



AN BILLE UM MI-USAID DRUGAI, 1972
MISUSE OF DRUGS BILL, 1972

EXPLANATORY MEMORANDUM

1. The Bill contains new and more extensive provisions for controlling the production, distribution and possession of certain drugs which are liable to abuse. It provides for the repeal of the Dangerous Drugs Act, 1934, which applied control over the import, export, production, possession and distribution of narcotic drugs such as opium and its derivatives, cocaine and cannabis, and the provisions of Section 78 of the Health Act, 1970, which empowered the Minister for Health to control by regulation the possession of other categories of drugs such as LSD and amphetamines.

In addition to the provisions relating to the misuse of drugs the Bill also provides for certain amendments of the Poisons Act, 1961, and the Pharmacy Acts, 1875 to 1962, with particular reference to powers to make regulations under those Acts.

2. *Section 1* contains general definitions and interpretative provisions.

3. *Section 2* defines "controlled drug" and provides that the Government may by order declare other substances to be controlled drugs for the purposes of the Bill, that the provisions of the Bill shall cease to apply to a particular substance, or may make declarations as to the classification of controlled drugs.

4. *Section 3* makes it an offence for any person to be in possession of a controlled drug unless authorised by regulations.

5. *Section 4* empowers the Minister to make regulations enabling certain classes of persons to have controlled drugs in their possession in specified circumstances or for specified purposes; the regulations must include provision authorising doctors, dentists, veterinary surgeons, pharmacists, etc., to have drugs in their possession for the purposes of their profession or business.

6. *Section 5* empowers the Minister to make regulations, for the purpose of preventing the misuse of controlled drugs, controlling certain activities in relation to such drugs, for example, production, importation, exportation, sale, supply and distribution. The regulations must include provision authorising doctors, dentists, veterinary surgeons, pharmacists, etc., to carry out appropriate professional activities in relation to controlled drugs. The Minister is also empowered to make regulations in relation to controlled drugs dealing with such matters as safe custody, packaging and labelling, transportation, disposal of unwanted stocks and the keeping of records. Provision is also made for regulating the form in which prescriptions for controlled drugs are issued and the furnishing of information to the Minister in relation to the dispensing of such prescriptions.

7. *Section 6* empowers the Minister to give a direction to a doctor, dentist, veterinary surgeon or pharmacist, who has been convicted of certain offences in connection with controlled drugs, prohibiting him from engaging in certain professional activities in relation to such drugs as may be specified in the direction. Contravention of any such direction is an offence.

8. *Section 7* provides for the making of an order by the Minister, where he is of opinion that it is in the public interest, relating to any

particular controlled drug which would enable the use, etc., of such drug to be restricted to research or other special purposes and/or to be subject to a special licence.

9. *Section 8* deals with the granting of licences, permits or authorisations and the charging of fees therefor.

10. *Section 9* makes it an offence to be in possession of controlled drugs for the purpose of unlawfully supplying them to another.

11. *Section 10* makes it an offence to engage in certain activities relating to opium, including smoking and the possession of pipes or utensils for that purpose.

12. *Section 11* makes it an offence to cultivate the cannabis plant or the opium poppy unless authorised by licence.

13. *Section 12* deals with forged and fraudulently altered prescriptions and makes it an offence to forge or fraudulently alter a prescription or to be in possession of such a prescription.

14. *Section 13* makes it an offence for occupiers or persons concerned in the management of any premises, vehicle or vessel, knowingly to permit or suffer certain activities relating to the production, supply and possession of controlled drugs and the smoking of cannabis and opium to take place on the premises, vehicle or vessel.

15. *Section 14* deals with certain offences relating to activities outside the State.

16. *Section 15* sets out miscellaneous offences under the Bill, for example, attempts to commit offences, contravention of regulations or terms of a licence, permit or authorisation, giving of false information, obstructing or impeding Gardaí.

17. *Section 16* provides that in any proceedings for an offence under the Bill the onus of proving any claim by a defendant that he was acting lawfully, whether by virtue of a licence or other authorisation, shall be on that defendant.

18. *Sections 17-20* provide powers of inspection, search and arrest. *Section 17* enables a member of the Garda Síochána to search persons, vehicles, etc., without warrant. *Section 18* provides power to enter and inspect premises of manufacturers, traders, etc., whilst *Section 20* deals with entry and search of premises under warrant. *Section 19* enables a member of the Garda Síochána to arrest, without warrant, a person who in his opinion has committed an offence under the Bill.

19. *Section 21* relates to the prosecution and punishment of offences under the Bill. In some cases the penalties vary according to the category of controlled drug involved and there is a clear distinction between offences involving unauthorised possession for personal use and those involving possession for the purposes of illicit supply. For convenience of reference the penalties are set out in a tabular statement appended to this memorandum.

20. *Section 22* provides for defences in relation to offences under the Bill—for example, proof that the defendant was not aware that he was in possession of a controlled drug or forged prescription or that he took possession for the purpose of giving the drug or prescription to a person lawfully entitled to take custody of it would be a defence.

21. *Section 23* empowers a Court on conviction of an offender to order anything relating to his offence to be forfeited and destroyed or otherwise disposed of.

22. *Section 24* deals with offences by bodies corporate.

23. *Sections 25 and 26* contain provisions relating to the Poisons Act, 1961, and the Pharmacy Acts, 1875 to 1962. These provisions

will enable regulations to be made declaring substances to be poisons for the purposes of the Pharmacy Acts and effect certain necessary amendments to Sections 14 and 15 of the Poisons Act, 1961 which empower the Minister for Health and the Minister for Agriculture and Fisheries to make regulations for the control of poisons.

24. Section 27 contains provision relating to the service of documents required or authorised by the Bill or by regulations.

25. Section 28 deals with general matters relating to the making of regulations and the laying of orders before each House of the Oireachtas.

26. Sections 29 and 30 contain financial provisions in connection with the administration of the provisions of the Bill.

27. Sections 31-33 provide for repeals, transitional provisions, short title and commencement.

28. The Schedule to the Bill, which should be read in conjunction with the definition of "controlled drug" in Section 2, specifies the drugs controlled under the Bill and classifies them, according to their relative harmfulness, for the purposes of the provisions relating to penalties for offences under the Bill.

SUMMARY OF PENALTIES PROVIDED FOR IN THE BILL (SECTION 21)

1. In the following table the penalties specified at (a) are for summary convictions and those at (b) for convictions on indictment, in each case.

2. The penalties shown are either a fine or a term of imprisonment and are in all cases maximum penalties.

Section of Bill	Nature of Offence	Punishment			General
		Category I Drug*	Category II Drug*	Category III Drug*	
Sec 3 (2)	Having possession of controlled drug ("simple" possession).	(a) £250 or 12 months or both (b) £1,500 or 7 years or both	(a) £150 or 6 months or both (b) £1,000 or 5 years or both	(a) £100 or 6 months or both (b) £500 or 2 years or both	
Sec. 6	Contravention of a direction by qualified person convicted of certain offences under the Act or under the Customs Acts.	(a) £250 or 12 months or both (b) £3,000 or 14 years or both	(a) £250 or 12 months or both (b) £3,000 or 14 years or both	(a) £150 or 6 months or both (b) £1,000 or 5 years or both	
Sec. 9	Having possession for illicit supply (i.e. "peddling", "pushing", etc.).	(a) £250 or 12 months or both (b) £3,000 or 14 years or both	(a) £250 or 12 months or both (b) £3,000 or 14 years or both	(a) £150 or 6 months or both (b) £1,000 or 5 years or both	
Sec. 10 and 11	Certain activities in relation to opium, cultivation of opium poppy or cannabis plant.				(a) £250 or 12 months or both (b) £3,000 or 14 years or both
Sec. 12	Forging a prescription, etc.				(a) £100 or 6 months or both (b) £750 or 3 years or both

Section of Bill	Nature of Offence	Punishment			
		Category I Drug*	Category II Drug*	Category III Drug*	General
Sec. 13	Occupiers of premises permitting use of such premises for certain activities.	(a) £250 or 12 months or both (b) £3,000 or 14 years or both	(a) £250 or 12 months or both (b) £3,000 or 14 years or both	(a) £150 or 6 months or both (b) £1,000 or 5 years or both	
Sec. 14	Offences relating to acts outside the State				(a) £250 or 12 months or both (b) £3,000 or 14 years or both
Sec. 15 (2)	Contravention of regulations relating to supply, etc. (Sec. 5 (1) (a) (other than transportation)). Contravention of regulations relating to possession, safe-custody, records, labelling, etc., transportation (Section 4 and Section 5 (1) (a) (iv)).	(a) £250 or 12 months or both (b) £3,000 or 14 years or both	(a) £250 or 12 months or both (b) £3,000 or 14 years or both	(a) £100 or 6 months or both (b) £1,000 or 5 years or both	(a) £100 or 6 months or both (b) £500 or 2 years or both
Sec. 15 (3), (4), (5), (6) and (7)	Giving false information, obstructing Gardai, contravening licence, etc.				£100 or 6 months or both

*See Schedule to Bill for list of such drugs.

*An Roinn Sláinte,
Eanáir, 1973.*

Section of Bill	Nature of Offence	Category I Drug*	Category II Drug*	Category III Drug*	General
19	Contravention of regulations relating to possession, safe-custody, records, labelling, etc., transportation (Section 4 and Section 5 (1) (a) (iv)).	(a) £250 or 12 months or both (b) £3,000 or 14 years or both	(a) £250 or 12 months or both (b) £3,000 or 14 years or both	(a) £100 or 6 months or both (b) £1,000 or 5 years or both	(a) £100 or 6 months or both (b) £500 or 2 years or both
20	Giving false information, obstructing Gardai, contravening licence, etc.				£100 or 6 months or both
21	...				
22	...				
23	...				
24	...				
25	...				
26	...				