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## AN BILLE UM MI-USAID DRUGAI, 1973

### MISUSE OF DRUGS BILL, 1973

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#### EXPLANATORY MEMORANDUM

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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* relates to the giving of a direction by the Minister prohibiting a practitioner (i.e. a doctor, dentist or veterinary

surgeon) from engaging in certain professional activities in relation to controlled drugs where he believes that such practitioner has been prescribing, administering or supplying such drugs in an irresponsible manner.

9. *Section 8* specifies the procedure to be followed where there are considered to be grounds for a direction under *section 7*. *Subsection (1)* requires the Minister in such a case to refer the matter for investigation to the registration authority concerned (e.g. the Medical Registration Council in the case of a doctor). The registration authority is then obliged to establish a committee of inquiry to investigate the case and report on it to the Minister. Where the committee finds that the grounds exist and considers that a direction should be given it is required to recommend accordingly and indicate the drugs to which the direction should apply. Under *subsection (5)* the Minister has discretion not to give a direction as recommended but if he proposes to give a direction after the committee has so recommended he is required to give notice to the practitioner and to allow him 28 days in which to make representations. *Subsection (6)* requires the Minister to refer to the registration authority any representations so made and the authority is then obliged under *subsection (7)* to establish an advisory committee to consider the case and the representations made and to advise the Minister as to the steps he should take. *Subsection (8)* enables the Minister (having considered any advice from the advisory committee where such committee has been established) to give a direction covered by the recommendation of the committee of inquiry, or to order that the case be referred back to that committee or to the registration authority for reference to a new committee of inquiry, or to decide not to give a direction.

10. *Section 9* provides for the giving of a similar direction of a temporary nature where it is considered that irresponsible prescribing, etc. justifying a direction under *section 7* has occurred and that the circumstances require such a direction to be given as a matter of urgency. *Subsection (3)* requires the Minister, where he proposes to give such a temporary direction, to refer the case to an advisory panel and provides that he may not give the direction unless the panel reports that there appear to be reasonable grounds for considering that such conduct has occurred. *Subsection (4)* requires the Minister, if he then gives such a direction, forthwith to refer the matter for investigation to the registration authority concerned. *Subsection (5)* limits the period of operation of a temporary direction to six weeks but the Minister is empowered under *subsection (6)* to extend the period by 28 days at a time with the consent of the registration authority.

11. *Section 10* provides for the investigation of cases of irresponsible prescribing etc. on the initiative of the registration authority concerned.

12. *Section 11* provides for appeal to the High Court by a practitioner who is aggrieved by any direction given pursuant to *section 7* or *9* of the Bill.

13. *Section 12* empowers the Minister after consultation with the registration authority concerned to make regulations relating to the constitution and procedure of committees of inquiry, advisory committees or advisory panels established pursuant to *section 8* or *9* of the Bill.

14. *Section 13* 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.

15. *Section 14* deals with the granting of licences, permits or authorisations and the charging of fees therefor.

16. *Section 15* makes it an offence to be in possession of controlled drugs for the purpose of unlawfully supplying them to another.

17. *Section 16* makes it an offence to engage in certain activities relating to opium, including smoking and the possession of pipes or utensils for that purpose.

18. *Section 17* makes it an offence to cultivate the cannabis plant or the opium poppy unless authorised by licence.

19. *Section 18* makes it an offence to forge or fraudulently alter a prescription or to be in possession of a forged or fraudulently altered prescription.

20. *Section 19* 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.

21. *Section 20* deals with certain offences relating to activities outside the State.

22. *Section 21* 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 Gardai.

23. *Section 22* 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.

24. *Sections 23-26* provide powers of inspection, search and arrest. *Section 23* enables a member of the Garda Síochána to search persons, vehicles, etc., without warrant. *Section 24* provides power to enter and inspect premises of manufacturers, traders, etc., whilst *Section 26* deals with entry and search of premises under warrant. *Section 25* enables a member of the Garda Síochána to arrest, without warrant, a person who in his opinion has committed an offence under the Bill.

25. *Section 27* 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 also according to the nature of the offence (for example, 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.

26. *Section 28* provides that where a person is convicted of an offence under Section 3, 15, 16 or 18 of the Bill the Court must obtain a report on the person's social background and on his medical, vocational and educational circumstances. The Court may then decide in the light of such report and of any recommendations contained therein, in lieu of imposing a fine and/or sentence of imprisonment under Section 27 of the Bill, either to have the person detained in a custodial treatment centre to be designated for that purpose, or to require the person to enter into a recognisance to undergo a course of treatment or other care.

27. *Section 29* 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.

28. *Section 30* empowers a Court on conviction of an offender to order anything relating to his offence to be forfeited and destroyed or otherwise disposed of.

29. Section 31 deals with offences by bodies corporate.

30. Sections 32 and 33 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. There is also provision for the amendment of section 4 of the Poisons Act, 1961, which deals with the constitution of Comhairle na Nimheanna.

31. Section 34 contains provision relating to the service of documents required or authorised by the Bill or by regulations.

32. Section 35 deals with general matters relating to the making of regulations and the laying of orders before each House of the Oireachtas.

33. Sections 36 and 37 contain financial provisions in connection with the administration of the provisions of the Bill.

34. Sections 38-40 provide for repeals, transitional provisions, short title and commencement.

35. 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 27)

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 prohibiting qualified person convicted of certain offences from possessing, supplying, etc. controlled drugs.	(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. 7	Contravention of a direction prohibiting practitioner from prescribing, etc. controlled drugs	(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. 15	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	

Section of Bill	Nature of Offence	Punishment			
		Category I Drug*	Category II Drug*	Category III Drug*	General
Sec. 16 and 17	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. 18	Forging a prescription, etc.				(a) £100 or 6 months or both (b) £750 or 3 years or both
Sec. 19	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. 20	Offences relating to acts outside the State				(a) £250 or 12 months or both (b) £3,000 or 14 years or both
Sec. 21 (2)	Contravention of regulations relating to supply, etc. (Sec. 5 (1) (a) (including subparagraph 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	
	Contravention of regulations relating to possession, safe-custody, records, labelling, etc., transportation (Section 4 and Section 5 (1) (including subparagraphs (i), (ii) and (iii) of paragraph (a) )				(a) £100 or 6 months or both (b) £500 or 2 years or both
Sec. 21 (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,  
Nollaig, 1974.*

29. Section 31 deals with offences by bodies corporate...

30. Section 32 deals with offences by individuals...

31. Section 33 contains provision relating to the service of documents...

32. Section 34 deals with general matters relating to the making of regulations...

33. Section 35 deals with the administration of the Bill...

Sections 36-40 provide for appeals, transitional provisions and commencement.

Schedule to the Bill, which should be read in conjunction with the definition of "controlled drug" in Section 2, specifies the relative harmfulness of various drugs controlled under the Bill.

penalties for offences under the Bill.

**SUMMARY OF PENALTIES PROVIDED FOR IN THE BILL**

(7) NOTES

1. In the following table the penalties for offences are shown in the order in which they are provided in the Bill.

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

Section	Description of Offence	Category I (Drug)		Category II (Drug)	
		Penalty	Penalty	Penalty	Penalty
Sec. 3 (1)	Having possession of controlled drug ("simple" possession).	12 months or £1,000 or both			
Sec. 6	Contravention of a direction prohibiting a person convicted of certain offences from possessing, supplying, or controlled drugs.	12 months or £1,000 or both			
Sec. 7	Contravention of a direction prohibiting a person from prescribing, supplying, or controlled drugs.	12 months or £1,000 or both			
Sec. 11	Having possession for illicit supply (i.e. "peddling", "pushing", etc.).	12 months or £1,000 or both			