

Costings of an alternative approach to personal drug possession

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Background

This work follows on from the National Drug Strategy in 2017, 'Reducing Harm, Supporting Recovery (RHSR): A Health-led Response to Drug and Alcohol Misuse in Ireland 2017-2025', which aims to provide an integrated public health approach to substance misuse. Ireland is at a pivotal stage in drug policy, with RHSR containing a strategic action to establish a Working Group to consider alternative approaches to the possession of drugs for personal use. Under Irish law, personal drug possession is an offence and this paper aims to generate an estimate of the costs it places on associated agencies of the Department of Justice and Equality (DOJE). This paper uses internationally-applied approaches to the formulation of assumptions and all of the cost estimates used in this paper are high-level and serve as descriptors of the current policy approach only. Furthermore, the paper aims to estimate costs from potential alternative scenarios. The paper starts off with an introduction to the topic by offering a background to drug-related offences in Ireland and by identifying the demographics of people who use drugs, and will subsequently provide analysis of the current and proposed policy options.

Introduction

According to the National Advisory Committee on Drugs and Alcohol (2016), 26.4% of Irish adults aged 15 years or older report using an illegal drug¹ in their lifetime. However, the prevalence of drug use differs depending on the specific age group under consideration. Some 43.8% of people between the ages of 25 and 34 have used illegal drugs during their lifetime. The latest figures from the European Centre for Monitoring Drugs and Drug Addiction (EMCDDA) suggest that drug use among people in Ireland is relatively high and the most common illicit drugs used are cannabis, opiates, cocaine and amphetamines². In 2017, almost 8% of all adults and 14% of young adults (15 to 34-years old) used cannabis.

According to the Health Research Board, 9,227 people entered drug treatment as part of the health service programme in 2016, with 38% of these entering treatment for the first time. This is a rise of 4.8% from 8,806 in 2010. The number of people who died due to an overdose in 2016 was 354 with approximately 73% due to illicit drug use according to the National Drug-Related Deaths Index³. Ireland's drug-induced mortality rate is amongst the highest in the EU, sitting fourth behind Estonia, Sweden and Norway per head of population in 2014. According to the Department of Health this figure may be higher compared to other jurisdictions due to the very

¹ Any illegal drug according to the National Advisory Council on Drugs and Alcohol refers to cannabis, ecstasy, cocaine powder, magic mushrooms, amphetamines, poppers, LSD, new psychoactive substances, mephedrone, solvents, crack and heroin.

² Part of the reason why Ireland's relative level of drug use is high may be due to good reporting compared to other jurisdictions.

³ Health Research Board, National Drug-Related Deaths Index 2015 - <https://www.hrb.ie/data-collections-evidence/alcohol-and-drug-deaths/latest-data/>.

high standards of Ireland's Drug-related Deaths Index which is calculated based on evidence from coroners' records, hospital in-patient enquiry scheme, central treatment list and the General Mortality Register. Similar standards are not adhered to in other countries. In 2016, the estimated drug-related expenditure by the Irish government represented 0.09% of gross domestic product or approximately €249 million, according to the EMCDDA. Over half of this related to health expenditure, followed by public order, recreation and social protection initiatives.

At present in Ireland, the possession of controlled drugs is a criminal offence under the Misuse of Drugs Acts 1977-2016. The severity of offence depends on the type of drug and if there is an intent to sell or supply. Based on the Irish Statute Book for the possession of cannabis or cannabis resin for personal use, the following rulings apply:

1. For a first offence, a class D fine (maximum €1,000) on summary conviction in a District Court, or a fine of €1,270 on conviction on indictment.
2. For a second offence, a class D fine or a fine of €2,540 on conviction on indictment.
3. For a third or subsequent conviction, a class C (maximum €2,500) fine can be imposed, as well as a prison sentence of not more than 12 months at the discretion of the court. On conviction on indictment, the court may decide on an appropriate fine and/or a prison sentence of up to three years.

The guidelines regarding other drugs are generally stricter, with a maximum penalty of an appropriate fine and a prison sentence of not more than 12 months for a summary conviction and not more than seven years for conviction on indictment. In the majority of personal possession cases, Gardaí will be the first to initiate proceedings in the majority of cases and if the individual is under 18, they may be referred to the Juvenile Diversion Programme to address their behaviour.

According to the Courts Service of Ireland Annual Report 2017, there were 23,216 incoming offences by 14,692 defendants for drug crime in the district courts, with the vast majority of these offences relating to personal possession. The most common action taken by the District Court in relation to these offences is to strike out, fine or initiate probation. Figures from the CSO show that approximately 72% of all drug offences in 2017 were for personal possession.

As such, the vast majority of personal possession offences brought to court are dealt with in the District Court, with a small number being sent forward to the Circuit Court due to multiple offences. Only around 1-2%⁴ of the prison population is made up of offenders on personal

⁴ Calculated based on analysis from PQ [03/07/2018 220](#).

possession charges, which reflects the fact that prison is reserved for the most serious offenders. Still, the repercussions of a personal possession offence can be long-standing for the individual and recent debate has sought alternative policies to manage people who use controlled drugs.

The current policy approach to possession for personal use relies on criminalisation and enforcement as a deterrent. As mentioned earlier a new drug strategy was put in place with the aim to provide an integrated public health approach to substance misuse. Substance misuse means the harmful or hazardous use of psychoactive substances, including alcohol, controlled drugs and the abuse of prescription medicines. Public consultation, which informed the strategy, has highlighted changing attitudes towards people who use drugs, with calls for drug use to be treated first and foremost as a health issue.

The unintended consequence of the current approach is that offenders can be stigmatised by a criminal record that restricts their education, employment and future prospects. Furthermore, a criminal record can marginalise them within society and has the potential to spur problematic drug use in response. This has led to calls to quickly divert people into early health interventions and treatments to help prevent problematic drug use. Ultimately, it could serve as a more efficient response by reducing drug dependence and the negative effects of a criminal charge on the person who uses drugs.

Recent reports on drug policy have recommended health interventions for personal drug possession cases be introduced. This approach has been adopted in Portugal, where a recent study ([Goncalves et al. 2015](#)) suggested the social cost of drug use reduced by about 12% over a five-year period. This was due to the combined strategy of decriminalisation and the implementation of a health-led approach to drug policy. Although the savings were largely driven by decreased costs to the justice system, the study identified significant savings in relation to health-related costs too. This was particularly due to the reduction in drug-induced mortalities. It is worth highlighting however that Portugal is a civil law jurisdiction and its approach may not be practicable for a common law country like Ireland. Ultimately, any move to reform the current policy approach must be carefully considered, as warned in a UK analysis on licensing and regulating cannabis (2013)⁵. The authors wrote: “Any considered view on the question of reform needs to take account of a large number of factors and be contingent on a

⁵ Bryan, Mark., et al. (2013). *Licensing and regulation of the cannabis market in England and Wales: towards a cost-benefit analysis*, The Beckley Foundation and the Institute for Social and Economic Research, University of Essex - <https://www.iser.essex.ac.uk/research/publications/521860>.

specific view about the detailed nature of the reform. Few of the most vocal participants in the debate on drug policy reform take a sufficiently broad perspective.”

Given the current policy on personal drug use, this paper will assess the costs of this policy to the Criminal justice system. Importantly, it will also identify and examine the potential costs associated with different options including an Adult Caution Scheme which is being considered and a health-led diversion.

The estimates in this paper are high-level that relate to tangible monetary costs and do not generally take account of intangible costs, such as the emotional costs to society of personal drug use. Ultimately, the cost estimates should be viewed as an indication of the current distribution of drug-related-costs across the criminal justice and health systems, as well as describing the potential shift in health and justice costs under any new arrangements.

The rest of this paper will set out the methodological approach and provide a detailed account of the assumptions used for the various estimates. It will also apply scenario analysis to determine the potential effects of any change in drug policy and will provide information on the results of these scenarios, as well as a conclusion comparing the net benefits of each policy option.

Demographic profiles

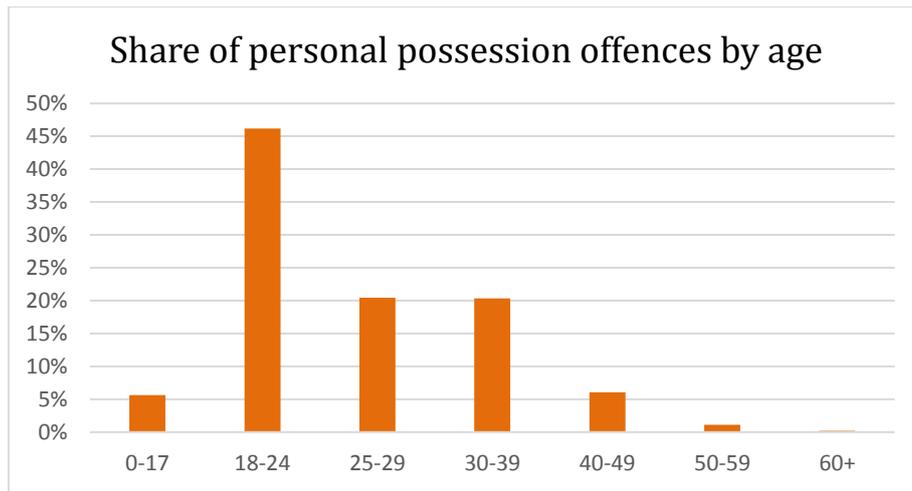
People aged 18 to 24 account for the largest share of personal possession offences, at over 45%. This is hardly surprising given that young people make up the largest group of people who use controlled drugs. Figures from the EMCDDA show that 16% of 15 to 24-year-olds used cannabis in 2017⁶, representing around 92,599 users for that age group alone. A further 79,480 of 25 to 34-year-olds are estimated to have used cannabis in 2017, with both groups combined accounting for 76% of all cannabis use.

Figure 1 below describes the age profile of offenders for personal possession across all drug groups.

Figure 1

⁶ European Monitoring Centre for Drugs and Drug Addiction:

<http://www.emcdda.europa.eu/system/files/publications/4520/TD0616149ENN.pdf>



Source: IGEES Unit DOJE

A demographic breakdown of people seeking treatment for problematic drug use shows that men accounted for 72% of all cases in 2016, according to the Health Research Board (HRB)⁷. Some two-thirds were unemployed and 35% had left education before the age of 16. The median age for seeking treatment was 30, while 7% were under the age of 18 and 10% were homeless. While these figures cannot be used to describe the profile of all people who use drugs, they do provide insight into the type of people who are availing of current treatment services. Table 1 below describes the demographic profile of over 9,200 people who use drugs and who sought treatment in 2016.

⁷ Health Research Board, *Drug Treatment in Ireland 2010-2016* - http://www.hrb.ie/fileadmin/2.Plugin_related_files/Publications/2018_pubs/Alcohol_and_Drugs/NDTRS/Drug_Treatment_in_Ireland_2010_to_2016_Bulletin.pdf.

Table 1

| Socio-demographics of cases treated, 2016 | | |
|--|----------------|-------------------------|
| | Absolute value | As a share of all cases |
| Median age | 30 | - |
| Under 18 | 629 | 7% |
| Male | 6,676 | 72% |
| Homeless | 886 | 10% |
| Traveller | 296 | 3% |
| Left education before | | |
| 16 | 3,236 | 35% |
| Employed | 1,028 | 11% |
| Unemployed | 6,107 | 66% |
| Retired/unable to work | 805 | 9% |

Source: HRB

It is noteworthy that opiates is reported as the most prevalent drug for the majority of people who avail of treatment services. Cannabis is the second most prevalent problem drug, while cocaine is the third.

Table 2 below describes the main problem drug as a share of all cases seeking treatment in 2016.

Table 2

| Main problem drug reported, % of all cases | |
|---|-----|
| Opiates | 47% |
| Cannabis | 26% |
| Cocaine | 12% |
| Benzodiazepines | 10% |
| Other ⁸ | 4% |

Sources: HRB, IGEES Unit DOJE

The trend for cannabis is particularly striking given perceptions around its relative harmlessness. This may be reflective of recent increases in the potency of cannabis, which may be leading to more noticeable health effects. Additionally, polydrug use was reported in 63% of all cases seeking treatment, which was offered across hospitals, community health organisations, doctors' surgeries, pharmacies and prisons.

Breakdown of Personal Possession Offences

While personal possession makes up around three-quarters of all recorded drug offences, it only accounts for 6% of total crime. The cost of the crime can therefore not be expected to exceed 6% of the budget of the DOJE and associated agencies. In actuality, the cost burden is likely to be significantly less considering that personal possession offences can be dealt with swiftly compared to more serious crimes like robbery and assault. Further sections will thus discuss the costs to the criminal justice system and the assumptions used to determine these costs. Table 3 below describes an estimate of the most common types of drugs associated with personal possession offences.

⁸ Other includes Z drugs, amphetamines, new psychoactive substances and MDMA.

TABLE 3

| Drug/Equipment Type | As a share of all cases: |
|----------------------------|---------------------------------|
| Cannabis | 72% |
| Heroin | 9% |
| Cocaine | 9% |
| Amphetamine | 4% |
| Other | 4% |
| Benzodiazepines | 1% |
| Not specified | 1% |
| Crack cocaine | 0.4% |
| Steroids | 0.2% |
| Equipment | 0.1% |

Source: Garda Analysis Service

Methodology

This paper estimates costings for personal drug use under a number of different policy scenarios using approaches widely used in a cost benefit analysis. The rest of this paper will describe the assumptions and estimates used for the analysis of a potential alternative approach to drug policy. The analysis will focus heavily on the cost implications for the Criminal Justice System, noting the limited availability of health-based costs (e.g. no health data available for people who use drugs problematically and interact with Criminal Justice System), and will only assess scenarios that are realistic in an Irish context.

It is worth reiterating that the figures calculated are high-level given the challenges posed by the availability of recent and consistent data on personal possession incidents. Often the data is confounded by the link between personal possession offences and other accompanying charges and all attempts have been made to ensure that only cases where personal possession is the primary offence have been used. However, there remains the potential for the estimates to be skewed by the absence of relevant data and due to confounding factors in the existing data, although all efforts have been made to provide as accurate an overview as possible.

Please note that these cost estimations are preliminary results based on the data available to us through each relevant body and they should be regarded as indicative only. Given this, it is

worth paying more attention to the proportionate change in spending associated with each scenario, rather than the absolute values.

Current Policy

The next section will describe the economic cost of the existing policy approach in relation to the criminal justice system. Once again, it is important to highlight that these estimates are limited by the availability of relevant data. They are, however, indicative of the distribution of the costs throughout the criminal justice system and in comparison to the health system.

1.0 Criminal Justice system

The costs to the criminal justice system due to personal drug use are broadly distributed across An Garda Síochána, the Irish Probation Service and the Irish Prison Service. Significant costs are also incurred by interventions under the Garda Youth Diversion Projects (GYDP) and the Drug Treatment Court (DTC). In 2017, there were 16,850 controlled drug offences recorded across the state – almost three-quarters of these related to possession for personal use⁹. It is estimated that youth referrals to the Juvenile Diversion Programme account for almost 7.6% of personal use offences or around 960 young people in 2017¹⁰. Furthermore, around 80 offenders were active in the DTC. There were 112 referrals, accounting for approximately 330 offences based on the typical three offences required for consideration¹¹. In 2017 there were 12,589 offences recorded according to data from the Gardaí¹². However, the proportion of incidents that went to court was almost 20% for the years 2015 to 2017¹³, with an estimated 2,231 ending up in the District Court in 2017 when other offences are excluded¹⁴.

Given the minor nature of a personal possession offence, it is assumed that zero personal possession cases are sent forward for trial¹⁵. However, they may be indictable and dealt with summarily in the District Court, and a prison sentence may be imposed. This depends on the

⁹ CSO, *Recorded Crime Offences Under Reservation (Number) by Type of Offence and Year (sourced August 2018)*.

¹⁰ Number referred to the Diversion Programme is based on youth referrals as a share of all drug offences over a three-year period to obtain an average of 7.6%. The estimates are informed by figures from the CSO and the Irish Youth Justice Service.

¹¹ Drug Treatment Court – the figure of 80 is based on active participants across the gold, silver and bronze stages of treatment and includes existing participants at the time. Not all referrals are accepted into the DTC.

¹² Data sourced from Garda Pulse data in August 2018 and used throughout as the baseline number of offences in 2017.

¹³ Based on data provided by the Garda Analysis Service relating to Section 3 offences under the Misuse of Drugs Act 1977.

¹⁴ This figure strips out cases in which personal possession incidents are linked to other non-personal possession offences.

¹⁵ As explained above, the number sent forward for trial overwhelmingly involves multiple offences and would therefore be inappropriate to include in this analysis.

number of past offences against the offender and the type of drug they were caught with. On any given day, there is an estimated 30 people in prison on unlawful possession charges¹⁶.

1.1 Justice intervention programmes

Before any personal possession charge is brought, a young offender (under 18) will be assessed for suitability for the Juvenile Diversion Programme based on the severity of the crime and their admission to the incident. They will be dealt with by a Juvenile Liaison Officer (JLO) and may receive a formal or informal caution; year-long supervision; be referred to a GYDP for a community-based project, or be considered for prosecution if they do not admit to the incident.

In the case of the Diversion Programme, it is estimated that around 51% of young people are further referred to a GYDP¹⁷. This means there were around 490 referrals to a GYDP in 2017 for personal possession offences. The estimated cost per participant is determined to be €2,342 based on the total funding for the projects divided by the maximum number of referrals. This price was updated by inflation for the years 2015 to 2017. Multiplying the cost per participant by the number of estimated referrals put the cost of personal possession to the GYDP at nearly €1.15m.

In the case of adults with non-violent drug-related offences, the District Court can direct them to the DTC rather than issuing them with a conviction. These interventions are therefore a useful place to start in assessing the costs of the current policy around personal drug use. An individual would not usually be referred to the DTC for a single personal possession offence. Typically, it is only when they face their third offence and may be subject to a custodial sentence that they will be considered for the programme¹⁸. They will also have additional non-drug offences against them and so it is not possible to isolate the costs due to personal possession only. However, the programme is aimed at people with problematic drug use who are non-violent. In this way, the total cost of the DTC can still be viewed as primarily due to simple possession, albeit people with problematic drug use are most likely involved.

¹⁶ Thirty-three is the average for unlawful possessions recorded in recent PQs and a snapshot from the Garda Analysis Service. The relevant PQs can be found here: <http://www.justice.ie/en/JELR/Pages/PQ-03-07-2018-220> (2018) and <http://www.justice.ie/en/JELR/Pages/PQ-31-05-2016-230> (2016).

¹⁷ Based on a maximum of 5,000 referrals to a GYDP per year out of a total of 9,807 referrals to the Diversion Programme in 2015. See *Annual Report of the Committee Appointed to Monitor the Effectiveness of the Diversion Programme 2015* - http://www.iprt.ie/files/Annual_Report_of_the_Committee_Appointed_to_Monitor_the_Effectiveness_of_the_Diversion_Programme_2015.pdf.

¹⁸ Department of Justice and Equality, *Review of the Drug Treatment Court, 2010* - [http://www.courts.ie/Courts.ie/library3.nsf/\(WebFiles\)/E933AAE944EB4038025784F0043FD2F/\\$FILE/Review%20of%20Drug%20Treatment%20Court.pdf](http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/E933AAE944EB4038025784F0043FD2F/$FILE/Review%20of%20Drug%20Treatment%20Court.pdf)

Rather than using the estimated number of referrals to the DTC to determine the cost, the number of people who actively engaged on the programme was used. These were people who were either in the bronze, silver or gold stage of the programme, with those under assessment for suitability defined as non-participants. The number of engagements was therefore 72 on a given day in February 2017.

The most recent available data on the costs of the DTC are from 2008 and provide an explicit cost per participant. This has been uprated to 2017 prices and multiplied by the number of engagements to reach a figure of €1.2m or €17,202 per attendee per year. An alternative method was to simply uprate the total cost for 2008 to 2017, which came to €670,887. However, this overlooked the increase in engagements since the beginning of the programme. Indeed, the number of engagements as defined above doubled between 2015 and 2017 alone, suggesting that the costs of the programme could have easily multiplied over the decade. Table 4 below provides an overview of the estimated demand on intervention programmes that may be attributable to personal possession cases.

TABLE 4

| Estimated demand due to personal possession offences on Justice programmes, 2017 | | | |
|---|-----------------------|--------------------|---------------|
| | Number of engagements | Cost per person, € | Total cost, € |
| GYDP | 491 | 2,342 | 1,149,922 |
| DTC | 72 | 17,202 | 1,238,544 |

Source: IGEES Unit DOJE

1.2 An Garda Síochána

When a personal possession case is detected, the Gardaí are responsible for beginning proceedings in relation to the offence. It is estimated that no court action was taken against circa 9,060 offences in 2017, or 80% of all personal possession offences¹⁹. However, there is still an administrative cost associated with processing these detections, as well as the cost of verifying the substances involved. A proxy estimate for these costs has been outlined below.

¹⁹ Based on data from the Garda Analysis Service. The proportion of incidents that did not go to court is estimated by subtracting 'total court outcomes' from 'total incidents' for the years 2015 to 2017, excluding cases involving multiple offences.

Figures from England and Wales suggest that about 16 hours are spent on an arrest leading to court²⁰, which translates into around 12 hours of Gardaí time and four hours for a sergeant. By comparison, a warning would require about two hours of Gardaí time. Using average Garda, sergeant and inspector pay across years one to eight, it was possible to estimate an hourly rate for each type of officer²¹. The unit cost of an action was then calculated by multiplying the estimated number of hours required for that action by the respective hourly rates. The total administrative cost to the Gardaí was estimated by multiplying the unit cost for each type of action by the total number of offences.

The total cost due to warnings was estimated at €296,763. The total administrative cost for incidents that went to court was €649,411 – putting the total cost to the force at an estimated €946,174. One of the challenges involved in reaching this estimate was the absence of hard data on the exact time spent on dealing with cases that do not ultimately proceed to court. This has been approximated using the UK hourly figures for warnings despite the fact that the Irish system does not formally use these types of penalties in relation to personal possession offences. In this way, they are a best estimate given the information available. Table 5 below describes the estimated number of hours spent on different types of penalties, by grade of officer.

Table 5

| | Garda | Sergeant |
|---------------------------|-------|----------|
| Arrest leading to court | 12 | 4 |
| Arrest leading to caution | 8 | 2 |
| Warning/penalty notice | 2 | 0 |

The Gardaí will also incur costs due to the demand on Juvenile Liaison Officers (JLOs), who are specially trained to work with young offenders under the Juvenile Diversion Programme. The programme is aimed at keeping young people out of the criminal justice system upon the admission of involvement in a crime. The duration of involvement of a JLO will depend on the severity of the crime, as well as whether or not the offender is referred to a community-based

²⁰ UK Institute for Social and Economic Research, *Licensing and Regulation of the Cannabis Market in England and Wales: Towards a Cost-Benefit Analysis*, 2011 - <https://www.iser.essex.ac.uk/research/publications/521860>.

²¹ Inspector’s average pay was calculated across years one to seven.

diversion project (GYDP). If the young person is deemed unsuitable for the programme because, for example, they deny involvement in the crime, their case may be referred back to a local District Officer who will consider initiating a prosecution or forwarding the file to the DPP.

The cost to the Juvenile Diversion Programme is based on the total average annual salaries of 114 JLO²²s working across the country, multiplied by the share of offences they deal with due to simple possession (4.5%), to reach a figure of €180,505. Dividing this by the number of simple possession offences accounted for by young people in a single year produces a unit cost of €227²³. Multiplying this by the estimated number of youths in the Diversion Programme for simple possession puts the total cost to JLOs at about €218,849.

1.3 District Court and judges

The cost to the District Court was divided into two sections – the budgetary costs, including clerical staff, and the cost due to judges’ fees, which fall outside of the court budget. The District Court accounts for 80% of all business across the courts system (District, Circuit and higher courts). However, it is unlikely to account for the same proportion of the total budget for the system. This is because the District Court deals with minor offences for which judgments are reached relatively quickly and cheaply compared to the higher courts. Therefore, to estimate the proportion of the court budget that is spent on the District Court, a figure of 39% is used. This is based on the total proportion of criminal legal aid that is spent on the District Court²⁴ and serves as a useful proxy for the share of total court expenditure.

District Court expenditure is thus estimated at €30.68m. The court dealt with over 525,000 offences in 2017, producing an estimated unit cost per offence of €58. Multiplying this by the total number of personal possession offences gives a total cost of sittings (excluding judges’ fees) of around €130,350.

The total cost per offence for a judge was estimated by looking at the share of judicial pay spent in the District Court, divided by the total number of orders made, to produce a unit cost of €25. Again, this was multiplied by the number of personal possession offences to reach a total cost

²² As of 30/09/2018 (8 sergeants, 106 Garda)

²³ The ‘unit cost’ was preferred to the ‘proportionate cost’ because it accounts for the fact that while the majority of JLOs are Gardaí, there are also JLOs at sergeant level who are paid higher salaries.

²⁴ Spending Review 2018, *Criminal Legal Aid: Overview of Current System and Potential Lessons from an International Comparison*, IGEES Unit DOJE, 2018.

for judges of €54,980 based on 2017 data. The combined cost to the District Court due to personal possession was therefore estimated at a total of €185,330.

It is estimated that about 2,231 personal possession offences reached the District Court in 2017, making up about 0.4% of business in the court. A similar share of expenditure can be attributed to personal possessions offences in the District Court (0.6%), suggesting the estimates above are reasonable. Table 6 below describes the estimated cost to the District Court due to personal possession offences.

TABLE 6

| Estimated cost of personal possession offences to District Court | | | |
|---|---------------------------------------|-----------------|---------------|
| Judicial cost per offence, € | Cost per offence at District Court, € | Number of cases | Total cost, € |
| 25 | 58 | 2,230 | 185,333 |

Source: Courts Service of Ireland, IGEES Unit DOJE

1.4 Probation Service

Total budget provision for the Probation Service was almost €46.25m in 2017, while the total number of offenders on probation was 15,269. Dividing the budget by the number of participants produces a cost per person of €3,029 per year²⁵. Total court referrals ²⁶(across all level courts) to the probation service totalled 9,005 in 2017, with all drug offences (not just those relating to personal possession) accounting for 15.5% of referrals to the service. If we take that as the proportion of all new participants for drugs, that would put the estimated number at 1,396. And, noting that approximately 72% of all drug offences relate to simple possession as per CSO, it is estimated that the number of new participants for personal use offences was around 1,011 in 2017. Multiplying this by the cost per participant results in a total cost to the probation service due to personal possession of €3.1m, or 6.7% of the total

²⁵ This does not account for the difference in costs depending on the type of probation, but rather serves as an average across all forms of probation. Data limitations meant it was not possible to refine the assumption further.

²⁶ Court referral figures would differ from individual referral figures bearing in mind the same individual may be referred by the courts more than once

probation budget. Table 7 below describes the estimated cost to the probation service due to personal possession.

Table 7

| Estimated cost of personal possession offences to Probation service | | | |
|--|--------------------|---------------------------------------|-------------------|
| 2017 Budget, € | Cost per person, € | Number on personal possession charges | Estimated cost, € |
| 46,245,000 | 3,029 | 1,011 | 3,062,319 |

Source: Irish Probation Service, IGEES Unit DOJE

1.5 Prison Service

It is highly unlikely that an individual will be sentenced to prison for one or two personal possessions offences, although it is technically possible. However, the data suggests there are people in prison on personal possession charges, so it remains relevant to estimate a cost of the crime to the prison service.

The annual cost of an available, staffed prison space was €68,635 in 2017²⁷, putting the average daily cost of a prisoner at €188. Figures from Courts Service suggest that 6% of outcomes for summary drug offences at District Court result in imprisonment or detention²⁸. The median sentence for a personal possession charge is around seven days²⁹, implying that offenders are frequently entering and exiting prison for the offence. Multiplying the median sentence by the average daily cost produces an average unit cost for personal possession of around €1,316. Multiplying this by an estimated number of prisoners on personal possession charges of 144³⁰ results in a total cost of just over €189,500 - 0.01% of the prison budget. Table 8 below describes the estimated cost to the prison service due to personal possession.

²⁷ Irish Prison Service Annual Report, 2017 - https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-annualreport-2017.pdf.

²⁸ While summary offences may capture more serious drug crimes than personal possession, it was assumed to be the closest estimate given that this is the most lenient way a drug offence can be considered in court.

²⁹ The median is used to avoid the costs associated with more serious offenders who are unlikely to be eligible for a softer enforcement approach. These offenders will be on longer sentences, disproportionately raising the average sentence length. The source of this data is the IGEES Unit of DOJE based on records from Courts Service and the Garda Analysis Service.

³⁰ Based on court outcomes and proportion sentenced to prison

TABLE 8

| Estimated cost of personal possession offences to Prison service | | | |
|---|-----------------------|------------------------------|---------------|
| Daily cost of a prisoner, € | Median sentence, days | Average cost per offender, € | Total cost, € |
| 188 | 7 | 1,316 | 189,504 |

Source: Irish Prison Service, IGEES Unit DOJE

1.6 Total criminal justice costs

Combining the costs across the various intervention programmes, An Garda Síochána, the District Court, the Probation Service and the Irish Prison Service, produces a total cost of personal possession to the criminal justice system of around €7m in the current policy approach. Personal possession represents around 5.87% of all crimes and about 0.28% of the total budget for the Justice Vote Group³¹. It is expected that personal possession takes a smaller share of the budget than of all crime, so this estimate appears reasonable. Table 9 below provides a summary of the costs to the criminal justice system, with the probation service accounting for almost half of the total.

TABLE 9

| Estimated individual and total cost (€ m) of personal possession interventions to the Justice* sector | |
|--|--------------------|
| GYDP | 1.15 |
| DTC | 1.24 |
| Gardaí | 1.17 |
| District Court | 0.19 |
| Probation Service | 3.06 |
| Prison Service | 0.19 |
| <u>Total</u> | <u>7.00</u> |

Source: IGEES Unit, DOJE

*Due to limited data it was not possible to include costings for forensic analysis

³¹ Expenditure for the Justice Vote was €2.54bn in 2017, covering An Garda Síochána; Courts Service; Prisons; Department of Justice and Equality; Irish Human Rights and Equality Commission; Policing Authority; Valuation Office and the Property Registration Authority - <http://www.justice.ie/en/JELR/Pages/SP16000287>.

2.0 Scenario Analysis

The next section describes the economic estimates of three recommended scenarios considered appropriate in an Irish context by the high level working group. Once again, it is important to highlight that these estimates are limited by the availability of relevant data and are high level estimates. Moreover, any costs that have been inestimable in the case of a change in enforcement procedures have been held constant for the purposes of comparison. The scenarios are an adult caution, multiple adult cautions and a diversion to health services based on estimates from the Health Service Executive (HSE). For comparison purposes under all of the scenarios the focus is on the total number of recorded offences assuming no other available intervention has been availed of. It is also assumed that the number of possession charges remains the same as 2017 at 12,589 which gives us the estimated number of people who will be arrested for personal possession in a year

2.1 Adult Cautioning

Subject to agreement between the DPP and AGS, one discretionary alternative to prosecution involves a formal caution given by a District Officer (Superintendent) or an Acting District Officer (Inspector) who will also provide the individual with health and social services information leaflet. This section examines the costs of the introduction of an ACS for all personal possession drug offences.

ACS came into effect in the Irish justice system on 1 February 2006 after receiving the approval of the Director of Public Prosecutions (DPP)³². It must be taken into account whether or not the offence is appropriate for a caution and if the offender is deemed to be appropriate for consideration when deciding to administer a caution. The main purpose of the scheme is to divert people who are unlikely to re-offend away from prosecution. Crimes that are currently covered by the cautioning scheme include public order and criminal damage offences but not personal drug possessions. Discussions on extending the ACS to minor personal possession offences are ongoing³³.

The unit cost of an action was then calculated by multiplying the estimated number of hours required for that action by the respective hourly rates (see Table 5 above). An addition of an ACS would add costs to the Gardaí in place of administrative costs leading to a court appearance. In Ireland an adult caution³⁴ requires the input of a Garda Inspector which would increase the

³² <https://www.garda.ie/en/About-Us/Publications/Policy-Documents/Adult-Cautioning-Scheme.pdf>

³³ Department of Health, *Reducing Harm, Supporting Recovery: A health-led response to drug and alcohol use in Ireland 2017-2025* - <https://health.gov.ie/wp-content/uploads/2018/07/Reducing-Harm-Supporting-Recovery-2017-2025.pdf>.

³⁴ Adult Cautioning Scheme <https://www.garda.ie/en/About-Us/Publications/Policy-Documents/Adult-Cautioning-Scheme.pdf>

workload on Gardaí. Assuming all offences are administered with an ACS and accounting for hours in terms of an Inspector, Sergeant and Garda this generates a cost of €4.29 million and would replace the €1.17 million in costs to the Gardaí in the current system. This would lead to an additional €3.13 million in costs to the Gardaí. Therefore the addition of this intervention to the current estimated costs would increase costs by 45%.

TABLE 10

| Estimated Cost of Adult Cautions for Personal Possession €m | |
|--|---------------|
| Adult Caution Scheme (ACS)* | €4.29 |
| <i>Change in Gardaí costs**</i> | <i>+€3.13</i> |

Source: IGESS Unit, DOJE

*Assuming all offences are given an ACS and this is administered by Gardaí

**Change in Gardaí costs to the estimated costs for current policy approach

2.2 Multiple Adult Cautions

Subject to agreement between the DPP and AGS, in a second possible scenario, in cases where an individual is caught on a personal possession offence, consideration would be given to exceptional circumstances that allowed them to be cautioned for a second time, rather than facing a criminal charge. This scenario would involve additional formal cautions given by a District Officer (Superintendent) or an Acting District Officer (Inspector) who will also provide the individual with health and social services information leaflet.

If it was decided that the person did not qualify for exceptional circumstances, they would be charged by the Gardaí and prosecuted. At present, a caution is usually only applied once to an offender, but there are provisions under “exceptional circumstances” to allow a subsequent caution if the second offence is trivial or where there has been a significant lapse in time since the first caution, subject to the consent of the DPP. This intervention would act similar to the above adult caution option except with further adult cautions for recidivism. In this scenario a person would get a second adult caution for personal possession for a second offence and an additional adult caution for a third offence. Under the assumption that an adult caution would be applied to all offences with 10% reoffending a second time and a subsequent 10% reoffending on a third occasion this scenario would cost an additional €5.15 million replacing the €1.17 million in costs to the Gardaí in the current system. Therefore this scenario adds an

additional €3.99 million or 57% rise in costs compared to the current model, while compared to one ACS this intervention adds almost €860,000.

TABLE 11

| Estimated Cost of Multiple Adult Caution for Personal Possession €m | |
|--|---------------|
| Adult Caution Scheme (ACS)* | €5.15 |
| <i>Change in Gardaí costs**</i> | <i>+€3.99</i> |

Source: IGESS Unit, DOJE

*Assuming all offences are given an ACS which is administered by Gardai with addition ACS based on recidivism

**Change in Gardaí costs to the estimated costs for current policy approach

2.3 Diversion to Health Services³⁵

A third scenario is based on an alternative to any form of prosecution involving a mandatory referral by An Garda Síochána for a SAOR brief intervention and screening with a health professional during which there can be onward referral to treatment services or other supports for people with or at risk of problematic drug use. This would be administered for a minimum of three offences and under this proposed option there are costs associated with:

- Costs to Gardaí associated with diversion to health services and follow up on attendance and non attendance
- Costs to the HSE associated with the SAOR brief intervention and any onward referral for treatment

Assuming that the number of possession charges remains the same as 2017, and for comparison purposes accounting all recorded offences in the criminal justice system then 12,589 SAOR brief interventions would be delivered. There are nine Community Health Organisations with associated addiction clinics and services around the country. The HSE propose to employ a Counsellor in each of the CHOs to deliver the SAOR interventions and to communicate attendance with the Gardaí. In addition, clinical supervision of the programme will be provided by two Senior Counsellors.

Firstly to estimate the costs to the Gardaí would require a cost taken for a garda to be on patrol, administer a referral to a health intervention and follow up on this action. This would be similar

³⁵ All assumptions and health costings in this scenario provided by the HSE

to the costs involved in issuing a caution with a diversion to a health intervention. Using the same approach as calculating an adult caution but excluding inspector hours would lead to an estimated cost of €2.24 million. This is €1.07 million higher than the estimated costs to the Gardaí in the current model.

In order to estimate the cost of treatment requires a number of assumptions. The first assumption based on international research is that 10% of those who attend for a brief intervention will have a problem with their drug use and will require treatment. Different types of treatment will be appropriate depending on the drug that a person uses however the HSE estimate treatment costs across all drug types to be just under €3,250 per treatment. Assuming 10% of all drug offences captured in the criminal justice system have a problematic drug problem leaves 1,259 offences. In total this leaves a cost of treatment for problematic drug users at an estimated €4.09 million.

Looking at the cost of employing health professionals for this diversion, the HSE assume this would require nine counsellors and one senior counsellor. The cost of employing these staff to provide SAOR interventions (including SAOR intervention and treatment) is estimated at €780,000 approximately and together with the costs of treatment leaves an estimated health cost of €4.87million. Adding this cost to additional Gardaí costs would leave a rise in costs of almost €5.95 million or 85% rise in this scenario compared to the current costs.

TABLE 12

| Estimated Cost of Health Diversion €m | |
|--|---------------|
| Gardaí Referral Cost* | €2.24 |
| | |
| <i>SAOR Brief Intervention **</i> | <i>€0.78</i> |
| <i>Costs of Treatment **</i> | <i>€4.09</i> |
| Health Costs | €4.87 |
| Total Costs | €7.11 |
| <i>Change in costs***</i> | <i>+€5.95</i> |

Source: IGEES DOJE Estimates based on HSE costs

*Assume same cost for referral as an adult caution without inspector.

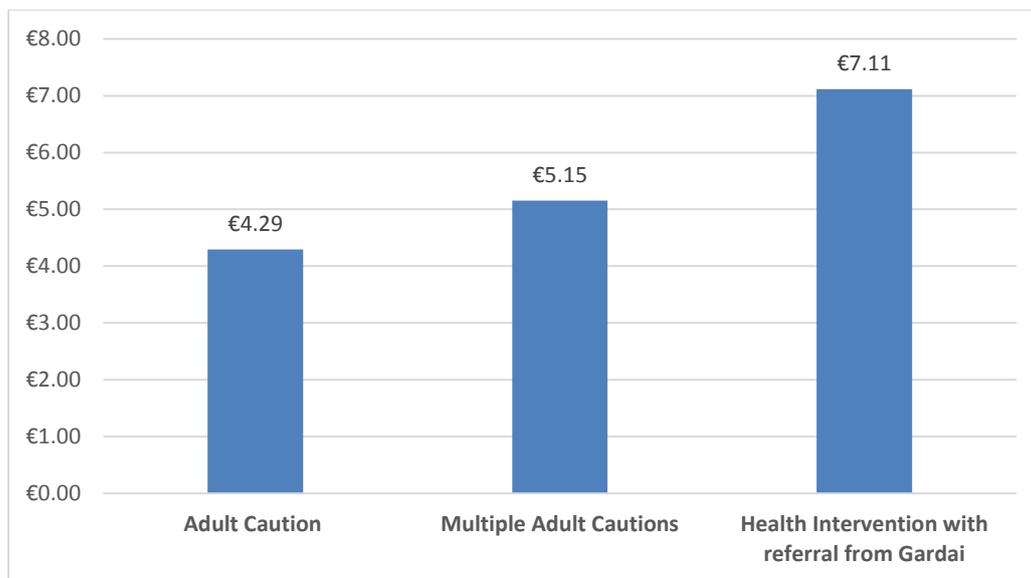
**Provided by HSE

***Change in costs of intervention compared to the justice sector costs estimated for current policy approach

3.0 Results Analysis

Figure 3 below compares the cost of each intervention used in the scenarios. Cost changes that were inestimable due to the lack of available data have been held constant for the purposes of comparison.

FIGURE 2 COMPARISON OF COSTS IN DIFFERENT SCENARIOS* (€'M)



Sources: *IGEES Unit DOJE*

* *Assuming no other intervention*

The most costly option is the third scenario, which is the health diversion with Gardaí referral at €7.11 million. The additional costs of this intervention are almost 75% higher than the existing policy and 48% higher than incorporating the adult cautioning scheme into the current policy. It is worth highlighting that the differences in costs may be weaker if there was more robust information on the time spent on cases that do not proceed to court under the existing system.

Table 13 summarises the costs included across the different sectors, the additional costs involved and the percentage change when compared with the costs included in the current system. For the introduction of an adult caution, multiple adult cautions and a health diversion the Gardaí would have the burden of higher costs. The net change in total benefits is hard to determine in the absence of available data in relation to health expenditure but intuitively, it seems reasonable to assume that an effective treatment and education service would help to reduce problematic drug use and drug-induced mortalities in the long term—albeit, the measurable economic costs involved may be substantial.

TABLE 13 COSTS TO EACH SECTOR BY SCENARIO (€'M)

| | Gardaí Costs | Health Costs | Total Costs of Intervention | Current Justice Costs | Additional Costs* | % change** |
|------------------------------|--------------|--------------|-----------------------------|-----------------------|-------------------|------------|
| Adult Caution | 4.29 | | 4.29 | 7.00 | 3.13 | 45% |
| Multiple Adult Cautions | 5.15 | | 5.15 | 7.00 | 3.99 | 57% |
| Diversion to Health Services | 2.24 | 4.87 | 7.11 | 7.00 | 5.95*** | 85% |

Sources: Estimates IGEEES Unit DOJE

*Additional Gardaí costs compared to the current system

**Proportional change in costs of the addition of each intervention compared to current approach cost

*** Additional Gardaí costs compared to the current system plus estimated health costs

Overall, the findings are very high-level estimates and based on a limited availability of data. There is a clear indication of additional costs to the Gardaí and the health services depending on the selected approach. It should be recalled that no health costs have been included in the costs associated with the current system although there is substantial interaction (e.g. supported referrals) between the justice sector and the health sector. Furthermore there is no indication of a reduction in workload or staff suggesting no clear savings. It was not possible to capture the potential social and welfare gains of any possible improvements under the above scenarios due to issues discussed in the annex below. There is also the potential for a significant improvement in net gains if there was more information available on the costs of problematic and non-problematic drug use to the health system. Indeed, any positive reduction in substance misuse and drug-induced mortality owed to a health-led approach would likely result in a net gain to society.

4.0 Conclusion

The findings of this analysis are very high-level estimates based on a limited availability of data and this caveat should be taken into account when interpreting results. Moreover, the difference in costs between the existing policy approach and an adult cautioning scheme may be insignificant given the lack of data on the current time spent on processing cases that do not ultimately end up in court. However based on this analysis the main difference across the various policy approaches would be driven by the introduction of a health intervention. It should also be noted that these costs represent data for one year and due to the number of intangibles it was not possible to assess potential cost savings over time.

It is hoped that the figures provided above offer a useful description of the type of costs associated with personal possession offences. They should also provide an indication of the net additional costs between the various agencies depending on the selected policy approach.

Annex A. Externalities due to personal drug use

The external cost of personal drug use refers to the ‘spill over’ or indirect costs associated with substance misuse and typically affects third-parties. These can include the emotional costs to family members, the social costs of dangerous behaviour, healthcare costs due to accidents and adverse reactions, and the cost of related crime. While the estimation of these costs is beyond the scope of this paper, it is worth highlighting that any tangible savings due to a health-led approach will likely underestimate the benefits to society as a whole.

Annex B. Simple caution scheme for England and Wales

In England and Wales, a simple caution is a formal warning that may be issued to offenders aged 18 and over who admit to committing an offence³⁶. Although simple cautions are available for any offence, they are primarily intended for low-level, first-time offences and there are statutory restrictions on the use of simple cautions in relation to certain offences. Police are prohibited from issuing a warning for indictable-only offences without the permission of the Crown Prosecution Service and, in such cases, the offence may only be eligible under exceptional circumstances.

Annex C. Evidence on drug tourism

A report by the EMCDDA³⁷ highlights that drug tourism may be facilitated by a variety of factors, including low air fares, membership of the Schengen area, domestic drug policy and attractiveness to young people and musical festival goers. It also notes that people with problematic drug use may travel to another country to access treatment services that are unavailable in their own countries, or to escape their environment. Since Ireland has forgone membership of Schengen to maintain the common-travel area with the UK, it seems likely that any potential increase in drug tourism to Ireland would predominantly flow from the UK. The EMCDDA report highlighted research across 6,500 young holidaymakers³⁸ from the UK and Germany to the Mediterranean. It found that one in ten reported illicit drug use during their holiday, compared to 95% who reported taking alcohol. Ultimately, the report concluded that

³⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/708595/cautions-guidance-2015.pdf

³⁷ http://www.emcdda.europa.eu/system/files/publications/677/Travel_and_drug_use_394352.pdf

³⁸ Young holidaymakers were defined as those who appeared to be between the ages of 16 and 35 and who were travelling without children or other relatives.

people's drug behaviours remained much the same when they were home or abroad – that is, if they typically used drugs at home, they would use drugs abroad, and vice versa.

Annex D. International evidence on the social costs of problematic drug use

According to a report from the United Nations Office on Drugs and Crime³⁹, lost output due to premature death or illness accounts for the largest share of the costs associated with problematic drug use. The study also highlighted the detrimental effect on educational outcomes, as well as on family stability. However, it noted that while problematic drug use can lead to family breakdown, the reverse is also true – confounding the direction of causality. It also raised awareness of the costs of problematic drug use to businesses due to workplace absences, drug testing and accidents (as well as compensation claims), but did not provide an explicit cost for these issues.

Separate research by Collins and Lapsley⁴⁰ found that illicit drug use accounted for almost 15% of the social costs due to substance misuse, compared to 56% for tobacco and 27% for alcohol. Within the drugs category, intangibles made up about 30% of the costs, compared to 70% for tangibles such as crime, health, productivity and road accidents. The Australian study also highlighted the production costs of premature mortality and suggested subtracting these losses from the total health costs to determine a net figure. In discussing welfare costs, the paper observed the difference between real and pecuniary costs. Real costs involved accommodation and the administrative cost of providing services, and may be accounted for. However, it was explained that pecuniary costs referred to welfare benefits that were a transfer of wealth rather than a cost and should therefore be excluded from the analysis. In any case, the study concluded that it was not possible to estimate the welfare costs attributable to illicit drug use.

The Scottish government estimated⁴¹ that non-problematic drug use accounted for only 4% of the total social and economic costs associated with illicit drug use. Similar to the studies cited above, the research accounted for lost output due to mortality, and incorporated drug poisonings and mental health issues into its health estimates. The study also considered the social care costs involved in caring for children whose parents were problematic drug users, as well as estimating that almost 37,000 people were not in employment due to problematic drug

³⁹ United Nations Office on Drugs and Crime, *Economic and Social Costs of Drug Abuse and Illicit Trafficking*, 1997 - https://www.unodc.org/pdf/technical_series_1998-01-01_1.pdf.

⁴⁰ Collins, DJ., and Lapsley, HM. *The costs of tobacco, alcohol and illicit drug abuse to Australian Society in 2004/05, 2008 -* [https://www.health.gov.au/internet/drugstrategy/publishing.nsf/Content/34F55AF632F67B70CA2573F60005D42B/\\$File/mono64.pdf](https://www.health.gov.au/internet/drugstrategy/publishing.nsf/Content/34F55AF632F67B70CA2573F60005D42B/$File/mono64.pdf).

⁴¹ Scottish Government Social Research, *Assessing the scale and impact of illicit drug markets in Scotland, 2009* <https://www2.gov.scot/resource/doc/287490/0087669.pdf>.

use. The above research therefore highlights a number of social costs that may be considered in any analysis of illicit drug use and, crucially, illustrates the difficulties involved in reaching acceptable estimates in the absence of freely available data.

Noting the caveats from the literature quoted above – in particular, that welfare payments are considered net transfers of wealth rather than added costs to society – this paper omitted the social welfare cost of drug use on society in the main body of the text. However, a high-level figure of the amount problematic drug users may be drawing in social welfare payments has been estimated. The methodology used and the result is outlined below.

The number of problematic drug users in Ireland has been proxied by the number of people on opioid substitution treatment. This was 9,804 in 2017, according to the HSE. Separate research from the HRB showed that 75% of people who sought treatment for drug use were either unemployed, unable to work or in retirement – or around 7,350 people. The average annual payout for Jobseeker’s Allowance is €7,947, as well as €12,064 for the non-contributory state pension. Multiplying these figures by the estimated number of people with problematic drug use who may be eligible for either of these supports returns a total of €61.89m.

Annex E. Costs of Lost Output due to problematic drug use

It is extremely difficult and sensitive to try and put a price on the premature death of an individual and this analysis is not seeking to place a value on life. Ultimately, life is priceless and there is no accounting for the externalities incurred by family, friends and loved ones due to a bereavement. However, the literature analysing the cost of drug use regularly includes a figure for lost output. The Scottish government explains that this is an attempt to account for the loss to the economy due to premature mortality⁴². As such, although not included in any of the scenarios this annex has provided a high-level estimate of the value of the lost productivity associated with drug-induced death, which is based on the forgone annual salary of the individual.

The drug-induced mortality rate in 2014 was 71 per million⁴³, or 0.01% of the population aged 15 to 64. This puts the estimated number of premature deaths due to drugs at 218 in 2017, with 86% of deaths including the presence of opioids. Given the demographic profile of people who use drug treatment services described above, it is

⁴² The Scottish Government, *Assessing the Scale and Impact of Illicit Drug Markets in Scotland*, 2009 - <https://www2.gov.scot/resource/doc/287490/0087669.pdf>.

⁴³ EMCDDA 2017 report.

assumed that a median wage would be the best estimate of potential earnings. Median weekly earnings in 2014 were €528.81⁴⁴. That would put median annual earnings in 2017 prices at around €27,655⁴⁵. Multiplying that by the total number of premature deaths provides an annual estimate for lost output of €6.04m.

It is worth pointing out that this estimate is confounded by the difficulty involved in approximating the potential earnings of an individual with problematic drug use. In particular, substance use disorder may be driven by a range of social disadvantages such as family breakdown, although the direction of causation is unclear. As such, this figure should be treated with caution and could be significantly higher if the earnings power of those vulnerable to problematic drug use was less ambiguous to determine. Table 14 below illustrates the estimated annual cost of lost output.

TABLE 10

| Estimated cost of lost output | | | |
|--------------------------------------|----------------------------------|---------------------------|-----------------------------|
| Drug-induced mortalities | Median weekly earnings, € | Annual earnings, € | Total lost output, € |
| 218 | 529 | 27,655 | 6,039,456 |

Source: IGEES Unit DOJE based on EMCDDA, CSO & Eurostat

Annex F. Education Programme

In terms of education programmes, it is worth highlighting the cost of the QUIT Campaign by the Health Service Executive in 2017, which came to €1.67m⁴⁶. The campaign is aimed at encouraging smoking cessation and may serve as a useful proxy for the cost of any health education programme to discourage cannabis or other drug use.

⁴⁴ CSO, *Earnings Analysis Using Administrative Data Sources, 2011-2014* -

https://pdf.cs0.ie/www/pdf/20180727120642_Earnings_Analysis_using_Administrative_Data_Sources_20112014_full.pdf

⁴⁵ The annual figure for mean earnings would be almost €35,000.

⁴⁶ The QUIT Campaign is an ongoing education programme and cost €800,000 in 2013. <https://health.gov.ie/wp-content/uploads/2018/07/TFI-Annual-Report-2017-Final-1-1.pdf>.