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**An Bille um Dhíol Earraí Aindleathacha, 2017**  
**Sale of Illicit Goods Bill 2017**

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*Meabhrán Mínteach*  
*Explanatory Memorandum*

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**SALE OF ILLICIT GOODS BILL 2017**

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**EXPLANATORY MEMORANDUM**

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**Background**

Smuggling is a major problem in the Irish economy - in 2015 alone it is estimated that the ‘black economy’ cost the Irish economy €2.35 billion in lost revenue. Fuel smuggling is believed to make up in the region of €435m of that figure, and tobacco smuggling accounts for approximately €450m.

Through a mix of a renewed emphasis on the enforcement of existing laws, along with the introduction of new demand-side measures which are proposed in this Bill, there is the real potential to greatly reduce the level of smuggling and in-turn reverse the damaging effects which smuggling has on our economy, including on the creation and retention of jobs.

**Purpose of the Bill**

The purpose of this Bill is to provide for the introduction of a series of new measures which are directed at tackling the trade in illegal alcohol, tobacco and solid fuel.

One of the key measures proposed under this Bill is to make it an offence for a person to buy illicit alcohol, illicit tobacco or illicit solid fuel. The Bill also makes it an offence for a person to buy alcohol, tobacco or solid fuel from an unregistered retailer.

In addition, this Bill introduces an on-the-spot fine of €100 which will be imposed where a person buys alcohol, tobacco or solid fuel which is illicit, or where a person buys alcohol, tobacco or solid fuel from a retailer who is not registered or licensed.

**Provisions of the Bill**

The Bill contains 14 sections and is divided into five Parts.

*Section 1* sets out the short title of the Bill and provides that the Bill comes into operation by way of an order to be made by the Minister for Finance.

*Section 2* defines nine key terms which are used in the Bill.

*Section 3* empowers the Minister for Finance to make Regulations in order to ensure that the legislation operates smoothly.

*Section 4* deals with illicit alcohol. Section 4(1) makes it an offence for a person to buy, or attempt to buy, alcohol in circumstances where he or she had known or should have known that taxes and excise duties had not been paid on that alcohol. It also makes it an offence for a person to buy, or attempt to buy, alcohol in circumstances where he or she did not care whether the applicable taxes and excise duties had been paid. Section

4(2) makes it an offence for a person to buy or attempt to buy alcohol in circumstances where he or she should have known that what was being bought was a counterfeit product, or that they did not care whether or not it was counterfeit. Under section 4(3), the offences outlined in section 4(1) and 4(2) do not apply to alcohol which has been purchased under a suspension arrangement. Section 4(4) defines the term “relevant taxes and duties” which is used in section 4.

*Section 5* deals with illicit tobacco. Section 5(1) makes it an offence for a person to buy or attempt to buy tobacco in circumstances where he or she had known or should have known that taxes and excise duties had not been paid. It also makes it an offence for a person to buy, or attempt to buy, tobacco in circumstances where he or she did not care whether taxes and excise duties had been paid. Section 5(2) makes it an offence of a person to buy or attempt to buy a tobacco product in circumstances where he or she should have known that they were buying a counterfeit product, or that they did not care whether or not it was counterfeit. Section 5(3) introduces a statutory presumption to the effect that a pack of tobacco product which does not contain a tax stamp will be presumed to be illicit. The onus will be on the person who owns the pack to prove that the tobacco product in question is not illicit. Under section 5(4), the offences outlined in section 5(1) and 5(2) do not apply to a tobacco product which has been purchased under a suspension arrangement. Section 5(5) defines the term “relevant taxes and duties” which is used in section 5.

*Section 6* deals with illicit solid fuel. Section 6(1) makes it an offence for a person to buy or attempt to buy solid fuel in circumstances where he or she had known or should have known that the relevant taxes had not been paid. Section 6(2) defines the term “relevant taxes and duties” which is used in section 6.

*Section 7* deals with the burden of proof in a prosecution. In respect of a prosecution under section 4, 5 or 6, it provides for the application of a rebuttable presumption to the effect that the required taxes and duties have not been paid. The onus will be on the suspected offender to demonstrate that the relevant taxes and duties have been paid.

*Section 8* deals with the purchase of alcohol, tobacco and solid fuel from an unregistered or unlicensed retailer. Section 8(1) makes it an offence for a person to buy an alcohol product from a person whose name is not included in the List of Current Valid Liquor Licences which is maintained by the Revenue Commissioners.

*Section 8(2)* makes it an offence for a person to buy a tobacco product from a person whose name is not included in the National Tobacco Retailers Register.

*Section 8(3)* makes it an offence for a person to buy solid fuel from a person whose name is not included in the List of Solid Fuel Suppliers. This list is available online at: <http://www.epa.ie/pubs/forms/sfs/registersolidfuelssuppliers.html>

*Section 9* sets out the powers of an authorised person under the Bill. Section 9(1) details his or her powers which are applicable in circumstances where he or she suspects the commission of an offence under this Bill. Section 9(2) sets out the circumstances in which an authorised person may, without a warrant, arrest a person. Under section 9(3), where a person is arrested without a warrant, the arrested person must be handed over to the Gardaí. Section 9(4) provides for the detention of a person who has been arrested. Section 9(5) sets out the authorised person’s powers of search and

seizure. Section 9(6) provides that a search may be conducted at a different location at the authorised person's discretion.

*Section 9(7)* makes it an offence to obstruct, impede or assault an authorised person. It also makes it an offence to fail to comply with a request which is made by an authorised person.

*Section 9(8)* clarifies that the powers of an authorised person are in addition to any other powers that such a person may have by virtue of other legislation.

*Section 10* provides for the immunity from suit of an authorised person for an act which is done in good faith.

*Section 11* addresses the test-purchasing of alcohol, tobacco and solid fuel. Section 11(1)(a) states that where a person plans to conduct a test-purchasing operation, he or she must notify the Superintendent in the district concerned in advance of his or her intentions to conduct test-purchasing. Under section 11(1)(b), where a Superintendent receives such notification, he or she must provide written acknowledgement of that notification. Section 11(1)(c) states that any notification which is provided under section 11(1)(a) must indicate the purpose of the test-purchasing operation, the dates on which the test-purchasing will be conducted, as well as details of the locations at which such test-purchasing operations will be conducted. Under section 11(2), where a person has conducted a test-purchasing operation, he or she is obliged to handover any illicit good which have been purchased, to either the Revenue Commissioners, or the Gardaí. Section 11(3) allows the Minister to issue guidelines in relation to certain aspects of test-purchasing.

*Section 12(1)* provides for the issuing of an on-the-spot fine for certain offences under this Bill. The level of the on-the-spot fine is set out in the Table which appears immediately below section 12. Initially, the level of the on-the-spot fine is being set at €100. Section 12(2) provides that multiple on-the-spot fines may be issued to a person at any one time, dependent upon the quantities of goods involved. Under section 12(3), a person who receives an on-the-spot fine has 28 days in which to make the payment. Where the on-the-spot fine is not paid within that time limit, a prosecution will be initiated. Where a person has paid the on-the-spot fine and a prosecution is subsequently initiated, under section 12(4) the person will have the opportunity to demonstrate that they had already paid the on-the-spot fine. Section 12(5) requires that the funds generated through on-the-spot fines must be passed over to the Exchequer. Section 12(6) empowers the Minister to increase the level of the on-the-spot fine. Section 12(7) defines three terms which are used in section 12.

*Section 13* sets out the penalties which will apply in the context of a prosecution for an offence which is committed under sections 4, 5, 6 or 8. Under section 13(1), where a person is found guilty of having committed an offence under this Bill, on the first occasion he or she will be subject to a class B fine (currently €4,000) or a jail term of up to six months. For a second and subsequent offence, a class A fine (currently €5,000) or a longer jail term of up to 12 months can be imposed. In each case, it is also possible for both a fine and a jail term to be imposed. Section 13(2) states that a summary prosecution may be initiated by an officer of the Revenue Commissioners, or a Garda. Section 13(3) provides that where a person is charged with an offence under sections 4, 5, 6 or 8, it will be a defence for that person to show that the goods had been purchased as part of a test purchasing operation which had been notified in advance to the local Superintendent, and that such notification had been duly acknowledged in advance of the goods having been bought. Under section 13(4) summary

proceedings may be initiated anytime within 12 months (rather than within 6 months which normally applies).

*Section 14* provides that where a person is convicted of a summary offence under this Bill, the court is required to order the person to pay the costs of the prosecuting side which arose in detecting the offence and prosecuting for the offence.

*Deputies Declan Breathnach, John Lahart and Robert Troy,  
Aibreán, 2017.*