



**AN BILLE UM CHEARTAS COIRIÚIL (SUBSTAINTÍ
SÍCIGNÍOMHACHA) 2010**
**CRIMINAL JUSTICE (PSYCHOACTIVE SUBSTANCES) BILL
2010**

EXPLANATORY AND FINANCIAL MEMORANDUM

Main Purposes of the Bill

The proliferation of retail outlets commonly known as “head shops” in Ireland in recent times has increasingly become a matter of public concern. These shops sell a wide range of substances which are not controlled drugs under the Misuse of Drugs Acts but whose effects are intended to be similar to controlled drugs such as cannabis or cocaine.

This Bill is part of the Government’s multi-pronged approach targeting such activities. The primary vehicles for regulating psychoactive substances are the Misuse of Drugs Acts 1977 to 2007. On foot of the Government Order of 11 May 2010, the Minister for Health and Children made the necessary statutory instruments to make the possession and sale of certain substances subject to criminal sanctions under the Misuse of Drugs Acts. The regulations covered the mainstream of substances then commonly being sold in head shops.

However, experience has shown that new psychoactive substances can quickly emerge and there will always be a time lag before such new substances can be made subject to control under the Misuse of Drugs Acts. This Bill will therefore introduce more general control by way of criminal justice legislation to deal with head shop products as they emerge.

The focus of the Bill is on seeking to ensure that the sale or supply of substances, which may not be specifically controlled under the Misuse of Drugs Acts, but which have psychoactive effects, for human consumption will be a criminal offence. The Bill will also give appropriate powers to the Gardaí and to the courts to intervene quickly to prevent the sale of psychoactive substances by way of prohibition notices and prohibition orders.

Provisions of the Bill

Section 1 defines terms used in the Bill.

Section 2 excludes from the scope of the Bill products which are subject to licence, authorisation or other control. These include

medicinal products, animal remedies, intoxicating liquor, tobacco and food. Controlled drugs, which are subject to the Misuse of Drugs Acts, are also excluded to avoid duplication. The section also provides that the Minister can by order exclude other products.

Section 3 provides for the offences of selling, importing and exporting psychoactive substances for human consumption. Subsection (1) provides for the offence of selling a psychoactive substance knowing or being reckless as to whether it is being acquired or supplied for human consumption. The definition of selling is broad and by means of *section 1* includes supplying, distributing, offering for sale, exposing or keeping for sale and being in possession for sale. It includes sale over the internet or home delivery services within this jurisdiction.

Subsection (2) provides that it will be an offence to import or export a psychoactive substance knowing or being reckless as to whether it is being acquired or supplied for human consumption.

Subsection (3) provides for a rebuttable presumption that the accused knew or was reckless as to whether the substance was being supplied or acquired for human consumption where the court is satisfied, having regard to indications that the substance may have psychoactive effects, the presence of drugs paraphernalia at the place to which the proceedings for the offence relate and whether it is reasonable to find that the substance is being sold, imported or exported for an alternative lawful purpose, taking into account the cost and quantity of the substance being sold, imported or exported, that it is reasonable to assume that the accused had such knowledge or was so reckless.

Subsection (4) provides that the court may be satisfied of the matters referred to in subsection (3) notwithstanding any oral or written statement or indication given on packaging, etc. that the substance in question is not psychoactive or is not intended or fit for human consumption.

Subsection (5) provides that it shall be a defence for a person accused of an offence under this section to prove that he or she is a person referred to in *section 6(2)*, which ensures that the lawful professional activities of doctors, pharmacists, etc. will be outside the scope of the offence provisions.

Section 4 creates the offence of selling an object knowing that it will be used to cultivate by hydroponic means any plant, etc. in contravention of section 17 of the Misuse of Drugs Act 1977. Hydroponic cultivation is the cultivation of plants in liquid containing nutrients, without soil, and under controlled conditions of light, temperature and humidity. This method of cultivation is known to be used for the purpose of growing cannabis indoors.

Section 5 provides for the offence of advertising a psychoactive substance or object to which *section 4* applies. Subsection (1) provides that it will be an offence for a person to publish or display any advertisement knowing or being reckless as to whether the advertisement indicates an intention to sell, import or export a psychoactive substance for human consumption or to sell any object for use in cultivating by hydroponic means any plant, etc. in contravention of section 17 of the Act of 1977. It will also be an offence to publish an advertisement promoting the consumption of a substance for its psychoactive effect and providing information on how or where a psychoactive substance may be obtained, or to publish an advertisement providing information on how an object

may be used to cultivate by hydroponic means any plant, etc. in contravention of section 17 of the Act of 1977.

Subsection (2) provides that it shall be a defence for a person accused of an offence under this section to prove that he or she is a person referred in *section 6(2)*, which ensures that the lawful professional activities of doctors, pharmacists, etc. will be outside the scope of the offence provisions.

Section 6 provides that certain categories of persons, such as doctors, pharmacists, etc. who sell, import, export or advertise psychoactive substances will not commit an offence if their actions are for the purpose of their profession and are otherwise lawful.

Section 7 provides that a Garda Superintendent (or higher) may serve a prohibition notice on a person where he or she believes that the person is selling, importing or exporting psychoactive substances for human consumption, selling objects for use in cultivating by hydroponic means any plant, etc. in contravention of section 17 of the Misuse of Drugs Act 1977 or advertising such substances or objects. A prohibition notice must specify the reasons for the Garda opinion, direct the person to cease forthwith the activities specified in the notice and set out the possible consequences of failure to comply with the directions specified in the notice.

Section 8 provides that where a Garda Superintendent (or higher) is of opinion that a person is not in compliance with a direction contained in a prohibition notice, he or she may apply to the District Court, on notice to the person concerned, for an order prohibiting the person from engaging in specified activities. The court may make a prohibition order if having considered the evidence before it and all the circumstances of the case, it is satisfied that the person has engaged in an activity specified in the prohibition notice and it is necessary to prevent the person from engaging in or continuing to engage in such activity. In considering the application, the court must have regard to indications given by the person that a substance may have psychoactive effects, the presence of drugs paraphernalia at the place to which the application relates and whether it is reasonable to find that the substance is being sold, imported or exported for an alternative lawful purpose, taking into account the cost and quantity of the substance being sold, imported or exported. This applies notwithstanding any statement or indication that the substance is not a psychoactive substance or is not intended or fit for human consumption.

The court may decide not to make a prohibition order where it considers that making the order would be unjust in all the circumstances of the case. This is a civil rather than criminal procedure so the proof required will be on the balance of probabilities rather than beyond reasonable doubt. A person who fails or refuses to comply with a prohibition order shall be guilty of an offence. A person who is the subject of a prohibition order may appeal the order to the Circuit Court.

Section 9 makes provision for application to the District Court for variation of a prohibition order.

Section 10 provides that where a person is convicted of an offence under *sections 3, 4, 5 or 8(6)* (breach of a prohibition order), the court may, in addition to, or as an alternative to any other penalty, make a closure order. A closure order will prohibit the person

concerned from operating any business or engaging in specified activities which may reasonably be considered to be connected with the sale, importation, exportation or advertisement of psychoactive substances for human consumption. The order will apply to the place where the offence was committed or any other place specified in the order. A person who fails or refuses to comply with a closure order shall be guilty of an offence.

Section 11 provides that the District Court may vary or discharge a closure order on application by the person who is subject to a closure order, the owner of the place concerned or a Garda Superintendent and sets out the procedure for such applications.

Sections 12 and 13 provide for Garda powers to enter, search and seize in relation to places, vehicles, etc. and to search suspects. *Section 14* extends those powers to officers of Customs and Excise in cases of unlawful importation or exportation of psychoactive substances for human consumption.

Section 15 provides for an offence of obstructing a Garda or an officer of Customs and Excise in the exercise of his or her functions under the Bill.

Section 16 sets out the procedure for the treatment of samples taken under *section 12*.

Section 17 makes provision for the designation of laboratories for the examination and analysis of substances for the purposes of the Bill. The Forensic Science Laboratory is specifically designated as such a laboratory.

Section 18 contains provisions relating to evidence in proceedings under the Bill.

Section 19 provides for the disposal of things seized for use in evidence in proceedings under the Bill.

Section 20 provides that a person guilty of an offence under the Bill is liable on summary conviction to a fine of up to €5,000 or imprisonment for up to 12 months or both or on conviction on indictment to a fine or to imprisonment not exceeding 5 years or both. It also includes standard provisions regarding offences by bodies corporate and forfeiture of substances, etc. on conviction for an offence under the Bill.

Section 21 is a technical jurisdiction clause.

Section 22 extends the powers of search and seizure of officers of Customs and Excise at ports and points of entry to the State in relation to controlled drugs under section 2 of the Customs and Excise (Miscellaneous Provisions) Act 1988 to psychoactive substances.

Section 23 is a standard provision regarding expenses incurred in the administration of the Bill.

Section 24 is a standard provision relating to the making of regulations and the laying of orders and regulations made by the Minister before each House of the Oireachtas.

Section 25 provides for the short title of the Bill and its commencement.

Financial implications

It is not expected that the measures contained in the Bill will result in any significant costs to the Exchequer.

*An Roinn Dlí agus Cirt agus Athchóirithe Dlí,
Meitheamh, 2010.*