

# Focal Point Ireland: national report for 2016 - Legal framework

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**Health Research Board. Irish Focal Point to the European Monitoring Centre for Drugs and Drug Addiction**

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**Please use the following citation:**

Health Research Board. Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction (2017) ***Focal Point Ireland: national report for 2016 – legal framework***. Dublin: Health Research Board.

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(2017) *Focal Point Ireland: national report for 2016 – drug policy*.

(2017) *Focal Point Ireland: national report for 2016 – treatment*.

(2017) *Focal Point Ireland: national report for 2016 – drug markets and crime*.

(2017) *Focal Point Ireland: national report for 2016 – prevention*.

(2017) *Focal Point Ireland: national report for 2016 – prison*.

(2017) *Focal Point Ireland: national report for 2016 – harms and harms reduction*.

(2017) *Focal Point Ireland: national report for 2016 – legal framework*

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## 0. Summary

### 0.1 National profile

The classification of drugs and precursors in Ireland is made in accordance with the three United Nations conventions of 1961, 1971, and 1988. Irish legislation defines as criminal offences the importation, manufacture, trade in and possession of, other than by prescription, most psychoactive substances. The principal criminal legislative framework is laid out in the Misuse of Drugs Acts (MDA) 1977 and 1984, and the Misuse of Drugs Regulations 1988. The offences of drug possession (MDA 1977 section 3) and possession for the purpose of supply (MDA 1977 section 15) are the principal forms of criminal charge used in the prosecution of drug offences in Ireland. The Misuse of Drugs Regulations 1988 list under five schedules the various substances to which the laws apply. There are no alternatives to punishment for the possession or supply of illicit drugs; they remain criminal offences under this legislation. However, different factors can operate either in mitigation of an offence or as aggravating influences.

#### Trends

There have been no changes to the definition of core drug offences since 2000. The most significant changes in the criminal laws applicable to drug-related crime began in 1996 following the assassination, in the summer of that year, of Veronica Guerin, a high-profile journalist who had written a number of exposés about criminals linked to the illicit drug trade. This was a catalyst for a range of legislative and policy initiatives. A significant number were later introduced in response to organised crime, and more recently again in response to so-called 'head shops' selling new psychoactive substances (NPS).

#### New Developments

In the 12-month period from 1 October 2015 to 30 September 2016, there have been a number of legislative changes. The Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, which commenced in full in April 2016, allows for certain convictions held by a person, subject to specified limitations, to be classified as spent after seven years. The Public Transport Act 2016 made amendments to the Dublin Transport Authority Act 2008 and allows law enforcement to remove an individual suspected of an offence under section 15 of the MDA 1977 to be removed from public passenger transport. In response to the recent surge in violence, and the emergence of NPSs, the Misuse of Drugs (Amendment) Act 2016 was enacted in July 2016 and provides for the addition of new substances, and the revocation of regulations and orders confirmed in the Misuse of Drugs (Amendment) Act 2015.

Two other pieces of legislation that are important in the current legal framework in Ireland are the renewal of Section 8 of the Criminal Justice (Amendment) Act 2009 until June 2017, and the Proceeds of Crime (Amendment) Act 2016, which reduced the thresholds for seizing property that is considered a proceed of crime from €13,000 to €5,000. Supplementing this amendment, draft regulations for Section 44 of the Criminal Justice Act 1994 have been approved to reduce thresholds for cash from €6,349 to €1,000. Finally, two bills are currently being debated, the Parole Bill 2016, which provides for the establishment of an independent parole board, and the Road Traffic Bill 2016, which allows Gardaí to carry out chemical roadside drug testing.

## 1. National profile

### 1.1 Legal framework

#### 1.1.1 Characteristics of drug legislation

As stated in the 2015 Legal workbook (Health Research Board and Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2016), the classification of drugs and precursors in Ireland is made in accordance with the three United Nations conventions of 1961, 1971, and 1988. Irish legislation defines the importation, manufacture, trade in and possession of, other than by prescription, most psychoactive substances as criminal offences. The principal criminal legislative framework is laid out in the Misuse of Drugs Acts (MDA) 1977 and 1984, and the Misuse of Drugs Regulations 1988. The offences of drug possession (MDA 1977 section 3) and possession for the purpose of supply (MDA 1977 section 15) are the principal forms of criminal

charge used in the prosecution of drug offences in Ireland. The Misuse of Drugs Regulations 1988 lists under five schedules the various substances to which the laws apply.

The vast majority of drug offences reported come under one of three sections of the MDA 1977:

- section 3: possession of any controlled drug without due authorisation (simple possession)
- section 15: possession of a controlled drug for the purpose of unlawful sale or supply (possession for sale or supply)
- section 21: obstructing the lawful exercise of a power conferred by the Act (obstruction).

Other MDA 1977 offences regularly recorded relate to the importation of drugs:

- section 5: regulations to prevent misuse of controlled drugs
- section 17: cultivation of cannabis plants
- section 18: use of forged prescriptions.

### Misuse of Drugs (Amendment) Act 2015<sup>1</sup>

The Misuse of Drugs (Amendment) Act 2015 was introduced as emergency legislation after the Court of Appeal found that a regulation making the possession of methylethcathinone (known as 4-Mec or Snow Blow) illegal was invalid (Hogan and Court of Appeal 2015). As a result of the judgment, all substances controlled by means of government orders made under section 2(2) of the MDA 1977 (e.g. ecstasy, benzodiazepines and NPSs) ceased to be controlled with immediate effect, and their possession ceased to be an offence. Following an emergency sitting of the Oireachtas, the Misuse of Drugs (Amendment) Act 2015 was passed and then signed into law by the President within 48 hours. The new legislation added the substances previously controlled under government order to the Schedule to the MDA 1977, thereby providing that they would once more be controlled. In order to reaffirm the controls which might apply to these substances, the legislation also confirmed a number of ministerial orders and regulations made under the Act, thereby giving these instruments statutory effect as though they were an Act of the Oireachtas. Please see section 3.1 of the 2016 Legal workbook for further information.

### Penalties for drug offences in Ireland

Table 1.1.1 shows a summary of penalties provided for under Section 27 of the MDA 1977, for various sections of the MDA 1977, Criminal Justice (Psychoactive Substances) Act 2010, Road Traffic Act 2014 and Maritime Safety Act 2005. The fines and sentence lengths vary by legislation, by section that offenders are being prosecuted for, and also by whether it is a first, second or subsequent offence

Comment [C1]: Duplication from above

**Table 1.1.1 Summary of penalties received for drug offences in Ireland**

Subject to section	Penalty
<b>Misuse of Drugs Act 1977-2007</b>	
Section 3 <sup>†</sup> Restriction on possession of controlled drugs	First offence: <ul style="list-style-type: none"> <li>• on summary conviction – Class D fine not exceeding €1,000, or</li> <li>• on conviction on indictment – fine not exceeding €1,270.</li> </ul>
a) Where controlled drug is cannabis or cannabis resin and court is satisfied that possession was for own use	Second offence: <ul style="list-style-type: none"> <li>• on summary conviction – Class D fine not exceeding €1,000, or</li> <li>• on conviction on indictment – fine not exceeding €2,540.</li> </ul> Third and subsequent offences: <ul style="list-style-type: none"> <li>• on summary conviction – Class C fine not exceeding €2,500 or imprisonment not exceeding 12 months at court's discretion or both fine and imprisonment, or</li> <li>• on conviction on indictment – fine of such amount court considers appropriate or at court's discretion, imprisonment for a term not exceeding three years, or both fine and imprisonment.</li> </ul>
b) Any other case	On summary conviction – <ul style="list-style-type: none"> <li>• class C fine not exceeding €2,500, or</li> <li>• imprisonment not exceeding 12 months at court's discretion, or</li> <li>• both fine and imprisonment.</li> </ul> Or

<sup>1</sup>Available at <http://www.irishstatutebook.ie/eli/2015/act/6/enacted/en/pdf>

Subject to section	Penalty
	<p>On conviction on indictment –</p> <ul style="list-style-type: none"> <li>• fine of such amount as court considers appropriate, or</li> <li>• imprisonment not exceeding seven years at court's discretion, or</li> <li>• both fine and imprisonment.</li> </ul>
<p>Section 6<sup>†</sup> Directions prohibiting prescribing, supply etc. of controlled drugs by practitioners or pharmacists convicted of offences</p> <p>or</p> <p>Section 7<sup>†</sup> Special directions prohibiting prescribing etc. of controlled drug in certain cases</p> <p>or</p> <p>Section 16 Prohibition of certain activities etc. relating to opium</p> <p>or</p> <p>Section 17<sup>†</sup> Prohibition of cultivation of opium poppy or cannabis plant</p> <p>or</p> <p>Section 19<sup>†</sup> Occupiers etc permitting certain activities to take place on land, vehicle or vessels to be guilty of an offence</p> <p>or</p> <p>Section 20<sup>†</sup> Offences relating to acts outside the State</p>	<p>On summary conviction –</p> <ul style="list-style-type: none"> <li>• class C fine not exceeding €2,500, or</li> <li>• imprisonment not exceeding 12 months at court's discretion, or</li> <li>• both fine and imprisonment</li> </ul> <p><b>Or</b></p> <p>On conviction on indictment –</p> <ul style="list-style-type: none"> <li>• fine of such amount as court considers appropriate, or</li> <li>• imprisonment not exceeding 14 years at court's discretion, or</li> <li>• both fine and imprisonment.</li> </ul>
<p>Section 15<sup>‡</sup> Possession of controlled drugs for unlawful sale or supply</p> <p>Section 15A Offence relating to possession of drugs with value of €13,000 or more</p> <p>or</p> <p>Section 15B Importation of controlled drugs in excess of certain value (amounts to €13,000 or more)</p>	<p>On summary conviction –</p> <ul style="list-style-type: none"> <li>• class C fine not exceeding €2,500 in District Court, or</li> <li>• imprisonment not exceeding 12 months at court's discretion, or</li> <li>• both fine and imprisonment.</li> </ul> <p><b>Or</b></p> <p>On conviction on indictment –</p> <ul style="list-style-type: none"> <li>• imprisonment for life or such shorter term as the court may determine, and</li> <li>• at the court's discretion, fine of such amount as the court considers appropriate.</li> </ul> <p>The court can:</p> <ul style="list-style-type: none"> <li>• take into account whether the offender has a previous conviction for a drug trafficking offence</li> <li>• impose a sentence with a term of not less than 10 years as the minimum term of imprisonment to be served by the offender</li> <li>• determine a sentence unjust if exceptional and specific circumstances relating to the offence exist</li> <li>• if exceptional circumstances exist, take into account: <ul style="list-style-type: none"> <li>○ whether offender pleaded guilty to the offence</li> <li>○ when and under what circumstances the guilty plea was provided</li> <li>○ whether offender was helpful during the investigation</li> <li>○ whether offender was previously convicted of a drug trafficking offence, and</li> <li>○ whether it is in the interest of the public to impose a shorter sentence.</li> </ul> </li> </ul> <p>When market value of drugs is greater than €13,000, or drugs are imported with a value greater than €13,000 –</p> <ul style="list-style-type: none"> <li>• if there are no exceptional circumstances, offender is liable to a minimum sentence of 10 years.</li> </ul>
<p>or</p> <p>Section 15C Supply of controlled drugs into prisons and places of detention</p>	<p>On summary conviction –</p> <ul style="list-style-type: none"> <li>• class B fine not exceeding €4,000 in District Court, or</li> <li>• imprisonment not exceeding 12 months at court's discretion, or</li> <li>• both fine and imprisonment.</li> </ul> <p><b>Or</b></p> <p>On conviction on indictment –</p> <ul style="list-style-type: none"> <li>• fine of such an amount as the court considers appropriate, or</li> <li>• imprisonment not exceeding 10 years at courts discretion, or</li> </ul>

Subject to section	Penalty
	<ul style="list-style-type: none"> <li>both fine and imprisonment.</li> </ul>
Section 18 <sup>†</sup> Forged or fraudulently altered prescriptions	<p>On summary conviction –</p> <ul style="list-style-type: none"> <li>class D fine not exceeding €1,000, or</li> <li>imprisonment not exceeding six months at court's discretion, or</li> <li>both fine and imprisonment.</li> </ul> <p><b>Or</b></p> <p>On conviction on indictment –</p> <ul style="list-style-type: none"> <li>fine of such an amount as the court considers appropriate, or</li> <li>imprisonment not exceeding three years at court's discretion, or</li> <li>both fine and imprisonment.</li> </ul>
Section 21 <sup>†</sup> (1) Attempts etc. and miscellaneous other offences	.
Section 21 <sup>†</sup> (2) Attempts etc. and miscellaneous other offences	<p>On summary conviction –</p> <ul style="list-style-type: none"> <li>fine not exceeding €2,500 (IR£1,000), or</li> <li>imprisonment not exceeding 12 months at court's discretion, or</li> <li>both fine and imprisonment.</li> </ul> <p><b>Or</b></p> <p>On conviction on indictment –</p> <ul style="list-style-type: none"> <li>fine of such an amount court considers appropriate, or</li> <li>imprisonment not exceeding 14 years at court's discretion, or</li> <li>both fine and imprisonment.</li> </ul>
a) in case the regulation in relation to which the offence was committed is a regulation made pursuant to <a href="#">section 5(1)(a)</a> of this Act, other than a regulation regulating the transportation of controlled drugs	<p>On summary conviction –</p> <ul style="list-style-type: none"> <li>fine not exceeding €1,300, or</li> <li>imprisonment not exceeding six months at court's discretion, or</li> <li>both fine and imprisonment.</li> </ul> <p><b>Or</b></p> <p>On conviction on indictment –</p> <ul style="list-style-type: none"> <li>fine of such an amount court considers appropriate, or</li> <li>imprisonment not exceeding two years at court's discretion, or</li> <li>both fine and imprisonment.</li> </ul>
b) in case the regulation in relation to which the offence was committed is a regulation made other than under the said section 5(1)(a) or is a regulation regulating the transportation of controlled drugs	<p>On summary conviction –</p> <ul style="list-style-type: none"> <li>fine not exceeding €1,040, or</li> <li>imprisonment not exceeding six months at court's discretion, or</li> <li>both fine and imprisonment.</li> </ul>
Section 21 <sup>†</sup> Attempts etc. and miscellaneous other offences Offences other than those mentioned in subsections 1 or 2	<p>On summary conviction –</p> <ul style="list-style-type: none"> <li>fine not exceeding €520.</li> </ul>
Section 23 <sup>†</sup> Power of Garda Síochána to search persons, vehicles, vessels or aircraft	<p>On summary conviction –</p> <ul style="list-style-type: none"> <li>fine not exceeding €520.</li> </ul>
Section 5 <sup>†</sup> Printing etc. of certain books etc., communication of certain information and possession of certain documents an offence.	<p>On summary conviction –</p> <ul style="list-style-type: none"> <li>where the offence is an offence under subsection (2) of that section, fine not exceeding €1,300, or</li> <li>in any other case, fine not exceeding €650.</li> </ul>
<b>Criminal Justice (Psychoactive Substances) Act 2010</b>	
Section 3 <sup>§</sup> Prohibition of sale, etc. of psychoactive substances	<p>On summary conviction –</p> <ul style="list-style-type: none"> <li>class A fine not exceeding €5,000, or</li> <li>imprisonment for a term not exceeding 12 months at courts discretion, or</li> <li>both fine and imprisonment.</li> </ul> <p><b>Or</b></p> <p>On conviction on indictment –</p> <ul style="list-style-type: none"> <li>fine of such an amount as court considers appropriate, or</li> <li>imprisonment not exceeding five years at court's discretion, or</li> <li>both fine and imprisonment.</li> </ul>
Section 4 <sup>§</sup> Prohibition of sale of certain objects	<p>On conviction on indictment –</p> <ul style="list-style-type: none"> <li>fine of such an amount as court considers appropriate, or</li> <li>imprisonment not exceeding five years at court's discretion, or</li> <li>both fine and imprisonment.</li> </ul>
Section 5 <sup>§</sup> Prohibition of advertising of psychoactive substances, etc.	<p>On conviction on indictment –</p> <ul style="list-style-type: none"> <li>fine of such an amount as court considers appropriate, or</li> <li>imprisonment not exceeding five years at court's discretion, or</li> <li>both fine and imprisonment.</li> </ul>

#### Road Traffic Act 2014

Subject to section	Penalty
Section 11 Preliminary impairment testing (4) Obligation to perform impairment tests	Failure to perform an impairment test to determine a person's ability to drive. On summary conviction – <ul style="list-style-type: none"> <li>class A fine not exceeding €5,000, or</li> <li>imprisonment for a term not exceeding six months at court's discretion, or</li> <li>both fine and imprisonment.</li> </ul>
<b>Maritime Safety Act 2005</b> Section 28 Prohibition on operating vessels while under influence of alcohol or drugs	On summary conviction – <ul style="list-style-type: none"> <li>class A fine not exceeding €5,000, or</li> <li>imprisonment for a term not exceeding three months, or</li> <li>both fine and imprisonment.</li> </ul>
Section 29 Drunkenness, etc., of passengers or members of crew	On summary conviction – <ul style="list-style-type: none"> <li>class A fine not exceeding €5,000.</li> </ul>
Section 30 Control of consumption of alcohol or drugs on board a vessel (commander or crew)	On summary conviction – <ul style="list-style-type: none"> <li>class A fine not exceeding €5,000, or</li> <li>imprisonment for a term not exceeding three months, or</li> <li>both fine and imprisonment.</li> </ul>

Note: Subject to Section 28, which gives power of court to remand offenders convicted, to obtain a report, and in certain cases to arrange for a medical

<sup>†</sup>As amended by Misuse of Drugs Act 1984

<sup>‡</sup>As amended by Criminal Justice Act 2007

<sup>§</sup>As amended by Criminal Justice (Psychoactive Substances) Act 2010

Sources: (<http://www.irishstatutebook.ie/> and <http://www.citizensinformation.ie/en/>)

## Alternatives to punishment

Under current legislation in Ireland possession or supply of illicit drugs are considered criminal offences. However, different factors can operate either in mitigation of an offence or as aggravating influences which can influence the punishment. In some cases a court may issue alternatives to punishment, which are defined as 'measures that are rehabilitative, such as treatment, education, aftercare, rehabilitation and social reintegration' (EMCDDA, 2015), examples in Ireland include:

- Under the Criminal Justice (Community Service) Act, 1983<sup>2</sup>, a court may issue a "community service order". The premise behind the order is that the offender is required to carry out unpaid work for a minimum of 40 hours up to a maximum of 240 hours. In order for a community service order to be issued, the court must consider the offender's circumstances, review a report about the offender from a probation and welfare officer, and determine the suitability of the offender to carry out work under such an order and whether arrangements can be made to do so.
- Similarly, under the Probation of Offenders Act, 1907<sup>3</sup>, section 1(1) allows a court to make an order before proceeding to conviction to:
  - dismiss the information or charge; or
  - discharge the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years,
Factors that influence this outcome include, the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed. Section 1(1) cannot be applied to some offences, for example, drink driving offences.

Section 1(2) is applied to indictable offences that are punishable with imprisonment. Under section 1(1) and 1(2) offenders are supervised by probation officers.

- Another example that commenced as a pilot study in 2001 is the Drug Treatment Court. See section 2.2 of this report for further information.

<sup>2</sup> Available at <http://www.irishstatutebook.ie/eli/1983/act/23/enacted/en/print>

<sup>3</sup> Available at <http://www.irishstatutebook.ie/eli/1907/act/17/enacted/en/print>

### 1.1.2. Penalties vary by drug, quantity (i.e. market value), addiction, and recidivism.

#### Drug

##### ***Sentencing in cannabis possession cases***

As per the MDA 1977, sections 3 and 27(1)(a), possession of cannabis for personal use is punishable by a fine on the first or second conviction. From the third offence onwards, the offender can incur prison sentences of up to one year (summary), or up to three years (on indictment), or a fine, or both.

##### ***Sentencing in trafficking cases***

In Ireland, the different drug trafficking offences and their associated penalties are set out in sections 15, 15A and 15B of the MDA 1977 (as amended), and section 3(1) of the Criminal Justice Act, 1994 (as amended) as follows: "Any person who has in his possession, whether lawfully or not, a controlled drug for the purpose of selling or otherwise supplying it to another in contravention of the regulations made under Section 5 of this Act, shall be guilty of an offence". The penalty on summary conviction may be a fine not exceeding €2,500, or up to 12 months imprisonment, or both, while the penalty for conviction on indictment may be a fine and/or imprisonment for life or both.

#### Quantity

Drug trafficking offences are differentiated only by the market value of the product and not by the quantity. Such that, penalties for offences under section 15A (possession), section 15B (importation), and section 27(3A) of the MDA 1977 is similar to an offence under section 15. If the market value of drugs is greater than €13,000, and there are no exceptional circumstances, an offender is liable to a presumptive mandatory minimum sentence of 10 years. However, the following provisions are in place:

- a court can impose a sentence of less than 10 years for a first offence if it determines that there are exceptional circumstances
- a court must impose a sentence of not less than 10 years if the accused has a previous conviction for a second or subsequent offence under sections 15A or 15B of the MDA 1977 or has been convicted under one of these sections and on the other on another occasion.

#### Addiction

An offender that suffers from an addiction comes under the remit of Section 27(3D), which specifies that if an individual has exceptional and specific circumstances relating to the offence or the person convicted of the offence, it would be unjust in all circumstances to specify the minimum term of imprisonment of not less than 10 years. In this instance, when imposing a sentence on any individual with an addiction convicted of an offence under Section 15A or 15B of the MDA 1977, a court may:

- under Section 27(3J),
  - a) ask if the offender was addicted to one or more drugs at the time that the offence was carried out, and
  - b) if satisfied that the offender was so addicted at the time, and that the addiction was a key factor to the offence being carried out, list the sentence for review after 50% of the sentence has expired.
- under section 27(3K), on reviewing the sentence under subsection (3J)(b),
  - a) suspend the remainder of the sentence on any conditions it considers fit, and
  - b) if it decides to exercise its powers, have regard to any matters it considers appropriate.

#### Recidivism

In order to reduce repeat offending, legislative provisions are in place such that sentencing for second or subsequent offences is enhanced. Table 1.1.1 illustrates the variations in penalties for crimes, for example under Section 3A of the MDA 1977, in relation to a conviction on indictment for cannabis, a second offence can result in a fine not exceeding €2,540, which is double that which may be given for a first offence. A third offence can result in a fine that the court considers appropriate, or imprisonment for a term not exceeding three years, or both a fine and imprisonment. See section 3.2 of this workbook for recent figures for recidivism.



### **Aggravating and mitigating factors**

Section 27(3D) of the MDA 1977 sets out a number of different mitigating and aggravating factors (in paragraphs (b) and (c) respectively) that a court must consider when imposing a sentence under section 15A, and when deciding whether or not to deviate from the mandatory minimum sentence.

- Aggravating factors include any previous drug trafficking convictions, other than under sections 15A or 15B of the MDA 1977, and whether the public interest would be served, for example, by preventing drug trafficking by the imposition of a lesser sentence.
- Mitigating factors include any matters that the court considers appropriate, including whether the person pleaded guilty to the offence, the stage at which he or she indicated the intention to plead guilty, the circumstances in which the indication was given, and whether the person materially assisted in the investigation of the offence.

Other than the issues described in this section, there are no official guidelines for sentencing or prosecuting for the trafficking of illicit drugs.

### **1.1.3 Legislation to control New Psychoactive Substances (NPS).**

In May 2010, in an attempt to address the ongoing problem of the sale of 'legal high' substances in 'head shops', the Government introduced a number of statutory instruments (SIs), which supplemented existing drug legislation (see section 2.1 for further information). Under these SIs, approximately 200 substances were declared as controlled drugs.

The Criminal Justice (Psychoactive Substances) Act 2010<sup>4</sup>

The main legislation controlling new psychoactive substances (NPSs) in Ireland is the Criminal Justice (Psychoactive Substances) Act 2010. The Bill was initially proposed chiefly due to the substantial rise in head shops which were selling substances that provided similar effects to controlled drugs such as cannabis or cocaine.

The Criminal Justice (Psychoactive Substances) Act 2010 formed part of a multi-pronged approach aimed at addressing public concerns about the availability of substances that were not under the control of the MDA 1977–2007.

The main provisions included in the Act are:

- An individual will be guilty of an offence if they knowingly sell, import or export a psychoactive substance for human consumption.
- An individual will be guilty of an offence if they knowingly sell equipment or objects that can be utilised to cultivate, by hydroponic means, any plant in contravention of Section 17 of the MDA 1977.
- It is also an offence and prohibited for an individual to advertise:
  - the sale or import or export of a psychoactive substance for human consumption
  - the sale of equipment that may be used in cultivation of psychoactive products
  - information that promotes consumption, psychoactive effects or specifies where a psychoactive substance may be obtained
  - information on how to cultivate products using equipment.

The sale etc. of psychoactive substances is permitted in certain cases, for example, by a registered practitioner such as a doctor, dentist, nurse, pharmacist, or any other individual designated by the Minister for Health.

A member of the Garda Síochána, ranked at superintendent or higher, can issue a prohibition notice to an individual if they are of the opinion that the person is engaged in selling, importing or exporting, or advertising psychoactive substances. Gardaí also have the power to search individuals

<sup>4</sup> Available at <http://www.irishstatutebook.ie/eli/2010/act/22/enacted/en/print>

or vehicles, and to seize and retain any evidence without a warrant if they are of the opinion that an offence is being committed under this Act. Irish Customs and Excise officers have similar powers to Gardaí in this regard.

Any individual who obstructs or interferes with an investigation, who fails or refuses to adhere to a request, or who fails to answer questions by law enforcement shall be guilty of an offence. On summary conviction, this can result in a fine not greater than €5,000, or imprisonment for a term not exceeding 12 months, or both a fine and imprisonment (see Table 1.1.1).

### **Misuse of Drugs (Amendment) Act 2016**

In an effort to deal with the transient nature of NPSs, the Misuse of Drugs (Amendment) Act 2016 was enacted in July 2016. The Act includes the addition of new psychoactive substances that have recently emerged on the Irish market. Please see section 3.1 of this workbook for further information.

#### **1.1.4 Other topics of interest**

##### **Drug driving**

'Driving under the influence of drugs' (DUID) has been a statutory offence in Ireland since the introduction of the Road Traffic Act, 1961.<sup>5</sup> Section 11 of the Road Traffic Act 2014<sup>6</sup> empowers the Garda Síochána to undertake intoxication impairment testing on people who are driving or attempting to drive a mechanically propelled vehicle in a public place under the influence of drugs. This involves non-technology-based cognitive tests (e.g. walking a straight line, tipping one's nose, counting while standing on one leg). The results of these tests may be used in evidence in support of the Garda forming an opinion that the person is intoxicated. Under the new provisions, the Minister of Transport is empowered to prescribe in regulations the nature of the tests and their manner of administration, as well as a form for recording the observations made during the tests. It is also an offence to fail to comply with a requirement to undergo intoxication impairment testing. Section 12 of the Road Traffic Act 2014<sup>4</sup> amends the Road Traffic Act 2010 to allow for the taking, subject to medical approval, of a specimen of blood from an incapacitated (i.e. unconscious) person following a road traffic collision involving death or injury. See section 3.4 for an account of the new Road Traffic Bill 2016, which will introduce chemical roadside testing in response to drug driving.

##### **Drug testing in the workplace**

Legislative provision has been made for mandatory drug and/or alcohol testing in certain work contexts, e.g. defence forces, maritime and railway industries, and workplaces generally.

##### **Defence Forces**

'Compulsory random drug testing' (CRDT), which was introduced in 2002, is intended as a deterrent. In 2009, an additional measure, 'targeted drugs testing', was introduced in order to improve the existing system. Targeted drugs testing measures mean that any member of the Defence Forces who obtains a positive result in CRDT can agree, at the discretion of the relevant General Officer Commanding, to undertake a maximum of six targeted drug tests over 18 months (Department of Defence 2009, 24 April). A positive CRDT test results in dishonourable discharge from the Defence Forces.

##### **Maritime safety**

The Maritime Safety Act 2005<sup>7</sup> strengthens the law against improper use of mechanically propelled personal watercraft (e.g. jet skis) and other recreational crafts.

- Section 28 prohibits operation of vessels in Irish waters while under the influence of alcohol or drugs.
- Section 29 entitles the commander of a vessel to refuse permission to a person intoxicated by alcohol or drugs to board a vessel.
- Section 30 prohibits the consumption of alcohol or drugs by any person on board a vessel.

<sup>5</sup> Available at <http://www.irishstatutebook.ie/1961/en/act/pub/0024/index.html?q=road+traffic+act&=&=>

<sup>6</sup> Available at <http://www.irishstatutebook.ie/pdf/2014/en.act.2014.0003.pdf>

<sup>7</sup> Available at <http://www.irishstatutebook.ie/eli/2005/act/11/enacted/en/html>

Penalties for not complying with this legislation are provided in T1.1.1.

#### Railway safety

The Railway Safety Act 2005<sup>8</sup> provides for the testing of safety-critical workers for the presence of alcohol and/or drugs. Under the Act, the Railway Safety Commission was established and given the power to:

- approve codes of conduct in relation to intoxicants that must be upheld by safety-critical workers (section 88)
- obtain a sample of a worker's blood or urine, in accordance with sampling procedures and support services, which railway undertakings are required to implement (section 89).

Additionally, in relation to testing of safety-critical workers, the Commission is expected to provide an annual report on all measures provided for in the Act that are implemented.

#### Safety, health and welfare at work

The Safety, Health and Welfare at Work Act 2005<sup>9</sup> states in Section 13(1)(b) that employees must not be under the influence of intoxicants to the extent that he or she will endanger his or her own safety, health or welfare at work, or that of any other person. Additionally, under Section 13(1)(c), an employee must submit to any appropriate, reasonable and proportionate tests by a competent practitioner is so required.

#### Drug testing in prisons

The Prisons Act 2007<sup>10</sup> provides for the making of rules by the Minister for Justice for the regulation and good governance of prisons, for example, Section 35(2)(j) allows for the testing of prisoners for intoxicants including alcohol and other drugs. Comprehensive Prison Rules were issued by the Department of Justice under SI 252 of 2007, and provided for the introduction of compulsory or mandatory drug testing (MDT) of prisoners.<sup>11</sup> For further information on its implementation, see section 1.2.3.

#### Organised crime offences – referral of cases to Special Criminal Court

The Criminal Justice Act 2006<sup>12</sup> specified, for the first time, participation in a criminal organisation as an offence. Following on from this, Section 8 of the Criminal Justice (Amendment) Act 2009<sup>13</sup> declared that ordinary courts were inadequate as a means of securing the effective administration of justice, and the preservation of public peace and order, in relation to an offence under each of the following provisions of Part 7 of the Act of 2006.

Offences under Part 7 of the Criminal Justice Act 2006 include:

- Section 71: A person who conspires to commit an offence inside or outside the State regardless of whether it takes place or not
- Section 72: A person who commits an offence in the State or a place outside the State for the purpose of enhancing the ability of a criminal organisation
- Section 73: Any person who commits an offence for the benefit of, or at direction of, a criminal organisation
- Section 76: An offence committed by a body corporate and proven to have been committed with the consent or neglect of any person being a director, manager, secretary or officer or someone acting in that capacity.

Under Section 8 of the Act, offences are deemed to be scheduled offences for the purposes of Part V of the Offences Against the State Act of 1939<sup>14</sup>, as if the order was made under Section 36 subsection (3) of that section and Section 37 of the 1939 Act.

None of these offences can be seen as influencing or limiting the powers exercised by:

<sup>8</sup> Available at <http://www.irishstatutebook.ie/eli/2005/act/31/enacted/en/print.html>

<sup>9</sup> Available at <http://www.irishstatutebook.ie/eli/2005/act/10/enacted/en/print.html>

<sup>10</sup> Available at <http://www.irishstatutebook.ie/eli/2007/act/10/enacted/en/print.html>

<sup>11</sup> Available at <http://www.irishstatutebook.ie/eli/2007/si/252/made/en/print.html>

<sup>12</sup> Available at <http://www.irishstatutebook.ie/eli/2006/act/26/enacted/en/print.html>

<sup>13</sup> Available at <http://www.irishstatutebook.ie/eli/2009/act/32/enacted/en/html>

<sup>14</sup> Available at <http://www.irishstatutebook.ie/eli/1939/act/13/enacted/en/html>

- the Government under provisions of section 35 or 36 of the Act of 1939
- the Director of Public Prosecutions (DPP) under Section 45(2) of the Act of 1939 to direct a person not be sent for trial in the Special Criminal Court, which operates with three judges and without a jury<sup>11</sup>.

Unless a resolution is put forward for it to continue, Section 8 of the Criminal Justice (Amendment) Act 2009 ceases to be in operation within 12 months of the Act being passed. Before a resolution is put forward, the Minister for Justice, Equality and Law Reform is required to present a report outlining how this Section has operated since it was last confirmed. For information on the recent confirmation of Section 8, see section 3.4 of this workbook.

### **Revenue commissioners customs division**

The Customs Act 2015<sup>15</sup> was enacted on 18 June 2015.

Under Section 24, an offence may be penalised at the same time under different legislations, for example, drug smuggling would be contrary to the Customs Act and also to the misuse of drugs legislation.

Under Section 30, Customs officers are allowed to search, seize and detain anything which may be used as evidence for proceedings for an offence under the MDA 1977. In addition, if a Customs officer has reason to believe that an individual is in possession of controlled drugs which are hidden internally, they are allowed to detain the individual and are required to hand the individual over to a member of the Garda Síochána as soon as possible.

### **Postal service**

The Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993<sup>16</sup> regulates the intervention of certain postal packets.

Under Section 2 of the Act, and with conditions noted in section 4, permission can be obtained from the Minister for Law Enforcement to intercept a package if it is for the purpose of a criminal investigation.

The conditions identified in Section 4 include:

- investigations carried out by the Garda Síochána of offences that are deemed or suspected to be serious
- where investigations not involving interception have failed or are likely to fail to produce sufficient evidence or information, and

where interception of a postal packet sent between two addresses would be of material assistance on its own or combined with other information or evidence, Or –

- in the case of an offence that is apprehended but has not yet been committed, where a Garda investigation is being carried out with the aim of preventing the offence or allowing it to be detected
- where investigations not involving interception have failed or are unlikely to prevent or detect the offence
- where it is considered reasonable to assume that interception will prevent or detect the offence in question.

### **Street sale of prescription drugs**

Under the Medicinal Products (Prescription and Control of Supply) Regulations 2003<sup>17</sup>, it is prohibited for a person to supply a prescription medicine except in accordance with a prescription, and the supply must be made from a registered pharmacy by or under the personal supervision of a registered pharmacist. A person who contravenes these regulations is guilty of an offence. However, the illegal street sale of prescription drugs has emerged as an important issue in the Irish drug scene in recent years (see discussion in section 1, (Health Research Board 2012).

<sup>15</sup> Available at <http://www.irishstatutebook.ie/eli/2015/act/18/enacted/en/print.html>

<sup>16</sup> Available at <http://www.irishstatutebook.ie/eli/1993/act/10/enacted/en/print.html>

<sup>17</sup> Available at <http://www.irishstatutebook.ie/eli/2003/si/540/made/en/print>

## 1.2 Implementation of the law

### 1.2.1 Sentencing practice related to drug legislation

As stated in the 2015 Legal workbook (Health Research Board and Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2016), sentencing practice for possession or importation of controlled drugs for the purpose of sale or supply was examined by the Irish Sentencing Information System (Mackey 2014). Four offences were covered in the study:

- possession of controlled drugs for unlawful sale or supply (MDA 1977 section 15, as amended)
- possession of controlled drugs, valued at €13,000 or more, for unlawful sale or supply (MDA 1977 section 15A, as amended)
- importation of controlled drugs for unlawful sale or supply (several provisions found in the Customs Acts, MDA 1977–1984, as amended, and the Misuse of Drugs Regulations 1988)
- importation of controlled drugs, valued at €13,000 or more, for unlawful sale or supply (MDA 1977 Section 15B, as amended).

See section 1.2.1 of the 2016 Legal workbook for further information.

### Prison sentences for drug offences

In response to a Parliamentary Question, the Minister for Justice and Equality, Frances Fitzgerald TD, provided the data contained in Table 1.2.1.1 below, which gives a snapshot of the prison population on 31 August 2014, including the offence for which they were convicted and the length of sentence. On that day, there were 3,792 prisoners in custody across the prison system. Of these, 530 or almost 14% were serving sentences for drugs-related offences. In 2013 there were 846 committals to prison under sentence for controlled drug offences. This represented a decrease of 8% on the 2012 figure of 922.

**Table 1.2.1: Prisoners in custody for drug offences, by offence and sentence length**

	3 to <6 Mths	6 to <12 Mths	1 to <2 Yrs	2 to <3 Yrs	3 to <5 Yrs	5 to <10 Yrs	10+ Yrs	Total
Allowing car to be used s. 19 of MDA					1			1
Allowing premises to be used			1	1				2
Cultivation of cannabis plants and opium poppy		2	3	2	21	5		33
MDA - printing etc					2			2
Possession for sale or supply drugs valued €13,000.00 or more				7	23	42	37	109
Possession of drugs for the purpose of sale or supply	1	13	30	44	83	98	37	306
Unlawful possession of drug(s)		1	6	8	25	16	11	67
Unlawful supply/offer to supply controlled drug					1	1		2
Unlawfully importing or exporting controlled drugs			1	1		3		5
Unlawfully produce controlled drugs				1	1	1		3
<b>Total</b>	<b>1</b>	<b>16</b>	<b>41</b>	<b>64</b>	<b>157</b>	<b>166</b>	<b>85</b>	<b>530</b>

Source: (Fitzgerald F 2014, 24 September)

### Sentencing practices in relation to drug trafficking offences

A recent study conducted by the Irish Sentencing Information System (ISIS) (see Section 2.2 below for a description of ISIS) examined the sentencing practice of the courts in relation to the offences of possession or importation of controlled drugs for the purpose of sale or supply (Mackey 2014).

There are four such offences, which were covered by the study:

- possession of controlled drugs for unlawful sale or supply (s.15 of the MDA 1977, as amended);
- possession of controlled drugs (valued at €13,000 or more) for unlawful sale or supply (s.15A of the MDA 1977, as amended);
- importation of controlled drugs for unlawful sale or supply (several provisions found in the Customs Acts, MDA 1977–1984, as amended, and the Misuse of Drugs Regulations 1988); and
- importation of controlled drugs (valued at €13,000 or more) for unlawful sale or supply (s.15B of the MDA 1977, as amended).

Convictions under s.15A or s.15B attract a 'basic presumptive sentence' of 10 years or more (for a discussion of the legislation, see (Irish Focal Point (Reitox) 2011): Chapter 1.2.2). A sentencing court may, however, impose a lower sentence where there are mitigating factors that amount to 'exceptional and specific circumstances', which would render the imposition of a sentence of 10 years or more 'unjust in all the circumstances'. Part I of Mackey's study analysed the legislative basis for these drug trafficking offences and the reserved judgments of the superior courts. Part II examined the application of sentencing principles in relation to the 'basic presumptive sentence' provided for in ss. 15A and 15B of the MDA 1977. Part III examined 79 judicial decisions involving 81 offenders before the Court of Criminal Appeal from 2009 to 2012. Twenty of these judgements related to ordinary offences and 59 to offences carrying the presumptive sentence.

The case law analysed showed that 'in the majority of s.15A and s.15B sentences (67% of those surveyed) the presumptive minimum sentence of 10 years imprisonment or more is not imposed by the courts despite the fact that this sentence is popularly described as a "mandatory minimum" ' (p. 6). However, this did not mean that the courts were disregarding the presumptive minimum sentencing provisions. As the author explained, 'the Court of Criminal Appeal has repeatedly emphasised that the upper parameters of these offences are properly defined by reference to the maximum penalty of life imprisonment and not, as is often the case, to the presumptive mandatory minimum of 10 years' (p. 6).

Regarding importation offences, the analysis concluded that the statutory framework 'is less coherent'. This was due to the fact that the ordinary offence exists under legislative provisions which provide different maximum penalties, 'one of which carries a maximum penalty of 14 years imprisonment and the other carries a maximum sentence of life imprisonment'.

This anomaly exists primarily for historical reasons that can be traced back to the emergence of the heroin epidemic in Dublin in the mid-1980s. Prior to the introduction of the maximum sentence of life imprisonment in 1984, the upper limit of 14 years applied to importation and possession for sale and supply offences. Such a maximum sentence was imposed in *The People (Director of Public Prosecutions) v. L.D.*, i.e. Larry Dunne, a leading member of the family largely credited with introducing heroin to Dublin at that time (Flynn and Yeats 1985). In the period between the commission of the offence and the date of sentencing, the legislature had increased the maximum penalty. In passing sentence, McMahon J. stated that the major players involved in drug trafficking could in future expect life imprisonment. As the Mackey study shows, however, up to the time of the study no convicted person had received the maximum sentence of life imprisonment. As a consequence, as the author pointed out, 'It is sometimes therefore popularly espoused that custodial sentences imposed are too short or that disparity exists from one sentence to the next' (p. 7). Such disparity was demonstrated in the following cases examined by the study:

'... one offender found with €300,500 of cannabis and cocaine was sentenced to the presumptive minimum of 10 years while another found with €329,301 of cocaine received a wholly suspended sentence; a man found with €43,000 of cocaine received a 1.5 year custodial sentence while another man found with €287,050 of cannabis received 4 years' (p. 7).

The study found that in supply offences involving drugs valued at €13,000 or more, the value was the most important factor in the determination of the appropriate sentence. However, this was not the only factor considered as sentences differed relative to the circumstances of individual cases and individual offenders. This approach was regarded as consistent with general sentencing principles.

The analysis of cases provided in this study led to the conclusion that there were four primary factors that featured most prominently in the construction of sentences for drug trafficking offences:

- the quantity or value of the controlled drug or drugs,
- the type of the controlled drug or drugs,
- the role of the offender, and the condition of the offender.

### **1.2.2 Sentencing practice related to legislation designed to control NPS**

To date, data are not available on actual sentencing practice related to legislation designed to control NPSs.

### **1.2.3 How implementation might differ from the text of laws**

As stated in the 2015 Legal Workbook (Health Research Board and Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2016), the Law Reform (2011) examined legislation concerning mandatory sentencing with the aim of determining whether legislative provisions for sentences were appropriate and beneficial. One area specific to the Misuse of Drugs Acts is the 'presumptive' mandatory minimum sentence. It was highlighted that despite legislation being passed for specific purposes, there were disparities in how that legislation was implemented by the courts (Law Reform Commission 2011). In a subsequent report, the Law Reform Commission recommended that the presumptive sentencing regime for drug offences be repealed (Law Reform Commission 2013).

A similar conclusion was drawn by the Strategic Review of Penal Policy Group, who recommended that no further mandatory sentences or presumptive minimum sentences be introduced, stating "in addition, the continuation of existing presumptive minimum sentences and the threshold for their application in drugs and other offences should be reviewed ... with a view to determining if this type of sentencing satisfies the need for proportionality in sentencing and fulfils the objective of reducing crime. As an initial step to comply with the principle of proportionality, the Review Group recommends an increase in the value of drugs, currently €13,000, possession of which triggers the presumptive minimum sentence of 10 years to a level commensurate with that sentence" (p. 99) (Strategic Review Group on Penal Policy 2014). Please see section 1.2.3 of the 2015, Legal Workbook (Health Research Board and Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2016) for further information.

### **Drug testing in prisons**

The Irish Prison Service (IPS) has recently advised the Minister for Justice and Equality that formal mandatory testing ceased in 2013. The reason for this was that tests could only detect some types of drugs, and as a result, testing did not provide "value for money or operational outcomes needed by the prison service" (Fitzgerald 2016, 16 June-a). However, some drug testing does occur for medical and operational reasons. The Minister was further advised that the IPS is currently considering a new scheme to help sentence management decisions in deciding whether prisoners are ready for temporary release, remission, or transfer to open centres (Fitzgerald 2016, 16 June-a). See section 1.1.4 of the 2015 Legal Workbook (Health Research Board and Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2016) for further information.

## **2. Trends**

### **2.1 Changes in penalties and definitions of core offences**

As stated in the 2015 Legal workbook (Health Research Board and Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2016), there have been no changes to the definition of the core offences since 2000. In terms of identifying the beginning of a trend, the most significant changes in the criminal laws applicable to drug-related crime began in 1996 following the assassination, in the summer of that year, of Veronica Guerin, a high-profile journalist who had written a number of exposés about criminals linked to the illicit drug trade. This was a catalyst for a range of legislative and policy initiatives introduced in response to the drug problem:

- The Criminal Justice (Drug Trafficking) Act, 1996<sup>18</sup> allows for the detention of suspected drug dealers for interrogation for up to seven days, and places restrictions on the 'right to silence' (Keane 1997) (Ryan A 1997).

<sup>18</sup> Available at <http://www.irishstatutebook.ie/eli/1996/act/29/enacted/en/print.html>

- The Criminal Assets Bureau Act, 1996<sup>19</sup> and the Proceeds of Crime Act, 1996<sup>20</sup> established the Criminal Assets Bureau with the power to seize the illegally acquired assets of criminals involved in serious crimes, including drug dealing and distribution (McCutcheon J and Walsh D 1999). This legislation allows the State to remove the property of citizens where it believes such property to be the proceeds of crime, by means of a civil process and without the requirement of a criminal conviction, thereby bypassing the traditional protections of the criminal law. See section 3.4 of this workbook for information on recent amendments to the Proceeds of Crime Act, 1996.
- The Bail Act, 1997,<sup>21</sup> facilitated by the passage of a referendum, places restrictions on the right to bail and allows for preventive detention, something previously unconstitutional under Irish law (Kilcommins, *et al.* 2004).
- The Criminal Justice Act, 1999<sup>22</sup> introduced mandatory minimum sentences of 10 years for drug dealing involving drugs with a street value of €13,000 or more.
- The Housing (Miscellaneous Provisions) Act, 1997<sup>23</sup> enables local authorities to evict individuals for drug-related antisocial behaviour.
- The Non-Fatal Offences against the Person Act, 1997<sup>24</sup> includes provisions specifically addressing the use of HIV-infected syringes in robberies and aggravated burglaries. This piece of legislation, along with the Housing Act, 1997, was introduced in response to pressure from local communities to address open drug dealing by some residents in local authority housing estates (Connolly 2006).

Since 2000, significant laws have been introduced, initially in response to organised crime, but later in response to head shops selling NPSs. See also Pike (Pike 2008) Appendix II for a listing of legislation enacted between 2001 and 2007 that impacts directly or indirectly on drug policy.

### Supplementations to normal drug law

Although there have been no significant changes to normal drug law since 2000, there have been a number of supplementations, for example a number of amendments, statutory instruments, regulations and declarations have been made to the MDA 1977<sup>25</sup> since its initial implementation:

- Misuse of Drugs Act, 1977 (Controlled Drugs) (Declaration) Order 2010 (S.I. 199 of 2010), declared a range of 'legal highs' to be controlled drugs.
- To give effect to this decision, on the same day, the Minister for Health and Children signed:
  - the Misuse of Drugs (Amendment) Regulations 2010 (S.I. 200 of 2010)
  - the Misuse of Drugs (Designation) (Amendment) Order 2010 (S.I. 201 of 2010)
  - the Misuse of Drugs (Exemption) (Amendment) Order 2010 (S.I. 202 of 2010).

Under these statutory instruments, approximately 200 'legal high' substances, which had been on sale in head shops and which included the vast majority of products of public health concern, were declared to be controlled drugs. Further information on NPSs can be found in section 1.1.3 of this workbook.

## 2.2 How the implementation of the law has changed since 2000

Diversion has become an important means of seeking to prevent crime, including drug-related crime, both before and after a crime has been committed.

- Garda Youth Diversion Projects are local community activities that aim to help children move away from behaving in a way that might get them or their friends into trouble with the law.
- In addition to the Garda Youth Diversion Projects, the Garda Juvenile Diversion Programme' (GJDP) provides an opportunity to divert juvenile offenders from criminal activity. It operates on a nation-wide basis under the supervision and direction of the Garda National

<sup>19</sup> Available at <http://www.irishstatutebook.ie/eli/1996/act/31/enacted/en/print.html>

<sup>20</sup> Available at <http://www.irishstatutebook.ie/eli/1996/act/30/enacted/en/print.html>

<sup>21</sup> Available at <http://www.irishstatutebook.ie/eli/1997/act/16/enacted/en/print.html>

<sup>22</sup> Available at <http://www.irishstatutebook.ie/eli/1999/act/10/enacted/en/print.html>

<sup>23</sup> Available at <http://www.irishstatutebook.ie/eli/1997/act/21/enacted/en/html?q=housing>

<sup>24</sup> Available at <http://www.irishstatutebook.ie/eli/1997/act/21/enacted/en/print.html>

<sup>25</sup> Available at <http://www.irishstatutebook.ie/eli/1977/act/12/enacted/en/print.html>



Juvenile Office. The GJDP provides that, in certain circumstances, a young person under 18 years of age who freely accepts responsibility for a criminal incident can be cautioned as an alternative to prosecution. The GJDP employs such strategies and initiatives as formal and informal cautioning, supervision, restorative cautioning and conferencing, community policing and referral to the Garda Youth Diversion Projects (which operate outside the GJDP but in concert with it).

- In 2005, the Irish Youth Justice Service (IYJS) was established to develop a coordinated partnership approach among agencies working in the youth justice system in order to improve service delivery in the system through diversion, restorative justice, rehabilitation and detention as a last resort. Garda Síochána statistics show that the types of offences committed by children under the age of 18 years are primarily theft, alcohol-related, criminal damage, assault, traffic offences, drugs possession, public order offences, and burglary.
- First established on a pilot basis in 2001, the Drug Treatment Court (DTC) is a specialised District Court which offers long-term court-monitored treatment, including career and education support, to offenders with drug addictions, as an alternative to a prison sentence. The idea is that by dealing with the addiction, the need to offend is no longer present. The 2014 progress report on the implementation of the National Drugs Strategy (NDS) (Department of Health 2015) stated that following the completion of an examination of the operation of the Court in 2012–2013, the Minister for Justice and Equality was examining options for the future operation of the Court. In a more recent communication, Minister Fitzgerald stated that “the DTC now covers all of County Dublin and has also found ways to include participants from outside Dublin, for example, participants from Portlaoise and Cork were admitted in 2015 ... The DTC will also form part of the Programme for Government’s commitment to commencing implementation of the new NDS starting in 2017” (Fitzgerald 2016, 16 June-b).
  
- Community Courts
  - In a 2007 report making the case for community courts in Ireland, the National Crime Council (NCC) recommended the establishment of such a court in Dublin’s inner city to deal with “quality of life offences committed in the Store Street and Pearse Street Garda station catchment areas” (National Crime Council 2007).
  - In early 2014, the Dublin City Business Association (DCBA) called for the establishment of a community court as a means of addressing low-level crimes such as vandalism, theft, anti-social behaviour, drug use and drug dealing in the capital city (see section 9.6.2 of the 2014 National Report (Health Research Board 2014) for an account of a seminar on community courts organised by the DCBA).
  - In July 2014, the Joint Oireachtas Committee on Justice, Defence and Equality published its report on community courts, recommending that a pilot community court be established in central Dublin “under the supervision of a single judge, supported by an implementation group and with the support of local community groups and services” (Joint Committee on Justice Defence and Equality 2014). Responding to the recommendation, the Minister for Justice and Equality, Frances Fitzgerald TD, stated her intention to bring forward proposals for the establishment of such a court: “I believe that appropriate planning is the key to getting an effective court in place and it will also entail significant consultation with all stakeholders including the community itself” (Department of Justice and Equality 2014).
  
- A working group of justice sector officials has been established and is currently considering proposals for a community justice intervention-type programme. The aim is to build on the

Garda Síochána's Adult Cautioning Scheme, which has the potential to respond more effectively to one-off and repeat low-level offending. The main focus is on prompt processing, aimed at reducing the risk of re-offending while also ensuring that referrals to appropriate services are immediate (Fitzgerald 2016, 31 May). The main issue is determining which model is most suited to the Irish context. Minister Fitzgerald is hoping to have something more concrete to announce in the near future.

- Following a series of pilots started in 2007, the Irish Sentencing Information System (ISIS) now maintains an online database with information on sentencing in the criminal courts. The aim is to have a computerised information system, on sentences and other penalties imposed for offences in criminal proceedings, which may inform judges when considering the sentence to be imposed in an individual case. The sentencing information system enables a judge, by entering relevant criteria, to access information on the range of sentences and other penalties that have been imposed for particular types of offences in previous cases. The project is overseen by a steering committee of judges, together with an expert on sentencing law, appointed by the Courts Service Board. See section 1.2.1 of the 2015 Legal workbook (Health Research Board and Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2016) for an account of the most recently available report published by ISIS on the sentencing practice of the courts in relation to the offences of possession or importation of controlled drugs for the purpose of sale or supply.

### 3. New developments

#### 3.1 Changes in laws in the last year

##### **Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016<sup>26</sup>**

Following on from the Criminal Justice (Spent Convictions) Bill 2012, the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, which was enacted on 11 February 2016, commenced in full on 29 April 2016 (Fitzgerald 2016, 22 June).

Under the Act, once specific conditions have been met, certain convictions held by an individual, subject to specified limitations, can be classified as spent after seven years. At the time of the commission of the offence, the individual must be aged 18 years or over and be a natural person. The person should have served, undergone, or complied with the sentence or order enforced by the court, which should be of no more than 12 months. Additionally, the sentence should not be an excluded sentence. Only one conviction can be classified as spent. However, where an individual has received more than one sentence for two or more offences relating to same event, this can be viewed as one conviction.

The main outcome of this Act is that legally, individuals are under no obligation to disclose certain spent convictions after seven years. Minister Fitzgerald stated that "the Spent Convictions and Certain Disclosures Act 2016 is an important milestone in the rehabilitation of offenders in Ireland. This legislation brings Ireland into line with most other EU Member States in providing that people convicted of relatively minor offences can eventually leave their past behind them and get on with their lives. The Bill should be of particular benefit to ex-offenders, who often find their path to employment blocked, once they admit to a previous offence. Society's interests and those of the offender who mends his or her ways can coincide. It is in everyone's interest that offenders who have paid their debt to society and want to leave crime behind are encouraged to do so. Insofar as this legislation can help, then it is to be welcomed by all" (Fitzgerald 2016, 29 April).

However, the Irish Penal Reform Trust (IPRT) purport that although they are satisfied that the Act will help many to move on from their past, the legislation is limited in that it only applies to certain offences. The IPRT hope that this legislation will eventually be extended to cover crimes other than

<sup>26</sup> Available at <http://www.oireachtas.ie/viewdoc.asp?DocID=31880&CatID=87>

minor motoring and public order offences, and that the terms of imprisonment allowed under the Act will be extended from 12 months to 48 months (Irish Penal Reform Trust 2016, 29 April).

### **Public Transport Act 2016<sup>27</sup>**

Following on from the Public Transport Bill 2015, the Public Transport Act 2016 was enacted on 8 February 2016. The aim of the Act is to provide technical amendments to the following Acts:

- Dublin Transport Authority Act 2008
- Taxi Regulation Act 2013
- Road Traffic Act, 1961
- Railway Safety Act 2006
- State Airports Act 2004.

The amendment to the Dublin Transport Authority Act 2008 allows an authorised person or member of the Garda Síochána who suspects that a person is committing or has committed an offence under Section 15 of the MDA 1977 to remove or escort an individual from any form of public passenger transport. An arrest can be made:

- if justified, or
- if the individual is not willing to provide a name or address, or
- if the individual gives a false name and address.

### **Misuse of Drugs (Amendment) Act 2016<sup>25</sup>**

Following increased drug-related violence, and the emergence of new psychoactive substances in the Irish drug market, it became necessary to expedite a shortened version of the Misuse of Drugs (Amendment) Act 2016, which was enacted on 27 July 2016. The aim of the Act is to amend schedules to the Misuse of Drugs Act 1977 to 2015.<sup>28</sup>

#### ***Provisions of the new Act***

The main provisions of the 2016 Act include the addition of new substances, revocation of regulations and orders confirmed in the Misuse of Drugs (Amendment) Act 2015,<sup>29</sup> and some technical amendments:

#### *Addition of new substances*

A number of new substances are to be added to the existing list of controlled substances, including:

- Zopiclone
- Zaleplon
- Phenazepam
- Lisdexamfetamine
- Clockwork Orange
- MT-45
- 25B-NBOMe
- 25C-NBOMe
- 4,4'-DMAR
- MDMB-CHMICA

The inclusions will allow law enforcement authorities to deal with illegal trafficking in Ireland more effectively, for example in the case of on-street dealing of prescription medications, some of which are not controlled by current legislation (Byrne 2016, 6 July). In addition, the legislation will allow Ireland to fulfil its obligations in accordance with EU directives such as EU Council Decision 2005/387/JHA<sup>30</sup> (which demands information exchange, risk assessment and control of new psychoactive substances), the United Nations Single Convention on Narcotic Drugs 1961,<sup>31</sup> and United Nations Convention on Psychotropic Drugs 1971.<sup>32</sup>

#### *Revocation of ministerial regulations and orders*

Section 3 of the Act amends Section 5 of the MDA 1977 and allows the Minister of Health to revoke ministerial regulations and orders confirmed by the Misuse of Drugs (Amendment) Act 2015.<sup>33</sup> The

<sup>27</sup> Available at <http://www.irishstatutebook.ie/eli/2016/act/3/enacted/en/print.html>

<sup>28</sup> Available at <http://www.irishstatutebook.ie/eli/1977/act/12/enacted/en/html>

<sup>29</sup> Available at <http://www.irishstatutebook.ie/eli/2015/act/6/enacted/en/html>

<sup>30</sup> Available at <http://www.emcdda.europa.eu/topics/law/drug-law/texts?pluginMethod=eldd.showlegaltextdetail&id=3301&lang=en&T=2>

<sup>31</sup> Available at [https://www.unodc.org/pdf/convention\\_1961\\_en.pdf](https://www.unodc.org/pdf/convention_1961_en.pdf)

<sup>32</sup> Available at [https://www.unodc.org/pdf/convention\\_1971\\_en.pdf](https://www.unodc.org/pdf/convention_1971_en.pdf)

<sup>33</sup> Available at <http://www.irishstatutebook.ie/eli/2015/act/6/enacted/en/pdf>

aim of this amendment is to enable the Minister to create new regulations or orders as necessary to control new substances under the Act.

#### *Technical amendments*

The Act will transfer responsibility for issuing licences under the MDA 1977 from the Minister for Health to the Health Products Regulatory Authority, which was a provision in the Irish Medicines Board (Miscellaneous Provisions) Act 2006.<sup>34</sup> Finally, following alterations to the Nurses and Midwives Act 2011,<sup>35</sup> the Act will bring up to date all references to nurses and midwives in the MDA 1977.

#### **Commencement**

Commencement of the Act will involve a two-step process. The first stage involves the control of substances in the Act. The second stage involves the drafting of regulations, which are required in order to enable legitimate users (for example, patients with prescriptions) to access controlled substances. The Act will commence when appropriate regulations are in place.

#### **Extensive debate**

As the Act progressed through the Dáil and Seanad, extensive debate occurred among deputies, though the amendments were predominantly welcomed. In light of recent events in Ireland, Deputy Lahart said that it was clear that there was a necessity to reinforce the legislation around drug misuse (2016, 6 July). Deputy Chamber argued that allowing law enforcement agencies to pursue gangs that control the supply and sale of drugs was an essential route to targeting drug-related crime in Ireland (2016, 6 July).

However, numerous concerns were raised that this Act was not going to address the root causes of the problem. For example:

- Deputy O'Brien purported that the Act was being rushed at the request of the Garda Síochána, and raised concerns that neither drug service providers nor medical practitioners were consulted. He further argued that the Act "will criminalise vulnerable drug addicts", and purported that a model of decriminalisation of drugs for personal use was necessary. It was argued that this should be centred around evidence and based on International best practice, for example the Portuguese model. He cautioned that thus far, the introduction of this kind of Act goes against Ministerial talk about availing of evidence-based practice, which seems to be ignored in this instance (2016, 6 July).
- Deputy O'Reilly viewed the Act as solving only half the problem, namely drug crime, without addressing any measures to provide support to help addicts, nor, in his view, did it address the socioeconomic impacts of addiction nor the issue of drugs overall. Deputy O'Reilly further argued that although this legislation would alter drug-related anti-social behaviour, and increase Garda presence and capability, it was not targeting the root causes of the problem (2016, 6 July).
- While Deputy Quinlivan stated that "criminalising young people who, more often than not, are already disadvantaged is a lazy and bankrupt response to what is an exceptionally serious issue ... the legislation will not work as it offers nothing to address the root causes of this problem, which are disadvantage, marginalisation and the political indifference of the middle class" (Quinlivan July, 7 July).
- Another issue raised was the lack of resources and funding.

A further Misuse of Drugs (Amendment) Bill, which aims to establish supervised injection rooms, is currently being presented to the Government.

### **3.2 Changes in the implementation of the law in the last year**

#### **Court outcomes for drug offences**

<sup>34</sup> Available at <http://www.irishstatutebook.ie/eli/2006/act/3/enacted/en/html>

<sup>35</sup> Available at <http://www.irishstatutebook.ie/eli/2011/act/41/enacted/en/print>

The Courts Service publishes data on the outcomes for drug offences in its annual report. The latest report relates to the year 2015 (Courts Service 2016). In 2015, the District Court received 405,007 offences, and made orders in respect of 298,797 – a 4.5% decrease on the 312,861 orders made in 2014. Orders made in respect of drug offences increased by 1.6% between 2014 (11,877) and 2015 (12,310). Of these, 3,076 were struck out or dismissed, 2,234 led to a fine, 1,731 led to probation, and 323 led to imprisonment or detention.

There were 14,119 offences received in the Circuit Court, (a higher court with the jurisdiction to impose more severe sentences,) involving 4,172 defendants. There were 1,432 drug offences involving 434 defendants; 1,307 resulted in a guilty plea, while 197 led to imprisonment (Courts Service 2016). For further information, see Drug market and crime workbook section 1.2.1 and Tables T1.2.1.1 to T1.2.1.9.

### Prison sentences for drug offences

In a written answer to a Parliamentary Question, the Tánaiste and Minister for Justice and Equality (Deputy Frances Fitzgerald) provided data from the Irish Prison Service which indicate that on 30 April 2016, there were 3,756 prisoners in custody across the prison system. Of these, 381, or 10%, were serving sentences for drug-related offences. It is not possible to provide the number of persons on suspended sentences for drug offences (Fitzgerald F 2016 31 May).

Table 3.2.1 provides a breakdown of offences, taken from the most recent snapshot of the prison population, carried out on 30 April 2016. The figures include the length of the sentence in each case.

**Table 3.2.1 Irish Prison Service Custody data on 30 April 2016**

Data on 30 April 2016	< 3 mths	3 to 6 mths	6 to 12 mths	1 to 2 yrs	2 to 3 yrs	3 to 5 yrs	5 to 10 yrs	10+ yrs	Total
Cultivation of cannabis plants and opium poppy	0	0	1	1	3	7	3	0	15
Possession for sale or supply drugs valued at €13,000 or more	0	0	0	2	5	20	38	26	91
Possession of drugs for the purpose of sale or supply	0	6	15	26	26	44	66	32	215
Unlawful possession of drug(s)	2	3	0	4	11	15	13	6	54
Unlawful supply or offer to supply controlled drug(s)	0	0	0	0	0	1	0	0	1
Unlawfully import or export of controlled drug(s)	0	0	0	2	0	2	1	0	5
<b>Total</b>	<b>2</b>	<b>9</b>	<b>16</b>	<b>35</b>	<b>45</b>	<b>89</b>	<b>121</b>	<b>64</b>	<b>381</b>

Note. mths = months; yrs = years.  
Source: (Fitzgerald F 2016 31 May)

### Recidivism

Recidivism rates can act as a proxy as to whether penalties for offending act as a deterrent to future offending behaviour. The most recent recidivism data available for Ireland indicate that 47.5% of prisoners released in 2009 reoffended within three years (Central Statistics Office 2015). Of those that reoffended, 46.7% were initially imprisoned for a controlled drug offence. Although the largest proportion of reoffenders were reconvicted for controlled drug offences (29%), reconvictions were also evident for other offence categories, for example:

- public order and other social code offences (28%)
- theft and related offences (14%)
- dangerous or negligent acts (10%)
- offences against Government, Justice Procedures and Organisation of Crime (6%)
- burglary and related offences (4%). (Central Statistics Office 2015)

See section 1.1.2 of this workbook for penalties for reoffending

### 3.3 Evaluation of the law in the last year

No evaluations of the law were carried out in the past 12 months in Ireland. The most recent evaluations available are by the Irish Sentencing Information System (Mackey 2014), (Law Reform Commission 2015), and (Smyth, *et al.* 2015), see section 1.1.3 and T3.3 of the 2015 Legal workbook (Health Research Board and Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2016).

### 3.4 Major political discussions in the last year relating to legislation and implementation

#### Criminal Justice (Amendment) Act 2009

As has occurred in previous years, on 15 June 2016, the motion that section 8 of the Criminal Justice (Amendment) Act 2009 should continue in operation from 30 June 2016 to 29 June 2017 was brought before the Seanad (Buttimer J 2016, 15 June). The Seanad divided (Tá, 33; Níl, 6), and the motion was carried. The division took place in the Dáil on 16 June 2016, and the question was declared carried (Tá 96; Níl 33). It was noted that despite Section 8 of the Criminal Justice (Amendment) Act 2009 being reviewed annually, it has not been availed of since 2009 (Stanton D 2016, 15 June); (Bacik 2016, 15 June). Further information on Section 8 can be found in section 1.1.4 of this workbook.

#### Proceeds of Crime (Amendment) Act 2016<sup>36</sup>

In the opening speech, the Minister for Justice and Equality (Deputy Frances Fitzgerald) argued that despite the success of the Irish model based on the Proceeds of Crime Act, 1996 for depriving criminals of the proceeds of their crimes, “another turning point had been reached, in that murder has been brought to our streets”. According to the Minister, the only way to respond is to “deprive them of their wealth” (Fitzgerald 2016, 5 July). The Proceeds of Crime (Amendment) Act, which is viewed as a key legislative change, was enacted on 27 July 2016. It aims to amend the Proceeds of Crime Act, 1996<sup>37</sup> by providing for the administrative seizure and detention of property other than land by the Criminal Assets Bureau (CAB).

Under Section 1A, a Bureau officer can seize property initially for 24 hours if they have reasonable grounds for suspecting that it is the proceeds of a crime. If the CAB is carrying out an investigation with a view to applying to a High Court for an interim order or interlocutory order, this can be extended to 21 days.

Sections 4, 5, and 6, amend sections 2, 3, and 8 of the Principal Act by reducing the threshold value of property subject to the Act from €13,000 to €5,000.

#### Criminal Justice Act 1994 (Section 44) Regulations 2016<sup>38</sup>

In July 2016, a motion that was put before the Dáil and Seanad to approve draft regulations under Section 44 of the Criminal Justice Act, 1994 was approved. Section 44 sets the prescribed sum for the purposes of Section 38, which allows Gardaí or Revenue Commissioners officers to seize and detain cash that is suspected of being the proceeds of crime. The draft regulation will repeal old regulations, and reduce the prescribed sum from €6,349 to €1,000. The Section 44 Regulations can only be made once the draft regulations have been laid before, and approved by resolutions of, each house (Fitzgerald 2016, 6 July). The aim of reducing the prescribed sum is to allow law enforcement to not only target gang members at the top, but also those who are lower down, such as foot soldiers who play a large role in implementing criminal operations (Fitzgerald 2016, 6 July).

#### Parole Bill 2016<sup>39</sup>

<sup>36</sup> Available at <https://www.oireachtas.ie/documents/bills28/acts/2016/a816.pdf>

<sup>37</sup> Available at <http://www.irishstatutebook.ie/eli/2016/act/8/enacted/en/print.html>

<sup>38</sup> Available at <http://www.irishstatutebook.ie/eli/2016/si/436/made/en/print>

The Parole Bill 2016 was initiated on 25 May 2016. The main objectives of the Bill are:

- to establish an independent Parole Board on a statutory basis
- to give the independent statutory board responsibility for decisions to grant parole, thereby removing responsibility for granting parole from the Minister for Justice and Equality
- to establish clear criteria for granting parole so that citizens, victims of crime and prisoners know how to apply and how parole is granted
- to allow victims of crime a say in the process. (O'Callaghan 2016, 15 June).

In his opening statement, Deputy O'Callaghan was pleased to introduce this Bill as the system in its current state is unsatisfactory due to the fact that it is not based on statute. Deputy O'Callaghan also argued that it was not right that the power to grant parole is given to one person only. The Parole Bill was not opposed in the Dáil, and was referred to the Select Committee on 15 June 2016.

#### **Road Traffic Bill 2016<sup>40</sup>**

As stated in the 2015 Legal workbook (Health Research Board and Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2016), the General Scheme Road Traffic Bill 2015 was drafted with the aim of allowing Gardaí to carry out chemical roadside drug testing. It is considered an important tool to enable Gardaí to address driving under the influence of drugs (Donohoe 2016, 2 February). For further information on roadside drug testing, see presentation by Mr Denis Cusack of the Medical Bureau of Road Safety to the Joint Oireachtas Committee on Transport and Communication (Cusack D 2015).

In January 2016, the Road Traffic Bill 2016 was initiated and passed through the Seanad. However, following dissolution of the 31<sup>st</sup> Dáil in February 2016, the Bill fell. A recent statement by the Taoiseach indicated that this Bill has been restored to the Dáil Clár at the Second Stage (Taoiseach 2016, 31 May). The debate on this Bill resumed after summer recess on 27 September 2016.

## **4. Notes and queries**

### **4.1 Recent developments in the debate on cannabis legislation**

On 21 July 2016, Brid Smith TD introduced a Private Members' Bill, the Cannabis for Medicinal Use Regulation Bill 2016, in the Dáil (Smith 2016, 21 July). Deputy Smith explained that the Bill is intended to "give some structure to what is becoming an increasingly demand-led medication". She mentioned specific groups of sufferers leading the demand, including those with Dravet syndrome (a severe form of epilepsy generally found in children), those with multiple sclerosis, and those suffering from various forms of cancer. Deputy Smith outlined how the Bill would "give some structure":

"... we are proposing to establish a cannabis regulation authority which would bear the costs that may be incurred by the State as a result rather than the State bearing the cost. Anybody who holds this cannabis-related product or cannabis for distribution through prescription would have to be licensed to do so. There would be restrictions on selling it, holding it and only people with scripts could obtain it. There are further issues in the Bill on labelling, testing, advertising and having due regard for the needs to users of this product and to promote awareness and an understanding more broadly of cannabis and its effects." (Smith 2016, 21 July)

Asked about the Bill in a subsequent media interview, the Minister for Drugs, Catherine Byrne TD, commented that "situations where cannabis was used to relieve the pain of seriously ill people

<sup>39</sup> Available at <http://www.oireachtas.ie/documents/bills28/bills/2016/2916/b2916d.pdf>

<sup>40</sup> Available at <https://www.oireachtas.ie/documents/bills28/bills/2016/316/b316s.pdf>

should be examined. Maybe we should look at it, but it needs to go through the process of passing all the medical checks". (Bardon and Holland 2016, 1 August). The Government did not oppose the Bill, and it has proceeded to the second stage, to be debated in Private Members time.

## Drug decriminalisation

The debate on drug decriminalisation, which has focused on the decriminalisation of possession of all drugs, not just cannabis, has continued during the past 12 months. In particular, the topic emerged extensively during the debates for the Misuse of Drug (Amendment) Act 2016. The former Minister for Drugs Strategy, Senator Aodhán Ó Ríordáin, was an advocate for decriminalisation of drugs for personal use. However, following the recent change in government, there has been less focus on this area. The current Minister for Drugs has made a commitment to continue exploring the issue. See section 3.4 of the Policy workbook for further information.

## 5. Sources methodology and references

### 5.1 Sources

<http://www.irishstatutebook.ie/>  
<http://www.lawreform.ie/>  
<http://www.irishsentencing.ie/>  
<http://www.hpra.ie/>  
<http://www.drugsandalcohol.ie/>  
<http://www.oireachtas.ie/parliament/>

### 5.2 References

- (2016, 6 July) Parliamentary Debates Dáil Éireann (Official report: unrevised): Misuse of Drugs (Amendment) Bill 201: Second stage 6, Vol. 916 No. 3. Available at <http://www.drugsandalcohol.ie/25774/>
- Bacik, I. (2016, 15 June) Seanad Debate – Criminal Justice (Amendment) Act 2009: Motion Vol 246 No 2. Available at <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/takes/seanad2016061500002?opendocument&highlight=Criminal%20Justice%20Amendment%20Act%202009%20Motion#XX00050>
- Bardon, S. and Holland, K. (2016, 1 August). TD's cannabis bill "simply trying to assist people in pain". *Irish Times*. Retrieved from <https://www.highbeam.com/doc/1P2-39888160.html>
- Buttimer J (2016, 15 June) Seanad Eireann Debate – Criminal Justice (Amendment) Act 2009: Motion Vol 246 No 2. Available at <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/takes/seanad2016061500002?opendocument&highlight=Criminal%20Justice%20Amendment%20Act%202009%20Motion#XX00050>
- Byrne, C. (2016, 6 July) Dail Eireann debate. Misuse of Drugs (Amendment) Bill 2016: second stage, Vol. 916 No. 3 Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016070600055?opendocument#WWW00300>
- Central Statistics Office (2015). Prison recidivism 2009 cohort. Cork. Available at <http://www.cso.ie/en/releasesandpublications/er/prir/prisonrecidivism2009cohort/>
- Connolly, J. (2006). Drugs and crime in Ireland. HRB Overview Series 3. Health Research Board, Dublin. Available at <http://www.drugsandalcohol.ie/6045/>
- Courts Service (2016). Courts service annual report 2015. Courts Service, Dublin. Available at <http://www.drugsandalcohol.ie/25854/>
- Cusack D (2015) General scheme Road Traffic Bill 2015; Roadside testing for drugs in drivers., Presentation to the Joint Oireachtas Committee on Transport and communications. Available at <http://www.drugsandalcohol.ie/23908/>
- Department of Defence (2009, 24 April) Minister for Defence, Mr Willie O'Dea, TD, revises the Compulsory Random Drug Testing Programme in the Defence Forces. Available at



<http://www.defence.ie/WebSite.nsf/Document+ID/304637A2045EC251802575A2004BBE9E?openDocument>

- Department of Health (2015). *National Drugs Strategy 2009-2016: progress report to end 2014*. Department of Health, Dublin. Available at <http://www.drugsandalcohol.ie/23935/>
- Department of Justice and Equality (2014) *Minister Fitzgerald welcomes reports of Joint Oireachtas Committee on Justice, Defence and Equality*. Press release issued by Department of Justice and Equality. Accessed at <http://www.justice.ie/en/JELR/Pages/PR14000188>
- Donohoe, P. (2016, 2 February) *Dáil Éireann debate. Written answer 580 legislative measures*. Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016020200083?opendocument#WRKK02150>
- European Monitoring Centre for Drugs and Drug Addiction (2015). *Alternatives to punishment for drug-using offenders*. Luxembourg: Publications Office of the European Union. Available at <http://www.drugsandalcohol.ie/24320/>
- Fitzgerald, F. (2016, 5 July) *Seanad Éireann Debate – Proceeds of Crime (Amendment) Bill 2016: second stage*. Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/seanad2016070500002?opendocument#EE01000>
- Fitzgerald, F. (2016, 6 July) *Dáil Éireann Debate unrevised Criminal Justice Act 1994: Motion, Vol. 916 No. 3*. Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016070600052?opendocument#TTT01100>
- Fitzgerald, F. (2016, 16 June-a) *Dáil Éireann debate. Written answer 41 drugs in prisons*. Accessed on at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016061600052?opendocument#WRB01050>
- Fitzgerald, F. (2016, 16 June-b) *Dáil Éireann debate. Written answer 43 drug treatment court*. Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016061600052?opendocument#WRB01450>
- Fitzgerald, F. (2016, 22 June) *Dail Éireann debate. Written answer 113 legislative programme*. Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/DebatesWebPack.nsf/takes/dail2016060800054?opendocument&highlight=Frances%20Fitzgerald#WRD02650>
- Fitzgerald, F. (2016, 29 April) *Commencement of Spent Convictions Act and National Vetting Bureau Act*. Available at <http://www.justice.ie/en/JELR/Pages/PR16000094>
- Fitzgerald, F. (2016, 31 May) *Dáil Éireann debate. Written answer 105 judicial reviews*. Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016053100052?opendocument#WRD03650>
- Fitzgerald F (2014, 24 September) *Dail Éireann debate. Written answer 109, Prisoner data*. Available at <http://www.drugsandalcohol.ie/22695/>
- Fitzgerald F (2016 31 May) *Dail Éireann Debate. Written answer 230 prisoner data*. Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/DebatesWebPack.nsf/takes/dail2016053100058?opendocument&highlight=Criminal%20Justice%20Amendment%20Act%202000%20Motion#WRK02250>
- Flynn, S. and Yeats, P. (1985). *Smack: the criminal drugs racket in Ireland*. Gill & Macmillan, Dublin.
- Health Research Board (2012). *2012 National Report (2011 data) to the EMCDDA by the Reitox National Focal Point. Ireland: new developments, trends and in-depth information on selected issues*. Health Research Board, Dublin. Available at <http://www.drugsandalcohol.ie/18808/>
- Health Research Board (2014). *2014 National Report (2013 data) to the EMCDDA by the Reitox National Focal Point. Ireland: new developments, trends*. Health Research Board, Dublin. Available at <http://www.drugsandalcohol.ie/23170/>
- Health Research Board and Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction (2016). *Ireland: national report for 2015*. Health Research Board, Dublin. Available at <http://www.drugsandalcohol.ie/26690/>

- Hogan, M. J. G. and Court of Appeal (2015). Bederev -v- Ireland & ors. Courts Service, Dublin. Available at <http://www.drugsandalcohol.ie/24355/>
- Irish Focal Point (Reitox) (2011). 2011 National Report (2010 data) to the EMCDDA by the Reitox National Focal Point. Ireland: new developments, trends and in-depth information on selected issues. Health Research Board, Dublin. Available at <http://www.drugsandalcohol.ie/16812/>
- Irish Penal Reform Trust (2016, 29 April) The Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 has finally commenced. Available at <http://www.iprt.ie/contents/2905>
- Joint Committee on Justice Defence and Equality (2014). Report on hearings in relations to community courts. Houses of the Oireachtas, Dublin. Available at <http://www.drugsandalcohol.ie/22396/>
- Keane, D. (1997). Detention without charge and the Criminal Justice (Drug Trafficking) Act 1996: Shifting the focus of Irish Criminal Justice away from trial court to Garda station'. Irish Criminal Law Journal, 7, 1-17.
- Kilcommins, S., O'Donnell, I., O'Sullivan, E. and Vaughan, B. (2004). Crime, punishment and the search for order in Ireland. Institute of Public Administration, Dublin.
- Law Reform Commission (2011). Consultation paper: mandatory sentences. Law Reform Commission, Dublin. Available at <http://www.drugsandalcohol.ie/16789/>
- Law Reform Commission (2013). Report: mandatory sentences. LRC 108–2013. Law Reform Commission, Dublin. Available at <http://www.drugsandalcohol.ie/20242/>
- Law Reform Commission (2015). Search warrants and bench warrants. Law Reform Commission, Dublin. Available at <http://www.drugsandalcohol.ie/25855/>
- Mackey, K. (2014). Analysis of sentencing for possession or importation of drugs for sale or supply. Irish Sentencing Information System, Dublin. Available at <http://www.drugsandalcohol.ie/21866/>
- McCutcheon J and Walsh D (1999). Seizure of criminal assets: an overview. Irish Criminal Law Journal, 9, 127-132.
- National Crime Council (2007). Problem solving justice: the case for community courts in Ireland. Stationery Office, Dublin. Available at <http://www.drugsandalcohol.ie/24889/>
- O'Callaghan, J. (2016, 15 June). Parliamentary Debates Dáil Éireann (Official report: unrevised): Parole Bill 2016: Second Stage [Private Members] Vol 913. No 2. Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016061500036?opendocument#JJ00100>
- Pike, B. (2008). Development of Ireland's drug strategy 2000-2007. HRB Overview Series 8. Health Research Board, Dublin. Available at [www.drugsandalcohol.ie/12152/](http://www.drugsandalcohol.ie/12152/)
- Quinlivan, M. (July, 7 July) Parliamentary Debates Dáil Éireann (Official report: unrevised): Misuse of Drugs (Amendment) Bill 2016, Second stage (Resumed), 1. Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/DebatesWebPack.nsf/takes/dail2016070700030?opendocument&highlight=Quinlivan>
- Ryan A (1997). 'The Criminal Justice (Drug Trafficking) Act 1996: Decline and fall of the right to silence'. Irish Criminal Law Journal, 7, (1), 22-37.
- Smith, B. (2016, 21 July) Dail Eireann debate. Cannabis for medicinal use regulation Bill 2016: first stage, Vol. 919 No. 2. Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016072100021?opendocument#T01700>
- Smyth, B. P., James, P., Cullen, W. and Darker, C. D. (2015). "So prohibition can work?" Changes in use of novel psychoactive substances among adolescents attending a drug and alcohol treatment service following a legislative ban. International Journal of Drug Policy, 26, (9), 887-889. Available at <http://www.drugsandalcohol.ie/24190/>
- Stanton D (2016,15 June) Dail Eireann Parliamentary Debates – Criminal Justice (Amendment) Act 2009: Motion Vol 913 No 2 Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016061500053?opendocument#CCC00600>
- Strategic Review Group on Penal Policy (2014). Strategic review of penal policy. Department of Justice and Equality, Dublin. Available at <http://www.drugsandalcohol.ie/22657/>

Taoiseach (2016, 31 May) Dáil Éireann debate. Order of business. Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016053100022?opendocument>

## European Monitoring Centre for Drugs and Drug Addiction

The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) is a decentralised EU agency based in Lisbon. The EMCDDA provides the EU and its Member States with information on the nature, extent, consequences and responses to illicit drug use. It supplies the evidence base to support policy formation on drugs and addiction in both the European Union and Member States.

There are 30 National Focal Points that act as monitoring centres for the EMCDDA. These focal points gather and analyse country data according to common data-collection standards and tools and supply these data to the EMCDDA. The results of this national monitoring process are supplied to the Centre for analysis, from which it produces the annual *European drug report* and other outputs.

The Irish Focal Point to the EMCDDA is based in the Health Research Board. The focal point writes and submits a series of textual reports, data on the five epidemiological indicators and supply indicators in the form of standard tables and structured questionnaires on response-related issues such as prevention and social reintegration. The focal point is also responsible for implementing Council Decision 2005/387/JHA on the information exchange, risk assessment and control of new psychoactive substances.

### Acknowledgements

Completion of the national focal point's reports to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) depends on the support and cooperation of a number of government departments and statutory bodies. Among those to whom we would like to express our thanks are the staff of the following:

Customs Drugs Law Enforcement, Revenue  
Department of Children and Youth Affairs  
Department of Education and Skills  
Drugs and Organised Crime Unit, An Garda Síochána  
Drugs Policy Division, Department of Justice and Equality  
Drugs Policy Unit, Department of Health  
Forensic Science Ireland  
Health Protection Surveillance Centre, Health Service Executive  
Hospital In-Patient Enquiry Scheme, Health Service Executive  
Irish Prison Service  
National Advisory Committee on Drugs and Alcohol, Department of Health  
National Social Inclusion Office, Primary Care Division, Health Service Executive

We also wish to acknowledge the assistance of the coordinators and staff of local and regional Drug and Alcohol Task Forces, voluntary, community-based and other non-governmental organisations.

We wish to thank our HRB colleagues in the Evidence Centre, National Drug Treatment Reporting System, the National Drug-related Deaths Index and the HRB National Drugs Library, all of whom make significant contributions to the preparation of the national report.