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++++ AS GAELIGE, 2017 +++++  
**CONTROLLED DRUGS AND HARM REDUCTION BILL 2017**

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**EXPLANATORY MEMORANDUM**

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**Background to and purpose of the Bill**

The purpose of the Controlled Drugs and Harm Reduction Bill 2017 is to provide a 21st century approach towards solving Ireland's ongoing drug problem. The Bill provides for the amendment of the Misuse of Drugs Acts 1977-2016 by the insertion of a new section 3 into the Principal Act.

This new provision will decriminalise possession of controlled drugs providing the amount possessed is for personal use only and does not exceed the authorised amount as regulated by the Minister.

The Bill will enable the Minister for Health to make for that purpose certain regulations in relation to the amount allowable for personal use. Furthermore, the Bill makes provision for circumstances in which a person exceeds the maximum amount for personal use; providing An Garda Síochána with a range of measures where the person is a repeat offender. Possession of controlled drugs for the purpose of resale and supply will continue to be an offence under section 15 of the Misuse of Drugs Act 1977-2016.

Part 3 of the Bill provides for the establishment a Drug Dissuasion Service to case manage persons who are found in possession of controlled drugs with the object of diverting them away from the courts system. Where a person has been referred to the Drug Dissuasion Service, that person will have an informal meeting with a case officer who will carry out an assessment. The case officer depending on the circumstances has a discretion to refer that person to one or more harm reduction programmes.

*Provisions of the Bill*

**PART 1**

**PRELIMINARY AND GENERAL**

*Section 1:* This is a standard provision to provide for the name and establishment day of the Bill.

*Section 2:* This is a standard form interpretation provision for the purposes of the Bill.

## PART 2

### POSSESSION OF CONTROLLED DRUGS

#### **Possession of controlled drug for personal use**

**Section 3:** This provision inserts a new section 3 into the Misuse of Drugs Acts 1977-2016. Under section 3(1) a person who has a controlled drug in his possession shall not be guilty of an offence where (a) the possession is entirely for personal use and (b) the quantity possessed does not exceed the maximum amount which the Minister shall regulate for personal use and possession in accordance with subsection (2) of the principal act. Under subsection (3) where a person is found in possession of a controlled drug which marginally exceeds the amount permissible for personal use, that person will be guilty of an offence which will be regulated by section 4 of this Act which provides a range of measures and or penalties depending on the circumstances

Nothing in subsection (1)(a) and (b) or subsection (3) excludes liability where the person possesses the controlled drug for the purposes of sale or supply contrary to section 15 of the principal Act.

#### **Possession in excess of the maximum amount for personal use**

**Section 4:** This provision regulates the circumstances in which a person is found in possession of a controlled drug for personal use in excess of the accepted amount regulated by the Minister under section 3(3). Under subsection (1)(a) the person will receive an informal caution for a first offence. Subsection (1)(b) the person will be issued with a fixed charge notice under section 22 of the bill. For a third or subsequent offence under 4(1), the person will be prosecuted in the district court, however under subsection (2) the court has the discretion to suspend the proceedings against the person where (a) the person is addicted to a controlled substance, (b) that person agrees to undergo treatment (c) the court has received expert evidence the person would benefit from treatment. Where the court agrees to suspend the proceedings, it may do so for a period of 1 year, after which it may vacate the proceedings under section 4(1)(c) providing the person attends and completes the drug treatment programme and doesn't re-offend during that period when the proceedings are suspended.

#### **Referral to the Drug Dissuasion Service**

**Section 5(1)** provides for the referral of a person found in possession of a controlled drug under amended section 3 of the Principal Act or section 4 (1)(a) and (b) of this Bill to the Drug Dissuasion Service. Subsection 2 enables a member of the Garda Síochána request the person to whom section 5(1) applies to supply them with their name and address. Failure to do so will result in an offence being committed under subsection (3).

Where a person has been referred to the Drug Dissuasion Service that person shall be notified within 28 days under subsection (5). Failure to attend without reasonable excuse will result in that person being guilty of a summary offence and may be prosecuted in the District Court.

## PART 3

### AMENDMENTS TO THE MISUSE OF DRUGS ACTS 1977-2016

**Section 6:** Amends section 19 of the Misuse of Drugs Acts 1977-2016.

**Section 7:** Repeals section 27(1) of the Misuse of Drugs Acts 1977-2016.

**Section 8:** Amends section 28 of the Misuse of Drugs Acts 1977-2016.

## PART 4

### THE DRUG DISSUASION SERVICE

Part 4 relates to the establishment of the Drug Dissuasion Service. The option remains to amalgamate this new service with the probation service. The service shall establish a panel of case officers who will oversee referrals from persons referred under section 5 of the Bill.

**Section 9 and 10:** Establishment of the Drugs Dissuasion Service

**Section 11:** Provides for the appointment of a Director General of the Drugs Dissuasion Service following the holding of an open competition for this position. Other than in the case of the first appointee to the office of Director General, on each occasion the office of Director General becomes vacant, the Public Appointments Service shall hold an open competition and shall thereafter present a panel of three suitable candidates to the Minister from among which the Minister shall choose the person to be appointed.

**Section 12:** Resignation, removal or disqualification of Director General

**Section 13:** provides that the Director General shall have statutory responsibility for the overall management and business of the Drug Dissuasion Service and that the Director General shall be accountable to the Minister for the due performance of his or her duties.

**Section 14:** provides that the Director General may delegate (and subsequently revoke) his or her functions to a specified member of staff of the Drug Dissuasion Service

**Section 15:** makes provision, on standard lines, that the Director General is accountable to Committees of the Houses of the Oireachtas, other than to the Public Accounts Committee as Accounting Officer as the Secretary General of the Department will be the Accounting Officer.

**Section 16:** *Functions of the Service*

**Section 17:** Provides for the appointment by the Director General of Case Officers responsible for carrying out assessments under section 18 following a referral under section 5(1) of the Act.

## PART 5

### CASE OFFICERS AND ASSESSMENTS

**Section 18:** Provides for an assessment to be convened within 28 days where a person has been referred under section 5(1). The assessment meeting shall be held in private, and conducted in an informal manner. The person referred can be accompanied by a friend, a relative or a personal representative. The meeting is designed to be non-adversarial.

**Section 19:** Under this section the case officer is assessing the person referred for dissuasion shall take into consideration that person's (i) age (ii) addiction (iii) personal circumstances including health issues (iv) previous convictions, if any? (v) and prior attendance on any or all of the programmes listed under subsection (1).

**Section 20:** The case officer having met with the person the subject of the referral has a number of options such as referring him / her to a drug awareness programme, a drug rehabilitation programme or a community engagement programme. Under subsection (2), the case officer can exercise their discretion and not refer someone to a programme if they are of the

opinion that referral is not necessary. Once a decision has been made, the case officer will make a written recommendation of his / her decision and the person the subject of the referral will be asked to sign off on it.

**Section 21:** Provides for mechanism for issuing a fixed-charge notice under 4(1)(b) of the Bill. Subsection (2) provides that for this purpose a member of the Garda Síochána may, request the person to give his or her name and address and to verify the information given, and if he or she is not satisfied with the name and address or any verification given, request that the person accompany the member to a Garda station for the purpose of confirming the person's name and address. Subsection (3) provides that a person who does not comply with a request by a member under subsection (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,500.

Under subsection (4) a person who is committing, or has committed, an offence under subsection (3) may be arrested without a warrant. Subsection (5) states that the notice is to be in the prescribed form and should state specified factors including:

- when and where the fixed charge offence was alleged to have been committed, and
- a prosecution for it will not be instituted if within 28 days the person pays the prescribed amount (or within a further 28 days an amount which is 50 per cent greater than the prescribed amount) to a member of the Garda Síochána at a specified Garda station or to another specified person at a specified place the prescribed amount, and that in default of such payment the person will be prosecuted for the offence.

Subsection (9) provides that the Minister can make regulations prescribing anything referred to as prescribed i.e. the form for fixed charge notice and the fixed charge amounts

**Section 22:** provides that the Minister for Health shall report back to the Houses of the Oireachtas on the progress of the Act should it become law

### **Financial Implications**

While moneys will have to be provided for the initial setting up of the Drug Dissuasion Service and on an ongoing basis thereafter, it is envisaged that the Bill will result in an overall saving for the State due to the lower eventual expenditure on arrests, court proceedings, legal aid and imprisonment relating to minor drug possession charges.

*Senator Lynn Ruane,*

*Bealtaine, 2017.*