shall be without prejudice to the provision contained in section 6 of the General Clauses Act, 1897 (10 of 1897), which shall also apply to the repeal of the Ordinance or other law referred to in sub-section (1) as if such Ordinance or other law had been an enactment.

AMENDMENTS IN THE PREVENTION OF BLACKMARKETING AND MAINTENANCE OF SUPPLIES OF ESSENTIAL COMMODITIES (PBMMSEC) ACT, 1980

Sl. No.	Section in PBM Act 1980	Existing Provisions	Proposed Amendments	Reasons for Amendment
1.	3(3) & 3(4)	<p>3(3) When any Order is made under this Section by an officer mentioned in sub-section (2) he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government:</p> <p>Provided that where under section 8 of the grounds of detention are communicated by the authority making the order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that the words "twelve days", the words "fifteen days" shall be substituted.</p> <p>3(4) When any order is made or approved by the State government under this Section or when any order is made under this Section by an officer of the State Government not below the rank of Secretary to that Government specially empowered under sub-section (1) the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing of the necessity for the order.</p>	<p>The words " twelve days" shall be substituted by the words " fifteen days" in Section 3(3).</p> <p>The words " seven days" shall be substituted by the words " fifteen days" in Section 3(4).</p>	<p>The time limit for approval of the detention order by the State Governments should be increased from twelve days to fifteen days. Similarly, the time period within which the report is to be sent by the State Governments to the Central Governments regarding each detention case should be increased from seven days to fifteen days. These provisions need amendments on practical considerations, operational constraints of the concerned authorities. The spirit of the Constitution of India on Fundamental Rights to the Individuals, has also been harmonized and balanced.</p>
2.	13	<p>Maximum period of detention – The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 12, shall be six months from the date of detention:</p> <p>Provided that nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time.</p>	<p>The words " six months" shall be substituted by the words " twelve months" in Section 13(1).</p>	<p>The enhancement of preventive detention to twelve months may be recognized as a necessary evil and accordingly safeguarded to avoid scope of possible abuse of powers thereunder, at the same time dealing sternly with persons acting in any manner prejudicial to the essence of the Act. The above provision could be useful as a deterrent measure to combat malpractices like black marketing, hoarding or profiteering.</p>
3.	14	<p>Revocation of detention orders – (1) Without prejudice to the provisions of Section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified –</p> <p>(a) notwithstanding that the order has been made by an officer of the State Government, by that State or by the Central Government;</p> <p>(b) notwithstanding that the order has been made by an officer of the Central Government or</p>	<p>PBMMSEC Act 1980 should be amended to include Sec.8(3) as under: "Representation, if any, either from the detainee or from any person including a relative, a friend or an advocate on behalf of</p>	<p>This proposal to amend the PBMMSEC Act to provide that the representations can be made to the Government of India only after confirmation of the detention order by the State Government, in view of practical difficulties and avoiding</p>

		<p>by a State Government, by the Central Government.</p> <p>(2) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made.</p>	<p>the detainee may be preferred to the Central Government only after the State Government confirms the said detention order under Section 12 (1)."</p>	<p>overlapping powers.</p>
--	--	---	---	----------------------------