



Number 7 of 2017

Misuse of Drugs (Supervised Injecting Facilities) Act 2017



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[No. 7.]

*Misuse of Drugs (Supervised
Injecting Facilities) Act 2017*

[2017.]

ACTS REFERRED TO

Criminal Justice (Psychoactive Substances) Act 2010 (No. 22)

Misuse of Drugs Act 1977 (No. 12)

Misuse of Drugs Acts 1977 to 2016



Number 7 of 2017

MISUSE OF DRUGS (SUPERVISED INJECTING FACILITIES) ACT 2017

An Act to provide for the establishment, licensing, operation and regulations of supervised injecting facilities for the purposes of reducing harm to people who inject drugs; to enhance the dignity, health and well-being of people who inject drugs in public places; to reduce the incidence of drug injection and drug-related litter in public places and thereby to enhance the public amenity for the wider community; and to provide for matters related thereto. [16th May, 2017]

Be it enacted by the Oireachtas as follows:

Interpretation

1. In this Act—

“Act of 1977” means the Misuse of Drugs Act 1977;

“authorised user” means an authorised user within the meaning of *section 7*;

“controlled drug” has the same meaning as it has in section 2 of the Act of 1977;

“drug” includes both controlled drugs and psychoactive substances;

“Executive” means the Health Service Executive;

“licence” means a licence, granted under *section 3* and “licence holder” shall be construed accordingly;

“Minister” means the Minister for Health;

“prescribed” means prescribed by regulations made by the Minister;

“psychoactive substance” has the same meaning as it has in section 1 of the Criminal Justice (Psychoactive Substances) Act 2010;

“supervised injecting facility” means a facility operated by a licence holder where authorised users may consume drugs by injection.

Application for licence

2. (1) A person may apply to the Minister for a licence to operate a supervised injecting facility in respect of certain premises.
- (2) The application shall be in writing or in such form as the Minister may prescribe and include—

- (a) the name and address of the applicant,
 - (b) the address of the premises of the proposed supervised injecting facility,
 - (c) particulars of the premises referred to in *paragraph (b)*,
 - (d) particulars of the protocols proposed to be put in place for the operation and clinical governance of the proposed supervised injecting facility,
 - (e) particulars of the applicant's experience or qualifications,
 - (f) such other information as the Minister may prescribe for the purpose of determining the application.
- (3) At any time after receiving an application and before determining it the Minister may by notice in writing require the person who made the application to provide additional information to him or her.

Grant of licence

3. (1) On application made to the Minister in accordance with *section 2*, the Minister may grant a licence to operate a supervised injecting facility in respect of a premises where the Minister is satisfied that—
- (a) the application complies with that section,
 - (b) the premises concerned are suitable for the operation of a supervised injecting facility,
 - (c) the applicant is capable of complying with any conditions imposed by the Minister on the licence and any requirements imposed by or under any enactment,
 - (d) the experience and expertise of the applicant is relevant to the operation of a supervised injecting facility, and
 - (e) the applicant is a fit and proper person to hold a licence under this section.
- (2) When determining whether or not to grant a licence in accordance with *subsection (1)*, the Minister may consult such persons as the Minister considers appropriate, including the Executive and An Garda Síochána.
- (3) The Minister shall not grant a licence under this section except where the Minister has consulted the Executive about the appropriateness of such a facility and the Executive has advised that—
- (a) there are appropriate protocols in place for the operation and clinical governance of the supervised injecting facility,
 - (b) the premises proposed for the supervised injecting facility are fit for the purpose, and
 - (c) the level and nature of drug use indicated, including the presence of any apparatus, equipment or thing reasonably associated with the consumption of

drugs by injection, is such that it would be appropriate for the Minister to grant a licence to the applicant for those premises, or

- (d) any available information relating to the number of persons who consume drugs by injection, or the number of overdoses or deaths that occur as a result of the consumption of drugs, if any, suggests that the consumption of drugs by injection is such that it would be appropriate for the Minister to grant a licence to the applicant for those premises.
- (4) A licence shall specify the premises in respect of which it is granted and the name and address of the licence holder.
- (5) A licence shall remain in force for the time period specified in the licence or until surrendered by the licence holder or suspended or revoked by the Minister.
- (6) The Minister may attach such conditions to the licence in respect of the operation of a supervised injecting facility as are, in the Minister's opinion, necessary and may consult the Executive, An Garda Síochána or such other persons as the Minister considers appropriate in relation to such conditions.
- (7) A licence which would be in force but for the expiration of the period referred to in *subsection (5)* shall continue in force for such further period as the Minister may specify on the advice of the Executive and An Garda Síochána.

Surrender of licence

- 4. (1) A licence holder shall not surrender a licence or cease to operate a supervised injecting facility without giving the Minister notice in writing, of such period as may be prescribed, of the intention to do so.
- (2) The notice referred to in *subsection (1)* shall include—
 - (a) the date on which the licence holder intends to surrender the licence and cease to operate the supervised injecting facility the subject of the licence,
 - (b) such other information (if any) as may be prescribed.

Revocation or suspension of licence

- 5. (1) Where the Minister is satisfied, having consulted with the Executive, An Garda Síochána, or such other persons as the Minister considers appropriate, that the licence holder has become ineligible to hold a licence, or is in breach of regulations made under this Act or the conditions of the licence concerned, the Minister may—
 - (a) revoke the licence, or
 - (b) suspend the licence.
- (2) The Minister may, having consulted the Executive, An Garda Síochána or such other persons as the Minister considers appropriate—
 - (a) attach conditions to the licence,

- (b) attach conditions to the licence in addition to those attached under *section 3(6)*,
 - (c) amend any conditions attached to the licence under *section 3(6)* or this section.
- (3) The Minister shall, except where *subsection (5)* applies, give the licence holder not less than 21 days notice in writing of his or her intention to take any of the measures referred to in *subsections (1) and (2)* and the reasons for doing so.
- (4) A licence holder notified of the Minister's intentions under *subsection (3)* may make representations to the Minister in relation to the proposed decision within the period specified in that subsection.
- (5) Where the Minister considers that there is a serious and immediate risk to the life, health or welfare of an authorised user, or to the well-being of the staff of that facility, or to the general public, the Minister may revoke or suspend the licence without giving notice under *subsection (3)*.

Transfer of licence

6. (1) The holder of a licence may apply to the Minister to transfer the licence to another person and the Minister may at his or her absolute discretion transfer the licence according to such terms and conditions as the Minister sees fit subject to the person satisfying the requirements of *section 3(1)(c), (d) and (e)*.
- (2) Where the licence is being suspended or surrendered, in order to maintain the provision of such a service, the Minister may transfer the licence for those particular premises to another person who satisfies the criteria set out in *section 3(1)(c), (d) and (e)*.

Authorised user

7. (1) A licence holder, or the person in charge of a supervised injecting facility for the time being, may authorise a person, not being a person prescribed as being ineligible to be an authorised user, to be on the premises of a supervised injecting facility for the purpose of consuming drugs by injection.
- (2) A person authorised by a licence holder or a person in charge of a supervised injecting facility for the time being, in accordance with *subsection (1)*, is referred to in this Act as an authorised user when on the premises of a supervised injecting facility in accordance with the terms of the licence and such conditions (if any) as may be attached thereto.

Obligation of licence holder to provide information

8. (1) A licence holder shall, at the request of the Minister or the Executive, give to the Minister or the Executive such information as the Minister or the Executive may reasonably require for the purpose of evaluating the safety, utility, and cost-effectiveness of the supervised injecting facility concerned, or such other information as may be prescribed for the purpose of such evaluation.

- (2) *Subsection (1)* does not apply to personal records (whether in written or electronic form) relating to an authorised user, who may be identified from them.

Liability of licence holder

9. A licence holder or any person acting under the direction of the licence holder shall not be liable for any act done or omitted to be done in a supervised injecting facility, in relation to the provision of assistance or advice to, or care of, an authorised user and no person shall have a cause of action in respect of that act.

Disapplication of sections 3, 19 and 21 of Act of 1977

10. (1) Subsections (1) and (2) of section 3 of the Act of 1977 do not apply to an authorised user.
- (2) Section 19(1)(e) of the Act of 1977, in so far as it relates to the preparation or production for immediate personal consumption by injection of a controlled drug by an authorised user, and section 19(1)(i) of the Act of 1977, do not apply to a licence holder who knowingly permits or suffers the preparation or production for immediate personal consumption by injection or the possession of a controlled drug, in a supervised injecting facility by an authorised user.
- (3) Section 21(2) of the Act of 1977, in so far as it relates to the possession, preparation or production of a controlled drug for immediate personal consumption by injection does not apply to an authorised user.

Power of Garda Síochána to enter supervised injecting facility

11. Notwithstanding section 26 of the Act of 1977, a member of An Garda Síochána, whether in uniform or not, or accompanied by such other person as may be necessary, may at any time enter the premises of a supervised injecting facility without a warrant, and there make such inspection, examination, observation and enquiry as he or she may think proper for the prevention or detection of offences under the Misuse of Drugs Acts 1977 to 2016, other than offences, which pursuant to *section 10*, do not apply to an authorised user.

Regulations

12. (1) The Minister may by regulations provide for any matter for the purposes of giving full effect to this Act, including—
- (a) application for a licence or for the renewal of such licence,
 - (b) eligibility of persons to apply to be the holder of a licence,
 - (c) criteria for assessing the suitability of premises proposed for a supervised injecting facility,
 - (d) the administration and clinical governance of supervised injecting facilities and matters connected therewith,

- (e) the operation of supervised injecting facilities,
 - (f) the persons who may be considered to be eligible to be authorised users,
 - (g) such other consequential or ancillary matters as the Minister considers necessary for the proper functioning of supervised injecting facilities.
- (2) The Minister may by regulations provide for any matter referred to as prescribed or to be prescribed.
- (3) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under the regulation.

Short title, collective citation and commencement

- 13.** (1) This Act may be cited as the Misuse of Drugs (Supervised Injecting Facilities) Act 2017.
- (2) This Act and the Misuse of Drugs Acts 1977 to 2016 may be cited together as the Misuse of Drugs Acts 1977 to 2017.
- (3) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.