VERŻJONI ELETTRONIKA

I assent.

(L.S.) **MARIE LOUISE COLEIRO PRECA**
President

20th February, 2015

ACT No. I of 2015

AN ACT to provide for the treatment of persons in possession of small quantities of prohibited drugs for personal use and for other measures for the rehabilitation of persons suffering from drug dependence.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:-

Short title and commencement.

1. (1) The short title of this Act is the Drug Dependence (Treatment not Imprisonment) Act, 2015.

(2) This Act shall come into force on such date as the Minister may by Order in the Gazette establish and different dates may be established in respect of different provisions or purposes of this Act.

Interpretation.

2. In this Act, unless the context otherwise requires:

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"conviction" also includes the voluntary payment of a penalty without proceedings as provided under this Act or under the Commissioners for Justice Act;

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"drug laws" means the Medical and Kindred Professions Ordinance and the Dangerous Drugs Ordinance.

"Minister" means the Minister responsible for Justice;

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"prohibited drug" means any drug which may form the object of criminal proceedings under article 120A of the Medical and Kindred Professions Ordinance or under article 22 of the Dangerous Drugs Ordinance;

Application of this Act.

3. (1) Subject to the provisions of subarticle (2), the provisions of this Act, including the procedures, measures and punishments provided in this Act in respect of offences against the drug laws, shall apply notwithstanding and to the exclusion of the provisions of the drug laws. No direction shall be required from the Attorney General for the purposes of commencement of proceedings under articles 4 and 5 of this Act.

(2) The drug laws shall continue to apply except in respect of any matter explicitly provided for in this Act.

Possession for personal use of prohibited drug.

4. (1) Where a charge for breach of the drug laws consists of a charge of possession of a prohibited drug in a quantity of less than two grams of any drug other than cannabis or three point five grams of the drug cannabis or two 'ecstacy' or two other prohibited pills, irrespective of purity, in circumstances which do not give rise to reasonable grounds to believe that the prohibited drug is not for personal use by the person in possession thereof, that person shall be tried in accordance with the Commissioners for Justice Act and shall be liable, on conviction by the Commissioner for Justice, hereinafter referred to as "the Commissioner", assigned by the Minister to hear drug offence cases, to a penalty of between seventy-five euro (€75) and one hundred and twenty-five euro (€125):

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Provided that the Minister may by means of regulations made by virtue of this Act establish amounts and levels of purity in respect of different types of prohibited drugs which shall give rise to a legal presumption that a person found in possession of the said amounts of prohibited drugs, whether of a specified purity or not, was in possession of those prohibited drugs for personal use or for trafficking, as the case may be.

(2) Notwithstanding the provisions of subarticle (1), where the prohibited drug in respect of which a person is charged according to subarticle (1) consists of the drug cannabis or of cannabis resin, the penalty applicable shall be of between fifty euro (€50) and one hundred euro (€100).

(3) Where, in proceedings commenced before the Commissioner in terms of subarticles (1) or (2) a question arises as to whether a substance constitutes a prohibited drug, the Commissioner shall refer such question to the Drug Offenders Rehabilitation Board which shall report back on its findings to the Commissioner.

(4) Any prohibited drugs confiscated or exhibited in the course of proceedings before the Commissioner in terms of subarticles (1) or (2) shall be sent by the Registrar of the Tribunal to

the Registrar of the Criminal Court for destruction. Due record shall be kept of such sending.

(5) Where a person charged with an offence as provided for in subarticles (1) or (2) is a person not habitually resident in Malta any penalty due in terms of the provisions of the said subarticles shall, unless the charge is contested, be paid in its minimum through electronic means and without proceedings before the Commissioner, at any place and in such manner as may be established by the Minister. Such payment may only be made through credit card or other bank transfer within twelve hours from the time when the said person is notified of the charge during which time the Executive Police shall have the power to keep the said person in detention until payment is made:

Provided that where a charge to which this subarticle applies is contested or where no payment of the penalty as provided above in this subarticle is made, the provisions of this Act shall cease to apply in respect of the person to be charged and the case shall proceed in accordance with the provisions of the drug laws.

For the purposes of this subarticle "contested" means giving notice of contestation even if verbally.

Second offence with a period of two years.

5. (1) In the case of a second or subsequent conviction for possession of a prohibited drug for personal use within a period of two years from the date of the first conviction the offender shall also be tried before a Commissioner for Justice appointed in terms of the Commissioners for Justice Act and shall be liable to the same penalties and be subject to the same procedures as provided in article 4:

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Provided that upon a conviction for the second or subsequent offence of a person habitually resident in Malta the Commissioner for Justice shall order the person convicted to appear before the Drug Offenders Rehabilitation Board established under article 6.

(2) Notwithstanding the provisions of subarticle (1), in the case of a second or subsequent conviction as referred to in subarticle (1), where the prohibited drug involved in the offence is cannabis or cannabis resin the Commissioner for Justice shall only refer the convicted person to the Drug Offenders Rehabilitation Board if, after considering the circumstances of the offence and of the offender, he is satisfied that there are reasonable grounds to believe that the circumstances of the convicted person give rise to a probability that he is abusing or is likely to abuse prohibited drugs other than

cannabis or cannabis resin.

Non-appearance before the Board.

(3) The Commissioner for Justice shall in all cases make an order for appearance before the Drug Offenders Rehabilitation Board in the case of any person who is charged with a second or subsequent offence in terms of subarticles (1) or (2) and who either opts to pay the penalty without proceedings in terms of the Commissioners for Justice Act or fails to appear before the Commissioner when duly summoned.

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(4) Where a person is referred to the Drug Offenders Rehabilitation Board in terms of subarticles (1), (2) or (3), the said Board shall summon the said person to appear before it and shall, after conducting such examinations on the said person as are proportionate and as it considers necessary, and if it finds that the said person has a drug dependence problem which merits treatment, the said Board shall issue such orders to that person as appear to the Board to be necessary for the purpose of assisting that person to come out of his drug dependence.

(5) Any person who after being referred to the Drug Offenders Rehabilitation Board fails, without reasonable justification, to appear before the Board on any occasion when he is to so appear, or who fails without reasonable justification to comply with an order issued to him by the Board shall be guilty of an offence against this Act and shall be liable on conviction by the Court of Magistrates to a fine (*multa*) of between one hundred euro (€100) and five hundred euro (€500) or to imprisonment for a period of three months or to both such fine and imprisonment.

Drug Offenders Rehabilitation Board.

6. (1) There shall be a Board to be known as the Drug Offenders Rehabilitation Board which shall consist of:

(a) a Chairman who shall be appointed by the Minister who shall be either a retired Judge or a retired Magistrate or a person who shall have exercised the profession of advocate for a period of at least twelve years;

(b) one member who shall be appointed by the Minister upon the recommendation of the Minister responsible for social policy;

(c) one member who shall be appointed by the Minister upon the recommendation of the Minister responsible for home affairs;

(d) one member who shall be appointed by the Minister upon the recommendation of the Minister responsible for

health:

Provided that the person appointed in terms of paragraphs (b), (c) and (d) of this subarticle shall be appointed from amongst persons coming from professions or duties which are relevant to the rehabilitation of persons suffering from drug dependence.

(2) The Minister may appoint more than one formation of the Board in accordance with the method of appointment provided in subarticle (1).

(3) In the case of equality of votes the Chairman of the Board shall have a casting vote.

(4) The Drug Offenders Rehabilitation Board shall have the following powers and functions:

(a) to interview and examine any person who is referred to it by the Commissioner for Justice or by a Court in terms of the provisions of this Act or of any other law;

(b) to order the taking of such blood or urine samples from any person referred to it;

(c) to obtain any information, technical assistance or expert advice from any Government department or agency or from any body set up by law for the purpose of assessing the situation of any person referred to it;

(d) to take such proportionate measures as may appear to the Board to be necessary for the purpose of assisting the person referred to it to combat drug dependence problems;

(e) to issue such orders or recommendations, which may also include orders restrictive of freedom of movement, for treatment or rehabilitation to any person referred to it for the purpose of assisting such person to combat drug dependence problems;

(f) to advise and assist the Commissioner for Justice, the Court of Magistrates or any other Court of criminal jurisdiction upon the request of the said Commissioner for Justice or Court in relation to measures related to proceedings before the Commissioner for Justice or the Court, or in matters relating to the assistance and rehabilitation of drug offenders and persons charged with offences under the drug laws or with offences which are related, directly or indirectly to drug

dependence;

(g) to oversee and advise about the establishment and operation of a programme aimed at providing psychological support to family members and other persons with a close connection to persons suffering from drug dependence problems;

(h) to work in co-ordination with the justice, social policy, police, health and judicial training authorities for the organization of training for practitioners involved in activities related to the control of drug abuse and drug related behaviour;

(i) to perform any other function related to the rehabilitation of drug abusers as the Minister may from time to time by regulations assign to it.

(3) Generally, for the purpose of exercising its powers and functions, the Board shall have, *mutatis mutandis*, all such powers as are by the provisions of Book Second of the Criminal Code vested in the Court of Magistrates.

Cultivation of the plant cannabis.

7. A person found guilty of cultivating the plant cannabis in a small quantity not exceeding one plant, in circumstances where the Court is satisfied that such cultivation was for personal use, shall not be liable to a mandatory term of imprisonment or to the exclusion of the application of a probation order or of the suspension of a term of imprisonment provided for in the drug laws.

Drugs Court.

8. (1) Where the accused is charged with an offence against the drug laws with regard to a quantity of prohibited drugs which, irrespective of the kind of drug or of the purity, does not exceed the quantity of the drugs listed in the Guidelines found in the Fourth Schedule to the Dangerous Drugs Ordinance or in the Fourth Schedule to the Medical and Kindred Professions Ordinance as a quantity of drugs indicative that the accused should not be referred for trial before the Criminal Court, or is charged with the commission of any crime not liable to a punishment of more than seven years imprisonment, and the conditions referred to in subarticle (2) are satisfied, the Court may, after hearing submissions made on behalf of the accused and on behalf of the prosecution and after hearing any witness which the Court considers it necessary to hear and after consulting the Drug Offenders Rehabilitation Board, issue a decree whereby the Court will assume the function of a Drugs Court.

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(2) The conditions to be satisfied for the purpose of subarticle (1) are the following:

(a) that the offence against the drug laws or against any other law with which the accused is charged is substantially attributable to the grave and medically proved drug dependence of the accused;

(b) that the offence against any law other than the drug laws with which the accused is charged does not consist of a wilful offence against the person or of a crime committed whilst the accused was in possession of arms proper or with the use of fire or explosives;

(c) that there are objective reasons which indicate that the accused is likely to be rehabilitated from drug dependence or that he has made substantial progress or effort to free himself of drug dependence.

(3) When the Court issues a decree that it is to assume the functions of a Drugs Court, the Court shall proceed to refer the accused before the Drug Offenders Rehabilitation Board which shall be entitled to give such orders in respect of the accused as provided in article 6.

(4) In the event that the accused fails to comply with the orders of the Drug Offenders Rehabilitation Board or if the Board, after examining the facts, considers that the accused is not showing commitment to his rehabilitation, the Board shall, without prejudice to any liability of the accused under article 5(5), recommend to the Court to revoke its decision to convert itself into a Drugs Court and to proceed with the trial.

(5) Where the Drug Offenders Rehabilitation Board, within a period of not more than eighteen months from when the accused was referred to it, considers that the accused has managed to substantially free himself of drug dependence, the Board shall report that fact to the Court and it shall refer the accused back to the Court.

(6) After it receives the report referred to in subarticle (5), the Court shall order the Registrar of Criminal Courts and Criminal Tribunals to furnish it with a list of all pending criminal cases against the accused, other than cases over which a Court of Magistrates does not have and cannot be granted competence and offences involving charges as referred to in subarticle (2)(b), and it shall, insofar as it considers such a measure to be in the best interests of the rehabilitation of the accused after also taking due account of the interests of the proper administration of justice and of victims, recall all such cases as may fall within the competence of the Court of Magistrates or to which the competence of the Court of Magistrates

may be extended so that they will be heard and decided before it if the Court is the Court of Magistrates and if the Court is the Criminal Court they shall be decided before it consisting only of the Judge:

Provided that in cases to which this subarticle applies, where an offence referred to in this subarticle exceeds the competence of the Court but consists of an offence to which the said competence may be extended, the Court's competence shall be deemed to have been extended by operation of law by virtue of the decree recalling such cases to be heard and determined before it with no further consent or formality being required.

(7) In cases where a recall of other cases is made in terms of subarticle (6) the Court may, notwithstanding any other law, in the event of any conviction, decide not to apply any minimum term of mandatory imprisonment or the exclusion of the application of a probation order or of the suspension of a term of imprisonment applicable to any offence in respect of which the accused is found guilty:

Provided that the Court shall only refrain from applying a mandatory minimum term of imprisonment or the exclusion of the application of a probation order or of the suspension of a term of imprisonment if it is satisfied on a balance of probabilities that the offence of which the accused has been found guilty was mainly attributable to his drug dependence.

(8) In giving judgement in cases to which subarticles (5), (6) and (7) apply, the Court may also order that any offence of which the accused has been found guilty, other than an offence for which the accused has been sentenced to imprisonment without the application of article 28A of the Criminal Code, shall not be taken into account for the purposes of the issue of a conduct certificate under the Conduct Certificates Ordinance after the lapse of a period being a minimum of one year and a maximum of three years from the date of the Court's judgement unless the offender relapses. Cap. 9. Cap. 77.

(9) There shall be no right of appeal from a decision of the Court to assume the functions of a Drugs Court or to decline a request to do so, or from any decision of the Drug Offenders Rehabilitation Board.

(10) Where the accused has been referred to the Drug Offenders Rehabilitation Board as provided in this article the accused shall, during the period whilst he is so referred, be brought before the Court at intervals of not more than three months for the Court to be updated, whether orally or in writing, by the Board with regard to the progress

of the rehabilitation or treatment of the accused.

(11) During the time when the accused is referred to the Drug Offenders Rehabilitation Board the Court shall continue to hear the case against the accused as though no such referral was made but it shall not pass judgement.

Sentencing Policy Advisory Board.

9. (1) There shall be a Board to be known as the Sentencing Policy Advisory Board which shall consist of such number of persons not being less than three or more than six as the Minister may from time to time appoint.

(2) The function of the Board shall be to suggest policies for the sentencing of persons found guilty of drug and drug related offences in such a manner as to aim at achieving consistency in the punishments given for such offences by different courts.

(3) The Minister, after consultation with the Commission for the Administration of Justice, may by regulations extend the competence of the Sentencing Policy Advisory Board to other offences.

(4) Upon drafting sentencing policies the Board shall report to the Minister who shall refer the draft policies for an opinion from the Commission for the Administration of Justice, making such comments in writing as the Minister may deem appropriate.

(5) The Commission for the Administration of Justice shall issue its opinion on the draft sentencing policies within six months from the end of the month during which these are communicated to it by the Minister:

Provided that if the opinion of the Commission for the Administration of Justice is not received by the Minister within a period of thirty days following the expiry of the period of six months referred to in this subarticle, the Minister shall be entitled to proceed to adopt and publish the said sentencing policies or to extend the said period of six months upon the request of the Commission if he considers that such extension is justified:

Provided further that where the Commission for the Administration of Justice has approved a sentencing policy this shall be published by the Minister as so approved unless the Minister, for reasons to be stated in writing, considers it necessary to depart from the approved policy.

Use of medicinal preparations of cannabis. Cap. 464.

10. A specialist registered under the Health Care Professions Act under the specialists register in respect of the speciality in neurology, oncology and radiotherapy, anaesthetics and intensive care medicine, psychiatry or of any other specialists register under the said Act which the Minister responsible for health may by regulations made by virtue of this article prescribe, shall be entitled to prescribe to patients medicinal preparations of the plant cannabis licensed under the Medicines Act, if he considers that there is no viable alternative to such prescription due account being taken of any protocols which may be in force from time to time in respect of the prescription of medicines, of the interests of the patient and of the costs.

Persons providing assistance to a person suffering from a drug overdose.

11. (1) Any person who provides assistance to another person suffering from a drug overdose by taking such person to a hospital or to a place where he can receive appropriate medical care or who seeks the assistance of the competent authorities for such a purpose shall, without prejudice to his liability for any other offence, not be liable to be prosecuted for having shared or consumed a prohibited drug in a quantity for personal use with the person suffering from the said overdose.

(2) Where the person providing assistance in accordance with subarticle (1) shall be liable to prosecution for any other offence directly connected with the overdose of the assisted person the punishment to which such person shall be liable on conviction shall be reduced by one degree.

Power to make regulations.

12. The Minister may make regulations for the better implementation of any of the provisions of this Act and, without prejudice to the generality of the foregoing, such regulations may make provision:

(a) for establishing procedures to be followed by Commissioners for Justice taking cognizance of cases under this Act and in respect of the procedure to be followed by the Drug Offenders Rehabilitation Board;

(b) for the organization of schemes of community service and to provide that such schemes may, with the authorisation of a Court or of a Commissioner for Justice, as the case may be, be used as an alternative to any pecuniary penalty which may be imposed by a Court or by a Commissioner for Justice under this Act;

(c) for varying the amount of penalties that may be imposed by Commissioners for Justice under this Act provided that the maximum penalty so established shall not exceed five hundred euro (€500);

(d) for providing for procedures to be followed for the immediate payment of penalties without proceedings in respect of penalties to which a person may become liable under this Act;

(e) for providing, in a proportionate manner, for the non-renewal of licences or other authorisations of any kind to a person convicted of any offence consisting of simple possession of a drug for personal use until a penalty due is actually paid;

(f) for prescribing anything that may be prescribed under this Act.

Exclusions from applicability of this Act.

13. This Act shall not apply:

(a) in respect of any offence against the drug laws, other than an offence consisting of the simple possession for personal use of a prohibited drug, committed within, or within one hundred metres from, the perimeter of a school, youth club or centre or such other place where young people habitually meet; or

(b) where the offence consists in the sale, supply, administration or offer of prohibited drugs to a minor, to a woman with child or to a person who is following a programme for cure and rehabilitation from drug dependence and to which the second proviso to subarticle (2) of article 120A of the Medical and Kindred Professions Ordinance or the second proviso to subarticle (2) of article 22 of the Dangerous Drugs Ordinance apply; or

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Cap. 101.

(c) where the offence against the drug laws is one committed in or in relation to a correctional facility.

Amendment of article 3 of the Commissioners for Justice Act. Cap. 291.

14. Article 3 of The Commissioners for Justice Act shall be amended as follows:

(a) in the proviso to subarticle (3) thereof, for the words "Provided that the Court of Magistrates shall have jurisdiction" there shall be substituted the words "Provided that the Court of Magistrates or any other court of criminal jurisdiction shall have jurisdiction";

(b) immediately after subarticle (3) thereof, there shall be added the following new subarticles:

"(4) Notwithstanding the other provisions of this Act, an offence against the Dangerous Drugs Ordinance or against the Medical and Kindred Professions Ordinance which is triable under this Act shall not cease to be a criminal offence and the courts of criminal jurisdiction shall retain a concurrent jurisdiction to try that offence so however that the punishments applicable after the coming into force of this Act shall not exceed the punishments which would be applied had the offence been tried before a Commissioner for Justice under this Act:

Cap. 101.

Cap. 31.

Provided that the Courts of criminal jurisdiction shall, by virtue of this Act, be entitled to apply any penalty which may be applied by a Commissioner for Justice under this Act in respect of an offence which according to this Act is to be tried before a Commissioner for Justice:

Provided further that the period of prescription applicable in respect of an offence against the Medical and Kindred Professions Ordinance and the Dangerous Drugs Ordinance triable under this Act shall, notwithstanding the other provisions of this Act, be the same applicable in respect of that offence under the said Ordinances read in conjunction with the provisions of the Criminal Code on prescription.

Cap. 31.

Cap. 101.

Cap. 9.

(5) An offence referred to in subarticle (4) shall remain subject to all the powers of the Executive Police in respect thereof as if it had not been an offence triable by a Commissioner for Justice under this Act for the purposes of the investigation of the said offence or of any other offence.

(6) Notwithstanding the provisions of subarticles (4) and (5) or of any other law, an offence referred to in subarticle (4) shall not be taken into account for the purposes of the issue of conduct certificates under the Conduct Certificates Ordinance but the Registrar of the Tribunal or any other person as may be designated by regulations made by the Minister shall keep a register of all convictions or voluntary payments of penalties in respect of offences referred to in subarticle (4) and such register shall be accessible to the Executive Police, to the Registrar of Criminal Courts and Criminal Tribunals and to any other public authority as the Minister may by regulations designate.

Cap. 77.

(7) Prosecution before the Commissioners for Justice for offences against the Medical and Kindred Professions Ordinance or against the Dangerous Drugs Ordinance for possession for personal use of a prohibited drug shall be carried out by the Executive Police who shall however appear before the Commissioner in plain clothes.".

Cap. 31.
Cap. 101.

Amendment of article 10 of the Commissioners for Justice Act. Cap. 291.

15. Immediately after subarticle (6) of article 10 of the Commissioners for Justice Act there shall be added the following new subarticle:

"(7) A person who fails to pay a penalty imposed upon him under this Act, whether by the Commissioner or by a Court, for an offence against the Medical and Kindred Professions Ordinance or the Dangerous Drugs Ordinance may, upon the demand of the Registrar of the Tribunal or of the Registrar of Criminal Courts, as the case may be, be brought before the Tribunal or before the Court for the purpose of a determination being made as to whether the cause of the failure to pay is drug dependence and in the case that the Commissioner or the

Cap. 31
Cap. 101

Court are of the opinion that on the basis of probabilities the person found guilty has failed to pay the penalty due to a problem of drug dependence they shall be entitled to order that the said person be referred to the Drug Offenders Rehabilitation Board established under article 6 of the Drug Dependence (Treatment not Imprisonment) Act, 2015 and the powers and functions of that Board shall *mutatis mutandis* apply to that person without prejudice to the other provisions of this Act.".

Amendment of article 13 of the Commissioners for Justice Act. Cap. 291.

16. In paragraph (b) of article 13 of the Commissioners for Justice Act, for the words "established for contraventions;" there shall be substituted the words "established for contraventions:" and immediately thereafter there shall be added the following proviso:

"Provided further that nothing in this paragraph shall be interpreted as preventing Parliament from amending the Schedule by means of an Act of Parliament to include therein offences which are liable to punishments which are higher than the punishments established for contraventions;".

Amendment of the Schedule to the Commissioners for Justice Act. Cap. 291.

17. The schedule to the Commissioners for Justice Act shall be amended as follows:

(a) for the words "Particular provisions if any" in the heading of the third column thereof, there shall be substituted the words "Particular provisions, if any, or description of offence"; and

(b) immediately after the item "Management of Bathing Water Quality Regulations" there shall be added the following new items under the columns indicated below:

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Legislation	Cap. or S.L. number	Particular provisions, if any, or description of offence
"Dangerous Drugs Ordinance	Cap. 101.	Simple possession for personal use of a prohibited drug in an amount not exceeding two grams of any drug other than cannabis or three point five grams of the drug cannabis irrespective of the purity.
Medical and Kindred Professions Ordinance	Cap. 31.	Simple possession of a prohibited drug for personal use in an amount not exceeding two grams irrespective of purity or of not more than two 'ecstasy' pills or two other prohibited pillsand simple possession for personal use of the plant 'khat'.".

Passed by the House of Representatives at Sitting No. 238 of the 11th February, 2015.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

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