



An Bille um Dhrugaí Rialaithe agus um Dhochar a Laghdú, 2017
Controlled Drugs and Harm Reduction Bill 2017

Mar a tionscnaíodh

As initiated



**AN BILLE UM DHRUGAÍ RIALAITHE AGUS UM DHOCHAR A LAGHDÚ, 2017
CONTROLLED DRUGS AND HARM REDUCTION BILL 2017**

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ACTS REFERRED TO

Misuse of Drugs (Amendment) Act 1984 (No. 18)

Misuse of Drugs Act 1977 (No. 12)

Misuse of Drugs Acts 1977-2016



**AN BILLE UM DHRUGAÍ RIALAITHE AGUS UM DHOCHAR A LAGHDÚ, 2017
CONTROLLED DRUGS AND HARM REDUCTION BILL 2017**

Bill

entitled

An Act to amend the Misuse of Drugs Acts 1977-2016 to provide for the 5
decriminalisation for possession of controlled drugs for personal use and to provide for
regulations regarding personal use; to establish a Drug Dissuasion Service to case-
manage persons found in possession of controlled drugs and to divert people away from
the courts by providing a system of harm reduction measures including drug awareness,
drug rehabilitation and community engagement programmes; and to provide for related 10
matters.

Be it enacted by the Oireachtas as follows:

PART 1

Short title and commencement

1. (1) This Act may be cited as the Controlled Drugs and Harm Reduction Act 2017. 15
- (2) This Act shall come into operation on such day or days as the Minister for Health may appoint by order or orders whether generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Interpretation

2. In this Act— 20
 - “Act of 1984” Means the Misuse of Drugs (Amendment) Act 1984;
 - “Drug Dissuasion Service” is an administrative service established by the Minister to assess a person found in possession of a controlled substance;
 - “informal caution” means a caution to be administered by a member of An Garda 25
Síochána to a person where—
 - (a) no previous caution has been administered, or
 - (b) one or more than one informal caution has been previously administered;
 - “Minister” means the Minister for Health;

“Principal Act” Means the Misuse of Drugs Act 1977.

PART 2

POSSESSION OF CONTROLLED DRUGS

Amendment of section 3 of Principal Act

3. The Principal Act is amended by the substitution of the following section for section 3: 5
- "Possession of controlled drugs for personal use**
3. (1) A person who has a controlled drug in his possession shall not be guilty of an offence where—
- (a) the possession is for personal use only, and
 - (b) the quantity possessed does not exceed the maximum amount for personal use and possession in accordance with this Act. 10
- (2) For the purpose of subsection (1)(b) the Minister shall make such regulations under this act specifying the maximum amount a person may possess of a controlled drug for personal use.
- (3) It is an offence to be found in possession of a controlled drug in excess of the amount permissible for personal use under subsection (1)(b) of the principal act as amended. 15
- (4) Nothing in subsection 1(a) and (b) excludes liability where the person possesses the controlled drug for the purposes of sale or supply contrary to section 15 of this Act.”. 20

Possession in excess of the maximum amount for personal use

4. (1) Where a person is found in possession of a controlled drug in excess of the accepted amount allowed for personal use contrary to section 3(3) of the principal act that person shall:
- (a) in the case of a first offence receive an informal caution; 25
 - (b) in the case of a second offence shall be issued with a fixed charge notice under *section 21* of this Act;
 - (c) in the case of a third or subsequent offence, be liable to a fine not exceeding €1,500 and/or a term of imprisonment not exceeding 6 months.
- (2) Where a person has been brought before the court in respect of an offence under *section 3(2)* the court may exercise its discretion to suspend the proceedings in the following circumstances where—
- (a) the person is addicted to a controlled substance,
 - (b) that person agrees to undergo treatment, and
 - (c) the court having heard evidence from a medical practitioner or expert in the field of drug addiction, is of the opinion the person would benefit from treatment. 35

- (3) Where the court exercises its discretion under *subsection (2)*, such proceedings may be suspended for a period of 1 year and after that period of time vacate those proceedings if—
 - (a) the person to whom the proceedings apply attends and completes a drug treatment programme as certified, and 5
 - (b) the person does not re-offend during the period when the proceedings were suspended.

Referral to the Drug Dissuasion Service

- 5. (1) Where a person is found to be in possession of a controlled substance under Section 3 of the principal act or *section 4(1)(a)* and *(b)* of this Act that person shall be referred to the Drug Dissuasion Service for assessment. 10
- (2) Where a member of An Garda Síochána refers a person under *subsection (1)* he or she shall—
 - (a) request the person concerned to give his or her name and address and to verify the information given, and 15
 - (b) if not satisfied with the name and address or any verification given, request that the person accompany the member to a Garda Síochána station for the purpose of confirming the person's name and address.
- (3) A person who—
 - (a) does not give his or her name and address when requested to do so under *subsection (2)(a)* or gives a name or address that is false or misleading, or 20
 - (b) does not comply with a request by a member of the Garda Síochána under *subsection (2)(b)*,
 is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,500. 25
- (4) A member of the Garda Síochána who is of the opinion that a person is committing, or has committed an offence under *subsection (3)* may arrest the person without warrant.
- (5) Where a person has been referred to the Drug Dissuasion Service, the Service shall notify that person in writing within 28 days that they are obliged to attend an assessment with a case officer on a given date. 30
- (6) Where a person has been notified to attend an assessment and fails to attend without reasonable excuse that person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €1,500.

PART 3

AMENDMENTS TO THE MISUSE OF DRUGS ACTS 1977-2016 35

Amendment of section 19 of Principal Act

- 6. The Principal Act is hereby amended at section 19(1) by the deletion of paragraphs (b) to

(d) and by the deletion of subparagraph (i).

Amendment of section 27 of Principal Act

7. Section 27(1) of the Principal Act is hereby repealed.

Amendment of section 28 of Principal Act

8. (1) Section 28 of the Principal Act is amended by the removal of the reference to section 3 in the title. 5

(2) Section 28 of the Principal Act is amended by the deletion of the following in subsection (1)(a) “of an offence under section 3 of this Act, other than a first or second offence in relation to which a penalty may be imposed under section 27(1)(a) of this Act, or”. 10

(3) Section 28 of the Principal Act is amended by the deletion of the following in subsection (1)(b) “of an offence under section 3 of this Act, other than a first or second offence in relation to which a penalty may be imposed under section 27(1)(a) of this Act, or”.

PART 4

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DRUG DISSUASION SERVICE

Establishment Day

9. The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Act.

Establishment of the Service

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10. (1) There shall stand established on the establishment day a body, which shall be known as the Drug Dissuasion Service (in this Act referred to as “the Service”), to perform the functions conferred on it by or under this Act.

(2) The Service Board shall comprise five members to include the following:

- (a) the Director General; 25
- (b) an expert in the field of drug counselling and addiction;
- (c) a representative from the Department of Justice;
- (d) a representative from the Department of Health;
- (e) a representative from the Probation Service.

Director General of the Drug Dissuasion Service

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11. (1) There shall be a chief executive officer of the Service (in this Act referred to as the “Director General”).

(2) The Director General, other than the Director General first appointed after the

commencement of this section or a Director General appointed under *subsection (5)* shall be appointed by the Minister from among persons in respect of whom a recommendation for the purposes of this section has been made by the Public Appointments Service consequent upon the holding of a competition in accordance with the Act of 2004.

5

(3) The Public Appointments Service shall, in relation to a competition referred to in *subsection (2)*, not make a recommendation for the purposes of that subsection in respect of more than 3 persons.

(4) The Director General shall hold office for such period not exceeding 5 years from the date of his or her appointment as the Minister may determine.

10

(5) The Minister may reappoint a person whose term of office as Director General expires by the efflux of time to be the Director General.

(6) A person who is reappointed to be the Director General in accordance with *subsection (5)* shall not hold office for periods the aggregate of which exceeds 10 years.

(7) The Director General shall hold office upon and subject to such terms and conditions (including terms and conditions relating to remuneration, allowances and superannuation) as may be determined by the Minister with the consent of the Minister for Public Expenditure and Reform.

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(8) The Director General shall not hold any other office or employment or carry on any business without the consent of the Minister.

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Resignation, removal or disqualification of Director General

12. (1) The Director General may resign from office by giving notice in writing to the Minister of his or her resignation and the resignation shall take effect on the day on which the Minister receives the notice.

(2) The Minister may, at any time, remove the Director General from office if the Minister is satisfied that—

25

(a) the Director General has become incapable through ill-health of performing his or her functions,

(b) the Director General has committed stated misbehavior, or

(c) the removal of the Director General appears to the Minister to be necessary for the effective performance by the Service of its functions.

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(3) If the Director General is removed from office in accordance with *subsection (2)*, the Minister shall provide the Director General with a statement of reasons for the removal.

Functions of Director General

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13. (1) The Director General shall carry on and manage, and control generally, the administration and business of the Service.

(2) The Director General shall be accountable to the Minister for the efficient and effective management of the Service and for the due performance of his or her

function.

Delegation of functions of Director General

14. (1) The Director General may delegate any of his or her functions to a specified member of staff of the Service, and that member of staff shall be accountable to the Director General for the performance of the functions so delegated. 5
- (2) The Director General may revoke a delegation made in accordance with this section.

Accountability of Director General to Committees of Houses of Oireachtas

15. (1) In this section “Committee” means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas, other than—
- (a) the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, 10
 - (b) the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann, or
 - (c) a subcommittee of a committee referred to in *paragraph (a) or (b)*. 15
- (2) Subject to *subsection (3)*, the Director General shall, at the request in writing of a Committee, attend before it to give account for the general administration of the Service.
- (3) The Director General shall not be required to give account before a Committee for any matter which is or has been or may at a future time be the subject of proceedings before a court. 20
- (4) Where the Director General is of the opinion that a matter in respect of which he or she is requested to give an account before a Committee is a matter to which *subsection (3)* applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at a time when the Director General is before it, the information shall be so conveyed in writing. 25
- (5) Where the Director General has informed a Committee of his or her opinion in accordance with *subsection (4)* and the Committee does not withdraw the request referred to in *subsection (2)* in so far as it relates to a matter the subject of that opinion— 30
- (a) the Director General may, not later than 42 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which *subsection (3)* applies, or 35
 - (b) the Chairperson of the Committee may, on behalf of the Committee, make such an application and the High Court shall determine the matter.
- (6) Pending the determination of an application under *subsection (5)*, the Director General shall not attend before the Committee to give account for the matter the subject of the application. 40

- (7) If the High Court determines that the matter concerned is one to which *subsection (3)* applies, the Committee shall withdraw the request referred to in *subsection (2)*, but if the High Court determines that *subsection (3)* does not apply, the Director General shall attend before the Committee to give account for the matter.
- (8) In the performance of his or her duties under this section, the Director General shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy. 5

Functions of the Drug Dissuasion Service

- 16.** (1) The Service shall, in addition to the other functions conferred on it by this Act—
- (a) provide for the establishment of a Drug Dissuasion Service in accordance with this act, 10
 - (b) provide for the appointment of a panel of Case Officers to the Drug Dissuasion Service,
 - (c) conduct reviews of, and monitor the effectiveness of the Drug Dissuasion Service, 15
 - (d) conduct or commission research into matters pertaining to drug dissuasion and harm reduction,
 - (e) provide advice, information and the findings of research conducted by or commissioned on behalf of the Service to the Department of Health and Department of Justice, 20
 - (f) provide information to members of the public in relation to possession of controlled drugs for personal use, Drug Dissuasion and the availability of harm reduction services,
 - (g) provide such other functions as the Minister may require by regulation enacted.
- (2) Subject to this Act, the Service shall be independent in the performance of its functions. 25
- (3) The Service shall perform its functions through or by the Director General or any member of the staff of the Service duly authorised in that behalf by the Director General.

Case Officers 30

- 17.** (1) The Director General may, with the consent of the Minister appoint—
- (a) such and so many of the members of staff of the Service, and
 - (b) such and so many other persons, as he or she considers appropriate to be a Case Officer for the purposes of this Act.
- (2) An appointment under this section shall cease— 35
- (a) if the Director General revokes the appointment in accordance with this section,
 - (b) in the case of a person appointed to be a Case Officer who is a member of the staff of the Service, if the person concerned ceases to be a member of the staff of

the Service, or

- (c) in the case of an appointment that is for a fixed period, on the expiry of that period.
- (3) The Director General may revoke an appointment under this section.
- (4) A Case Officer shall be independent in the performance of his or her functions. 5

PART 5

CASE ASSESSMENT

Case Assessment

- 18. (1) Where a person is referred for assessment under *section 5(1)* the Drug Dissuasion Service shall appoint a Case Officer to carry out a drug dissuasion assessment under *subsection (2)*. 10
- (2) For the purpose of *subsection (1)*, the Case Officer concerned shall convene a meeting within 28 days of the referral.
- (3) A drug dissuasion assessment shall take place at a time and place determined by the Case Officer. 15
- (4) The person to whom the referral applies may be accompanied by a family member, friend or personal representative.
- (5) The meeting shall be informal and conducted otherwise than in public.

Hearing of Information

- 19. (1) The Case Officer shall during the course of the meeting hear information concerning the nature of the controlled drug(s) found in possession of the person subject to the referral. 20
- (2) The Case Officer shall take into account the person's:
 - (a) age;
 - (b) addiction; 25
 - (c) personal circumstances;
 - (d) previous convictions, if any;
 - (e) prior attendance on programmes set out under *section 20(1)*.

Recommendations

- 20. (1) On foot of the assessment carried out under *section 19(1)* the Case Officer may recommend that person attend one or more of the following: 30
 - (a) drug awareness programme;
 - (b) drug rehabilitation programme;

- (c) community engagement programme.
- (2) Where the Case Officer forms the opinion that the person does not need to be referred to any of the programmes provided for under *subsection (1)(a), (b) and (c)* the case officer may at his/her discretion decide to make no recommendation.
- (3) The Case Officer shall record in writing the terms of his recommendation. 5
- (4) The person the subject of the assessment shall, sign the recommendation thereof, and the Case Officer concerned shall send the record as so signed to the Director.

Fixed Charge Notice

- 21.** (1) A member of the Garda Síochána may for the purposes of *section 4(1)(b)* serve on the person personally or by post the notice referred to in *subsection (5)* or cause it to be served. 10
- (2) A member of the Garda Síochána may, for the purposes of *subsection (1)*—
- (a) request the person concerned to give his or her name and address and to verify the information given, and
 - (b) if not satisfied with the name and address or any verification given, request that the person accompany the member to a Garda Síochána station for the purpose of confirming the person's name and address. 15
- (3) A person who—
- (a) does not give his or her name and address when requested to do so under *subsection (2)(a)* or gives a name or address that is false or misleading, or 20
 - (b) does not comply with a request by a member of the Garda Síochána under *subsection (2)(b)*,
- is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,500.
- (4) A member of the Garda Síochána who is of opinion that a person is committing, or has committed an offence under *subsection (3)* may arrest the person without warrant. 25
- (5) The notice referred to in *subsection (1)* shall be in the prescribed form and shall state—
- (a) that the person on whom it is served is alleged to have committed the fixed charge offence concerned, 30
 - (b) when and where it is alleged to have been committed,
 - (c) that a prosecution for it will not be instituted if—
 - (i) during the period of 28 days beginning on the date of the notice, the person pays to a member of the Garda Síochána at a specified Garda Síochána station or to another specified person at a specified place the prescribed amount, or 35
 - (ii) within 28 days beginning on the expiration of that period, the person so pays an amount which is 50 per cent greater than the prescribed amount,

- and
- (d) that in default of such payment the person will be prosecuted for the alleged offence.
- (6) A payment referred to in *subsection (5)* shall be accompanied by the notice referred to in that subsection. 5
- (7) Where a notice is served under *subsection (1)*—
- (a) a person to whom the notice applies may make a payment in accordance with *subsections (5)(c)* and *(6)*,
- (b) a member of the Garda Síochána or other specified person shall receive the payment, issue a receipt for it and retain it for payment or disposal in accordance with *subsection (8)(b)*, 10
- (c) a payment so received shall not be recoverable by the person who made it, and
- (d) a prosecution in respect of the alleged fixed charge offence to which the notice relates shall not be instituted during the periods specified in *subsection (5)(c)* or, if a payment is made in accordance with that *subsection* and *subsection (6)*, at all. 15
- (8) (a) In proceedings against a person for a fixed charge offence it shall be presumed, until the contrary is shown, that the person did not make payment in accordance with *subsections (5)(c)* and *(6)*.
- (b) Payments so made shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance directs. 20
- (9) (a) The Minister may make regulations prescribing anything which is referred to in this section as prescribed.
- (b) Different amounts may be prescribed for a fixed charge offence under this section and an offence under *section 4*.
- (c) Regulations made under this section may contain such incidental, supplementary 25 and consequential provisions as appear to the Minister to be necessary for the purposes of the regulations.

Report on the operation of the Act

22. The Minister for Health shall, not later than 3 years after the commencement of this Act, cause a report to be prepared on the operation of this Act in general and shall cause 30 copies of the report to be laid before each House of the Oireachtas.

An Bille um Dhrugaí Rialaithe agus um
Dhochar a Laghdú, 2017

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do leasú na nAchtanna um Mí-Úsáid Drugaí, 1977 go 2016 chun socrú a dhéanamh maidir le díchoiriúlú a dhéanamh ar shealbhú drugaí rialaithe chun úsáide pearsanta agus chun socrú a dhéanamh maidir le rialacháin a bhaineann le húsáid phearsanta; do bhunú Seirbhís Athchomhairliúcháin Drugaí chun daoine a bhfaightear drugaí rialaithe ina seilbh a chásbhainistiú agus chun daoine a athstiúradh ó na cúirteanna trí chóras de bhearta laghdaithe dochair a sholáthar, lena n-áirítear feasacht i leith drugaí, athshlánúchán ó dhrugaí agus cláir rannpháirtíochta pobail; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

Na Seanadóirí Lynn Ní Ruadháin, Aodhán Ó Riordáin, Colette Ní Chéileachair, Alice-Mary Ní Uiginn, Gráinne Ní Shúilleabháin, Seán Ó Dúláin, Proinséas Ní Dhuibh, David Norris, Mícheál Mac Dubhghaill, Gearóid Ó Creachmhaoil, Victor Ó Buacháin, Liam Laighléis, Siobhán Mhic an tSaoir, Brian Ó Domhnaill, Ivana Bacik, Gearalt de Nais, Caoimhín Mac Unfraidh a thíolaic,

24 Bealtaine, 2017

Controlled Drugs and Harm Reduction Bill
2017

BILL

(as initiated)

entitled

An Act to amend the Misuse of Drugs Acts 1977-2016 to provide for the decriminalisation for possession of controlled drugs for personal use and to provide for regulations regarding personal use; to establish a Drug Dissuasion Service to case-manage persons found in possession of controlled drugs and to divert people away from the courts by providing a system of harm reduction measures including drug awareness, drug rehabilitation and community engagement programmes; and to provide for related matters.

Presented by Senators Lynn Ruane, Aodhán Ó Riordáin, Colette Kelleher, Alice-Mary Higgins, Grace O'Sullivan, John Dolan, Frances Black, David Norris, Michael McDowell, Gerard Craughwell, Victor Boyhan, Billy Lawless, Joan Freeman, Brian Ó Domhnaill, Ivana Bacik, Ged Nash, Kevin Humphreys,

24th May, 2017

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

Le ceannach díreach ó

FOILSEACHÁIN RIALTAIS,

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