

# Focal Point Ireland: national report for 2018 - 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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## Table of Contents

<b>T0. Summary</b> .....	<b>3</b>
Summary of T1.1.1 characteristics of drug legislation and national guidelines.....	3
Summary of T1.1.2 variation of penalties by drug / quantity / addiction / recidivism .....	3
Summary of T1.1.3 laws for controlling NPS .....	3
<b>T1. National profile</b> .....	<b>3</b>
T1.1 Legal framework .....	3
T1.1.1 Characteristics of drug legislation .....	3
T1.1.2. Penalties vary by drug, quantity (i.e. market value), addiction, and recidivism. ....	10
T1.1.3 Legislation to control New Psychoactive Substances (NPS). ....	11
T1.1.4 Other topics of interest .....	12
T1.2 Implementation of the law .....	16
T1.2.1 Sentencing practice related to drug legislation.....	16
T1.2.2 Sentencing practice related to legislation designed to control NPS .....	17
T1.2.3 How implementation might differ from the text of laws .....	17
<b>T2. Trends</b> .....	<b>17</b>
T2.1 Changes in penalties and definitions of core offences.....	17
T2.2 How the implementation of the law has changed since 2000 .....	18
<b>T3. New developments</b> .....	<b>21</b>
T3.1 Changes in laws in the last year.....	21
T3.2 Changes in the implementation of the law in the last year .....	23
T3.3 Evaluation of the law in the last year .....	23
T3.4 Major political discussions in the last year relating to legislation and implementation.....	24
<b>T4. Additional information</b> .....	<b>26</b>
T4.1 Sources of information .....	26
T4.2 New areas of specific importance .....	35
<b>T5. Sources methodology and references</b> .....	<b>35</b>
T5.1 Sources .....	35
T5.2 New studies .....	36
T5.3 References .....	37
<b>Acknowledgements</b> .....	<b>41</b>

## **T0. Summary**

### **Summary of T1.1.1 characteristics of drug legislation and national guidelines**

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, other than by prescription, of most psychoactive substances as criminal offences. The principal criminal legislative framework is laid out in the Misuse of Drugs Acts (MDAs) 1977–2016. Since the commencement of the Misuse of Drugs Act 1977, the legislation has been amended via statutory instruments (SIs) and regulations to accommodate the transient nature of drug-related crime. Alternatives to punishment are available in Ireland; for example, via community service orders, probation services, and drug treatment court programmes.

### **Summary of T1.1.2 variation of penalties by drug / quantity / addiction / recidivism**

Fines and sentence lengths for drug-related crime vary by legislation, by Section that offenders are being prosecuted under, and also by whether it is a first, second or subsequent offence. It is considered unjust to specify the minimum term of 10 years to offenders with addictions; if the judge is satisfied that an addiction exists and all extenuating circumstances are considered, the sentence can either be listed for review once 50% has expired or been suspended. In order to reduce the likelihood of repeat offending, second or subsequent offences are penalised more severely than first offences.

### **Summary of T1.1.3 laws for controlling NPS**

The main legislation that provides for the control of new psychoactive substances (NPS) is the Criminal Justice (Psychoactive Substances) Act 2010. This Act formed part of a multifaceted approach to reduce the availability of substances that were not controlled by the MDA 1977–2007 legislation. Under the main provisions of the Act, it is an offence to sell, import or export substances; to sell equipment that enables cultivation; and to advertise drugs. In an effort to deal with the transient nature of NPS, the Misuse of Drugs (Amendment) Act 2016 was enacted in July 2016. The Act includes the addition of NPS that have recently emerged on the Irish market. To date, the implementation of this legislation has not been evaluated.

## **T1. National profile**

### **T1.1 Legal framework**

#### **T1.1.1 Characteristics of drug legislation**

As stated in previous Legal framework workbooks, 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, other than by prescription, of most psychoactive substances as criminal offences. The principal criminal legislative framework is laid out in the Misuse of Drugs Acts (MDAs) 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. As follows:

- 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.

Due to the continually changing nature of the drug situation, drug related legislation is continually being monitored and adapted accordingly.

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

As stated in previous workbooks, Under S.I. No. 540/2003 – Medicinal Products (Prescription and Control of Supply) Regulations 2003, 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 retail pharmacy business 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 T1.2.1 (Health Research Board 2012)).

### **Misuse of Drugs (Amendment) Act 2015**

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 NPS) ceased to be controlled with immediate effect, and their possession ceased to be an offence. Please see Section T3.1 of the Legal framework workbook, National Report 2016 (Health Research Board. Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2017) for further information.

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

Following increased drug-related violence, as well as the emergence of NPS 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 was to amend schedules to the Misuse of Drugs Acts 1977–2015. Please see Section T3.1 of the Legal framework workbook, National Report 2016 (Health Research Board. Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2017) for further information on this Act, and see Section T3.1 of this workbook for an update on the commencement date.

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

The Misuse of Drugs (Supervised Injecting Facilities) Act 2017 was signed into Irish law on 16 May 2017. In the Introduction, the Act is summarised as: ‘An Act to provide for the establishment, licensing, operation and regulations of supervised injecting facilities for the purposes of reducing harm to people who inject drugs; to enhance the dignity, health and well-being of people who inject drugs in public places; to reduce the incidence of drug injection and drug-related litter in public places and thereby to enhance the public amenity for the wider community; and to provide for matters related thereto.’ Further information on this Act can be found in Section T1.1.1 of the Legal framework workbook, National Report 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a).

### **Misuse of Drugs Regulations 2017**

The Misuse of Drugs Regulations 2017 came into operation in May 2017. Part 3 of the Regulations imposes restrictions on the production, supply, importation, and exportation of controlled drugs as specified in Schedules 1 to 5 of the Regulations, which refers to drugs that are controlled under the Misuse of Drugs Acts 1977–2016. Further information on the provisions provided for can be found in Section T1.1.1 of the Legal framework workbook, National Report 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a).

Further information on all legislation, statutory instruments, and regulations referred to in this workbook can be retrieved from the Electronic Irish Statute Book (<http://www.irishstatutebook.ie/>).

### **Penalties for drug offences in Ireland**

As stated in the Legal framework workbooks, National Reports 2016 and 2017 (Health Research Board. Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2017, Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a), Table T1.1.1 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. There were no changes to these penalties in 2017.

**Table T1.1.1 Summary of penalties received for drug offences in Ireland**

Subject to Section	Penalty
<p><b>Misuse of Drugs Acts 1977–2016</b></p> <p>Section 3<sup>†</sup> Restriction on possession of controlled drugs</p> <p>a) Where controlled drug is cannabis or cannabis resin and court is satisfied that possession was for own use</p>	<p>First offence:</p> <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> <p>Second offence:</p> <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> <p>Third and subsequent offences:</p> <ul style="list-style-type: none"> <li>• On summary conviction – Class C fine not exceeding €2,500 or imprisonment not exceeding 12 months at the court’s discretion or both fine and imprisonment, or</li> <li>• On conviction on indictment – fine of such amount that the court considers appropriate or at the court’s discretion, imprisonment for a term not exceeding three years, or both fine and imprisonment.</li> </ul>
<p>b) Any other case</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 the 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 seven years at the 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>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 the 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 the court’s discretion, or</li> <li>• Both fine and imprisonment.</li> </ul>

Subject to Section	Penalty
<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>Section 15<sup>†</sup> Possession of controlled drugs for unlawful sale or supply</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 the 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, or</li> <li>• Both fine and imprisonment.</li> </ul>
<p>Section 15A<sup>‡</sup> Offence relating to possession of drugs with value of €13,000 or more</p> <p>or</p> <p>Section 15B<sup>‡</sup> Importation of controlled drugs in excess of certain value (amounts to €13,000 or more)</p>	<p>Offences under Section 15A or 15B,</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<sup>0</sup> 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 the court's discretion, or</li> </ul>

Subject to Section	Penalty
	<ul style="list-style-type: none"> <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 the court’s discretion, or</li> <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 the 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 the court’s discretion, or</li> <li>• Both fine and imprisonment.</li> </ul>
<p>Section 21<sup>†</sup> (1) Attempts, etc. and miscellaneous other offences</p> <p>a) in case the regulation in relation to which the offence was committed is a regulation made pursuant to Section 5(1)(a) of this Act, other than a regulation regulating the transportation of controlled drugs</p> <p>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> <p>Section 21 Offences other than those mentioned in subsections 1 or 2</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 the 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 the court’s discretion, or</li> <li>• Both fine and imprisonment.</li> </ul> <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 six months at the 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 the court’s discretion, or</li> <li>• Both fine and imprisonment.</li> </ul> <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 the court’s discretion, or</li> </ul> <p>Both fine and imprisonment</p>
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>• Class E fine not exceeding €500**.</li> </ul>
Section 5 <sup>†</sup> Printing, etc. of certain books, etc., communication of	<p>On summary conviction –</p> <ul style="list-style-type: none"> <li>• Where the offence is an offence under subsection (2) of that</li> </ul>

Subject to Section	Penalty
certain information and possession of certain documents an offence	Section, a Class C fine not exceeding €2,500**, or <ul style="list-style-type: none"> <li>• In any other case, Class C fine not exceeding €2,500**.</li> </ul>
<p><b>Criminal Justice (Psychoactive Substances) Act 2010</b></p> <p>Section 3<sup>§</sup> Prohibition of sale, etc. of psychoactive substances</p> <p>Section 4<sup>§</sup> Prohibition of sale of certain objects</p> <p>Section 5<sup>§</sup> Prohibition of advertising of psychoactive substances, etc.</p>	<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 the 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 court considers appropriate, or</li> <li>• Imprisonment not exceeding five years at the court's discretion, or</li> <li>• Both fine and imprisonment.</li> </ul>
<p><b>Road Traffic Act 2016</b></p> <p>Section 8 offences involving certain drugs</p> <p>Signing a medical exemption certificate containing information which he/she knows to be false</p> <p>Section 11 Mandatory intoxicant testing</p> <p>Section 12 Impairment testing</p> <p>Section 13/13B Obligation to provide oral fluid and blood specimens in relation to certain offences involving drugs</p> <p>Failure to provide breath or oral fluid or blood specimen at request of Garda, or failure to perform impairment test</p>	<p>On summary conviction –</p> <ul style="list-style-type: none"> <li>• Class C fine not exceeding €2,500.</li> </ul> <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 six months at the court's discretion, or</li> <li>• Both fine and imprisonment.</li> </ul>
<p><b>Maritime Safety Act 2005</b></p> <p><b>Section 27 Conduct endangering vessels, structures or individuals</b></p> <p>Section 28 Prohibition on operating vessels while under influence of alcohol or drugs</p> <p>Section 29 Drunkenness, etc., of passengers or members of crew</p>	<p>On summary conviction –</p> <ul style="list-style-type: none"> <li>• Class A Fine not exceeding €5,000</li> <li>• Imprisonment to a term not exceeding six months, or</li> <li>• Both fine and imprisonment.</li> </ul> <p>On conviction on indictment</p> <ul style="list-style-type: none"> <li>• Fine not exceeding €100,000</li> <li>• Imprisonment for a term not exceeding two years</li> <li>• Both fine and imprisonment</li> </ul> <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 three months, or</li> <li>• Both fine and imprisonment.</li> </ul> <p>On summary conviction –</p> <ul style="list-style-type: none"> <li>• Class A fine not exceeding €5,000.</li> </ul>



Subject to Section	Penalty
<p>Section 30 Control of consumption of alcohol or drugs on board a vessel (commander or crew)</p> <p>Section 32 Prohibition on endangering vessels or persons on board</p>	<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 three months, or</li> <li>• Both fine and imprisonment.</li> </ul> <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 six months, or both fine and imprisonment.</li> </ul> <p>On conviction of indictment</p> <ul style="list-style-type: none"> <li>• Fine not exceeding €100,000</li> <li>• Imprisonment for a term not exceeding two years or</li> <li>• Both fine and imprisonment</li> </ul>
<p><b>Criminal Justice (Community Service) Act 1983</b></p> <p>Section 7 Requirements under community service order and failure to comply with such requirements</p>	<p>On summary conviction –</p> <ul style="list-style-type: none"> <li>• Fine not exceeding £300</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 treatment

\*\* Following guidance received from Law Reform Commission, these figures have been amended since the last report

†As amended by Misuse of Drugs Act 1984

°As amended by Criminal Justice Act 2006

‡ As amended by Criminal Justice Act 2007

§ As amended by Criminal Justice (Psychoactive Substances) Act 2010

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

### Alternatives to punishment

No changes were evident in this section. As stated in the Legal framework workbook, National Report 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a), under current legislation in Ireland, possession or supply of illicit drugs are considered criminal offences. However, a range of options is available to the court in dealing with those who have committed a criminal offence. The legislature generally sets the maximum sentence that can be imposed within the drug legislation, and it is then a matter for the judiciary to decide what is the appropriate sentence in a particular case, taking into account all the circumstances surrounding the crime and the individual offender (personal, communication, Department of Health, 2017). Options available to the court to deal with drug offences include: fines and custody (see Table T1.1.1), imposition of a Peace Bond/Probation Order, suspended sentence (see Section T3.1 in this workbook for the most recent figures).

In addition, 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’ (European Monitoring Centre for Drugs and Drug Addiction 2015). Examples in Ireland include:

Under the Criminal Justice (Community Service) Act 1983, 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, 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 recognisance, 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 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 and Garda Síochána Adult Caution Scheme. See Section T2.2 of this report for further information.

### **T1.1.2. Penalties vary by drug, quantity (i.e. market value), addiction, and recidivism.**

#### **Drug**

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

As stated in previous workbooks, as per the MDA 1977, Section 3 and Section 27(1)(a) as amended by the Criminal Justice Act 1984, 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***

As stated in previous workbooks, 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, or imprisonment for life, or both.

#### **Quantity**

As stated in previous workbooks, 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 has been convicted under the other Section on another occasion.

## **Addiction**

As stated in previous workbooks, an offender who 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 in 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 T1.1.1 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 T3.2 of the Legal framework workbook, National Report 2017 for recent figures for recidivism (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a).

## **Aggravating and mitigating factors**

As stated in previous workbooks, 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 or 15B, 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.

### **T1.1.3 Legislation to control New Psychoactive Substances (NPS).**

As stated in the Legal framework workbooks, National Reports 2016 and 2017 (Health Research Board. Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2017, Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a), 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 T2.1, supplementations to normal drug law, for further information and see Section T2.1 in the Legal framework workbook, National Report 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a). Under these SIs, approximately 200 substances were declared controlled drugs.

### **Criminal Justice (Psychoactive Substances) Act 2010**

As stated in the Legal framework workbooks, National Reports 2016 and 2017 (Health Research Board. Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2017, Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a), the main legislation controlling new psychoactive substances (NPS) in Ireland is the Criminal Justice (Psychoactive Substances) Act 2010. There were no changes to this Act in 2017. This Act formed part of a multifaceted approach to reduce the availability of substances that were not controlled by the MDAs 1977–2007 legislation. Under the main provisions of the Act, it is an offence to sell, import or export substances; to sell equipment that enables cultivation; and to advertise substances. Further information can be found in the Legal framework workbook, National Report 2016 (Health Research Board. Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2017). See Table T1.1.1 for penalties associated with this offence.

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

In an effort to deal with the transient nature of NPS, the Misuse of Drugs (Amendment) Act 2016 was enacted in July 2016. The Act includes the addition of NPS that have recently emerged on the Irish market. Please see Section T3.1 of the Legal framework workbook, National Report 2016, for further information (Health Research Board. Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2017).

See Section T2.1 for an update on recent legislative supplements that allowed for additions of NPS products.

#### **T1.1.4 Other topics of interest**

As highlighted in the Legal framework workbooks, National Reports 2015–2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2016) (Health Research Board. Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2017) (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a) topics that are relevant to the understanding of the legal framework for responding to drugs in Ireland include:

#### **Drug driving**

Driving under the influence of drugs has been a statutory offence in Ireland since the introduction of the Road Traffic Act 1961. Since that time, the Act has been amended a number of times:

- Section 11 of the Road Traffic Act 2014 empowered the An Garda Síochána (AGS) 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.
- Section 12 of the Road Traffic Act 2014 amended 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.
- Following on from the Road Traffic Bill 2016, the Road Traffic Act 2016 was enacted on 27 December 2016. The Act amended and extended the Road Traffic Acts 1961–2015 and provides for a number of measures to improve safety on Irish roads. A new offence for driving with the presence of certain drugs was established and a number of amendments were made to help tackle driving under the influence of drugs. Further information on the Road Traffic Act can be found in Section T3.1 Legal framework workbook, National Report

2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a). See Section T3.1 of this workbook for the most recent amendments to the Road Traffic Act.

### **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***

Due to the unique and challenging nature of working in the military or Defence Forces, personnel are required to be free of the 'presence' or 'influence' of any controlled drug or substances (Kehoe 2017, 11 April). No change has been demonstrated here. Further information on compulsory random and targeted drug testing can be found in Section T1.1.4 in the Legal framework workbook, National Report 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a). Up-to-date data for compulsory random drug testing and targeted drugs testing can be found in Section T2.3, Tables T2.4.1–T2.4.3 in the Drug market and crime workbook.

#### ***Maritime safety***

The Maritime Safety Act 2005 strengthens the law against improper use of mechanically propelled personal watercraft (e.g. jet skis) and other recreational crafts. There has been no change to this Act.

- 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.

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

#### ***Railway safety***

The Railway Safety Act 2005 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. Please see Section T3.4 for an update on the Railway Safety (Amendment) Bill 2018.

There are two agencies that operate under this legislative framework: they are Iarnród Éireann and Transdev, which operates the Luas tram network. They are obliged to implement statutory compliant safety management systems (Nic Lochlainn 2018, 27 June). Both organisations are obliged to implement a statutory code of conduct for drugs and alcohol for railway safety-critical workers which outlines the workplace policy for testing workers for intoxicants. Disciplinary sanctions apply for non-compliance, up to and including dismissal. Safety is regulated by the Commission for Railway Regulation (CRR) and any accidents or incidents are investigated by the Railway Accident and Investigation Unit (RAIU) (Nic Lochlainn 2018, 27 June). Random drug and alcohol testing is carried out. The most recent figures available can be found in Section T2.3 in the Drugs and crime workbook.

### **Safety, health and welfare at work**

There were no changes to the Safety, Health and Welfare at Work Act 2005, which states in Section 13(1)(b) that an employee 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 if so required.

### **Drug testing in prisons**

There were no changes to The Prisons Act 2007 in 2017, which provides for the making of rules by the Minister for Justice and Equality 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 and Equality (DOJE) under S.I. No. 252/2007, and provided for the introduction of compulsory or mandatory drug testing (MDT) of prisoners (see Section 26(5)). For further information on drug testing in prison, see Section T1.2.3.

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

As stated in the Legal framework workbook, National Report 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a), the Criminal Justice Act 2006 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 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 2006 Act 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: A 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 Criminal Justice (Amendment) Act 2009, offences are deemed to be scheduled offences for the purposes of Part V of the Offences Against the State Act 1939, as if the order was made under Section 36 of the Act of 1939 in relation to it and subsection (3) of that section, and Section 37 of the Act of 1939 shall apply to such an offence accordingly.

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

- 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.

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 and Equality 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 T3.4 of this workbook.

### **Offences Against the State (Amendment) Act 1998**

The Offences Against the State (Amendment) Act 1998 amends and extends the Offences Against the State Acts 1939–1985. It was introduced in response to the Omagh bombing in 1998. The measures in the Act target four areas:

- Changed the rules of evidence applied to the offence of membership of unlawful organisations
- Created new substantive offences relevant to the activities of unlawful organisations and those who support them
- Strengthened the hands of the courts with regard to those supporting activities of unlawful organisations or engaging in offences on their behalf
- Extended the maximum period of detention permitted under Section 30 of the Offences Against the State Act 1939.

### **Revenue Commissioners Customs Division**

Following enactment in June 2015, the Customs Act 2015 commenced in full in December 2016. There were no amendments to this Act in 2017.

- Under Section 24, a person may be liable for more than one penalty in respect of the same offence under either customs legislation or other legislation, for example, in relation to smuggling offence, offenders could be liable to a number of separate charges under the Customs Act and under the Misuse of Drugs legislation and if found guilty, may be liable to penalties under both sets of 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, the officer is allowed to detain the individual and is 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 regulates the intervention of certain postal packets. There has been no change to this legislation. Further information on the relevant sections can be found in Section T1.1.4 in the Legal framework workbook, National Report 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a).

### **Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016**

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). Changes to this legislation in 2017 were not related to drugs offences.

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' duration. 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. Further information on this Act can be found in the Legal framework workbook, National Report, 2016 (Health Research Board. Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2017).

### **Criminal Justice Act 2017**

The Criminal Justice Act 2017 was enacted in July 2017. The aim of the Act was to strengthen the law on bail by making amendments to existing legislation, including the Criminal Justice Act 1984, the Criminal Justice (Public Order) Act 1994, the Criminal Justice (Drug Trafficking) Act 1996, the Bail Act 1997, the Criminal Justice Act 2007 and the Criminal Justice Act 2011, and to provide for related matters. This Act commenced in August 2017.

### **Public Transport Act 2016**

The Public Transport Act 2016 was enacted on 8 February 2016. There were no further changes in 2017. 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 2005
- 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.

## **T1.2 Implementation of the law**

### **T1.2.1 Sentencing practice related to drug legislation**

Sentencing practices in relation to drug trafficking offences

As stated in the Legal framework workbooks, National Reports, 2015 to 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2016) (Health Research Board. Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2017) (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a) 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 Act; MDAs 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 T1.2.1 of the Legal framework workbook, National Report, 2016 for further information (Health Research Board. Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2017).

### **T1.2.2 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.

### **T1.2.3 How implementation might differ from the text of laws**

For a discussion on why implementation might differ to the text of the law, please see Section T1.2.3 in the Legal framework workbook, National Report, 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a).

### **Drug testing in prisons**

As part of the current Irish Prison Service (IPS) Strategic Plan 2016–2018, sentence management plans were prioritised, as they could assist in decision-making around prisoner readiness for temporary release, remission, or transfer to open prisons (Irish Prison Service 2016). Progress to year end 2017 includes:

- The integrated planning module on the prisoner information management system has been completed, and services data is updated on a regular basis.
- Integrated planning IT functionality, which has been completed in nine areas, is ongoing.
- IT pre-release features have been rolled out to enable more effective management and release planning of prisons.
- Integrated sentence management policy is currently in the process of being developed.
- Integrated sentence management officer role and dedicated management support is available in prisons. Quarterly meetings are held that incorporate training and information sessions (Irish Prison).

More details on this strategy can be found in Section T1.3.1 of the Prison workbook, National Report, 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018b).

Information on mandatory drug testing in prisons can be found in the Prison workbook, Section T1.2.1, Drug use prior to imprisonment and inside prison.

## **T2. Trends**

### **T2.1 Changes in penalties and definitions of core offences**

As stated in the Legal framework workbooks, National Reports, 2015 to 2017 (Health Research Board. Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2017] Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction, 2018 #3349, 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. For an outline of legislative and policy initiatives introduced in response to the drug problem at that time, please see Section T2.1 of the Legal framework workbook, National Report, 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a).

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

More recently, other changes have occurred:

- The Proceeds of Crime (Amendment) Act 2016, which is viewed as a key legislative change, was enacted on 27 July 2016. It amended the Proceeds of Crime Act 1996 by providing for the administrative seizure and detention of property other than land by the Criminal Assets Bureau (CAB).
  - Under Section 1A, a CAB 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.

For an update on secondary legislation, European Union (Freezing and Confiscation of Instrumentalities and Proceeds of Crime) Regulations 2017, which brings Ireland in line with the EU, please see Section T3.1.

### **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 since its initial implementation. As follows: in November 2017, one statutory declaration order – S.I. No 531/2017 Misuse of Drugs Act 1977 (Controlled Drugs) Declaration Order – was made and one regulation order was made – S.I. No. 532/2017 – Misuse of Drugs (amendment) Regulations 2017, both of which allowed for the addition of new substances to existing legislation. For a summary of changes that occurred between 2010 and 2014, please see Legal framework workbook, National Report, 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a).

### **T2.2 How the implementation of the law has changed since 2000**

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

- Garda Síochána statistics show that the types of offences committed by children under the age of 18 years are primarily theft and related offences (21%), burglary and related offences (24%) and damage to property and the environment (34%) (Committee appointed to Monitor the Effectiveness of the Diversion Programme 2018). As stated in previous workbooks, in 2005, the Irish Youth Justice Service (IYJS) was established to develop a coordinated partnership approach among agencies working in the youth justice system, with the aim of improving service delivery and reducing youth offending. Its responsibilities were to:
  - Develop a unified youth justice policy
  - Devise and develop a national strategy to deliver this policy and service
  - Link this strategy where appropriate with other child-related strategies
  - Manage and develop children detention facilities
  - Manage the implementation of provisions of the Children Act 2001 which relate to community sanctions, restorative justice conferencing and diversion
  - Coordinate service delivery at both national and local level
  - Establish and support consultation and liaison structures with key stakeholders, including at local level, to oversee the delivery of this service and response
  - Develop and promote information sources for the youth justice sector to inform further strategies, policies and programmes (Irish Youth Justice Service 2005)}.
- Garda Diversion programmes have been in existence since 1963 and provide an opportunity to divert young offenders from criminal activity. There are two programmes: the Garda Juvenile Diversion Programme (GJDP) and the Garda Youth Diversion Projects (GYDPs). They avail of restorative justice and restorative practices to try and target offending behaviour in young people

under the age of 18 years (An Garda Síochána n.d.). Further information on the process involved can be found in Section T2.2 of the Legal framework workbook, National Report, 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a).

The current provision of diversion programmes is under review. The reason for this is to fully comply with requirements regarding co-funding of projects by the European Social Fund Programme for Employability, Inclusion and Learning 2014–2020 (Flanagan, C 2018, 13 February). To support the development of the GYDP, extensive consultation is being undertaken with key stakeholders and young people, which is helping to address any foreseen problems in expanding and enhancing the service, including the use of age-appropriate interventions (Stanton 2018, 14 June). The consultation has been centred around two questions:

- The development of an agreed statement on what the Garda Youth Diversion Project (GYDP) service is – how it should operate, the range of interventions and supports deployed to assist participants in turning their lives around and to support their families and to prevent young people becoming involved in crime in the first place; the strong links required with other service providers and programmes that support communities, families and young people at risk in order to ensure effectiveness of the GYDP service; and the sense of local community participation and ownership of the work that is also critical to the design of programmes of work that take account of local circumstances and needs and thus have the potential to make a long-term impact; and
- The optimum local geographical areas for organisation of individual projects, with the objectives of keeping those strong links with local community and other service provider stakeholders that are essential to the successful operation of the GYDP, and of ensuring that the service is available throughout the State (Flanagan, 23 May 2018, 23 May).

Additionally, an independent evaluation report that is currently being prepared on a pilot GYDP service in 2015 in County Kerry will also inform the process (Flanagan, C 2018, 15 February). Later this year, a call for proposals will be made which will allow for the current model to be further updated and improved. Applicants are required to also provide for continuity of GYDP services (Stanton 2018, 28 March). It is hoped that the new GYDP model will be accessible in all areas of Ireland regardless of where a child resides (Flanagan, C 2018, 13 February).

This accessibility does not exist at present. To achieve this, service provision will be aligned with Garda Divisions or other appropriate local areas with a distinct community identity as may be agreed during the consultation process. The consideration of such local arrangements may apply particularly in relation to areas with a large number of potential participants on GYDPs (Stanton 2018, 20 March). The changes are viewed as advantageous to young people who cannot access services at the moment (Stanton 2018, 20 March). The new approach is not expected to reduce the level of existing services nor the importance of community involvement in its delivery of these services (Stanton 2018, 22 March).

In 2016, there were 17,615 referrals to the Diversion Programme, representing a 9.7% reduction since 2015 (19,513); 77% (7,262) were admitted to the programme, 13% were considered unsuitable, 35% were dealt with by informal caution, and 21% were dealt with by formal caution (Committee appointed to Monitor the Effectiveness of the Diversion Programme 2018). The IYJS was allocated €13,290,518 million by the DOJE to cover costs of 105 GYDPs (Stanton 2018, 24 July). A further €1,372,178 in grant funding was provided to support other activities, including project work relating to Local Drugs Task Forces, pilot mentoring initiatives and measures to support training and best practices.

- In a similar vein, the Irish Probation Service has a Young Persons Probation (YPP) division of trained staff who work specifically with children and young people aged between 12 and 18 who come before the courts, or those who are in Children Detention Schools or Centres. The YPP is underpinned by two key principles:
  - Detention of children and young people should only be used as a last resort and

- A belief that in most cases community sanctions are more effective and lasting (Probation Service 2018). Current YPP projects are located in Dublin (9), Kilkenny (1), Louth (1), Limerick (2), Galway (1), Kerry (1), and Cork (2) (Irish Youth Justice Service n.d.). Projects are co-funded by the Irish Government and the European Social Fund as part of the EST Programme for Employability, Inclusion and Learning 2014–2020. In 2017, the Probation Service was provided €5,086,500 to support the operation of this project (Stanton 2018, 24 July).
- The Drugs 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 DTC was first established on a pilot basis. The idea is that by dealing with the addiction, the need to offend is no longer present. The DTC continues to provide a restorative justice alternative to a custodial sentence for persons with drug addiction who have pleaded guilty before, or have been convicted by, the District Court for minor, non-violent criminal charges connected to their addiction. There were 108 participants referred to the DTC programme in 2017. The programme comprises three stages – bronze, silver and gold. Ten participants graduated at the gold level during the year, the highest number in any one year since the programme commenced in 2001. This indicates that they have completed all stages of the programme, are not using any non-prescribed drugs and are either working or enrolled on a course. At year end, there were 26 participants on the bronze phase, 11 on the silver phase and 12 on the gold phase (Courts Service 2018). Further information on the DTC can be found in the Legal framework workbook, National Report, 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a).
- Community Courts: The Strategic Review of Penal Policy group welcomed a proposal to pilot a community court in Ireland in 2014 and emphasised the need to ensure that such courts are adequately resourced. For an outline of the case for Community Courts in Ireland, see Section T2.2, Legal framework workbook, National Report, 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a). This work has continued. Reports from the Implementation Oversight Group (IOG) provide an update on the progress so far:
  - The Courts Policy held a preliminary meeting with representatives of DOJE and other Irish Justice agencies to scope out implementation steps in May 2015
  - A follow-up meeting with the DOJE and other Justice Agencies was held in October 2015
  - The Courts Policy sent an outline strategy to the Minister for Justice and Equality for assessment (Penal Policy Review Group 2016).
  - The implementation status is currently rated at D – Discussion/Consultation/planning phase. Areas still to be addressed include:
    - Decision to be made by the IOG on alignment between this initiative and alternatives to prosecution project (Penal Policy Review Group 2017a)
    - Paper on alignment between this initiative and alternatives to prosecution project to go to IOG for consideration (Penal Policy Review Group 2017b).
    - The DOJE have to review changes made following consideration of recommendations for adult caution scheme and youth diversion programme for 18–21 year-olds and their impact on recommendations for a community court before making any final determination (Penal Policy Review Group 2018).
- The Garda Síochána Adult Cautioning Scheme was implemented in Ireland in 2006. Further information on this scheme can be found in the Legal framework workbook, National Report, 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a). In 2014, it was recommended by the Penal Policy Review Group that agencies including AGS, Crime Division and the Director of Public Prosecutions should review the offences covered by the adult caution scheme, with a view to including a wider range of offences (Recommendation 5) (Strategic Review Group on Penal Policy 2014). This work is ongoing. Reports published by the IOG indicate that four milestones were to be addressed, of which three have been achieved:
  1. Three meetings have taken place (Penal Policy Review Group 2016).
  2. A fourth meeting was held in May 2016 and aimed to make recommendations.

3. A review was carried out and a report was produced by the Working Group on Alternatives to Prosecution for the Department of Justice and Equality (Penal Policy Review Group 2017a).
4. The final milestone, which has not yet been achieved, was the decision to be made by the IOG on how Recommendation 5 aligned with the alternatives to prosecution project (Penal Policy Review Group 2017b). A suggested scheme is currently under consideration (Penal Policy Review Group 2018).

### **T3. New developments**

#### **T3.1 Changes in laws in the last year**

##### **Road Traffic (Amendment) Act 2018**

The Road Traffic (Amendment) Act 2018 was enacted on 23 July 2018. The Act provided for automatic disqualification from driving in the case of a person paying a fixed charge in respect of drink driving offences. The aim of the Act was to amend the Road Traffic Act 2016; Road Traffic Act 2010; Road Traffic Act 2002; Road Traffic Act 1994; and Road Traffic Act 1961 and to provide for related matters.

##### **Criminal Justice (Corruption Offences) Act 2018**

The main purpose of the Act was to provide a single Act to repeal and replace several Acts that dealt with corruption in Ireland. For example, Public Bodies Corrupt Practices Act 1889; Prevention of Corruption Act 1906 and 1916; Section 38 of the Ethics in Public Office Act 1996; Prevention of Corruption (Amendment) Acts 2001, Part 6 of 2005 and 2010. In addition, it provides renewed provision for the main requirements of a number of international anti-corruption instruments already ratified by Ireland:

- The Convention drawn up on the basis of Article K (3)(2)(c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union in Brussels on 26 May 1997 and adopted by Ireland on 11 March 2003
- The Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was adopted in Paris on 21 November 1997 and ratified by Ireland on 22 September 2003
- The Council of Europe Criminal Law Convention on Corruption done at Strasbourg on 27 January 1999 and ratified by Ireland on 3 October 2003
- The EU Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector
- The Additional Protocol to the Council of Europe Criminal Law Convention on Corruption done at Strasbourg on 15 May 2005 and ratified by Ireland on 11 July 2005
- The United Nations Convention Against Corruption done at New York on 31 October 2003 and ratified by Ireland on 9 November 2011.

Part 6 of the Act allows for amendments to various references and definitions in other legislation as appropriate to corrupt conduct, corruption offences, offences against the administration of justice and relevant offences to take account of the offences in the Act, for example, Criminal Justice Acts 1994 and 2011 (Schedule 1); Proceeds of Crime Act 1996; Bail Act 1997; Section 6 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010; and Criminal Procedure Act 2010.

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

In November 2018, under S.I. No. 521/2017 – Misuse of Drugs (Amendment) Act 2016 (Commencement) (No. 2) Order 2017, Section 7, which allowed for the revocation of the following instruments, was commenced:

- (a) the Misuse of Drugs (Licence Fees) Regulations, 1979 (S.I. No. 164 of 1979)
- (b) the Misuse of Drugs (Safe Custody) Regulations, 1982 (S.I. No. 321 of 1982)
- (c) the Misuse of Drugs (Exemption) Order, 1988 (S.I. No. 326 of 1988)
- (d) the Misuse of Drugs Regulations, 1988 (S.I. No. 328 of 1988)
- (e) the Misuse of Drugs (Designation) Order, 1998 (S.I. No. 69 of 1998)
- (f) the Misuse of Drugs (Supervision of Prescription and Supply of Methadone) Regulations, 1998 (S.I. No. 225 of 1998).

### **Misuse of Drugs (Supervised Injecting Facilities) Act 2017 (Commencement) Order 2017**

This Act commenced in November 2017 under S.I. No. 517/2017 commencement order. Further information on this Act can be found in Section T3.1 of the Legal framework workbook, National Report, 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a).

### **Criminal Justice (Suspended Sentences of Imprisonment) Act 2017**

Following on from the Criminal Justice (Suspended Sentences of Imprisonment) Bill 2016, the Criminal Justice (Suspended Sentences of Imprisonment) Act 2017 was enacted on 15 March 2017. However, the commencement order has not yet been issued. The aim of the Act was to amend Section 99, which refers to the power to suspend sentences in the event of another offence being carried out by an individual who was already the subject of a suspended sentence. The need for this amendment was a result of a High Court Judgment in April 2016, which purported that some of the provisions in this Section were unconstitutional.

Under the provisions of the new Act, when a person carries out a 'triggering offence' having already obtained a suspended sentence for a previous offence, following court proceedings and imposing a sentence for the triggering offence, the individual will be remanded to the court that imposed the order of the suspended sentence, so that the matter of activation of the suspended sentence can be dealt with. If the conviction for the triggering offence is appealed, then the original suspended sentence will not be dealt with until the appeal is dealt with.

### **European Union (Freezing and Confiscation of Instrumentalities and Proceeds of Crime) Regulations 2017**

Secondary legislation was enacted in November 2017 to implement Directive 2014/42/EU of the European Parliament and the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (S.I. No. 540/2017 – European Union (Freezing and Confiscation of Instrumentalities and Proceeds of Crime Regulations 2017). The Directive allows for law enforcement agencies of Member States to confiscate and recover the profits that criminals make from cross-border serious and organised crime. It lays down minimum rules with respect to the freezing and confiscation of criminal assets through direct confiscation, value confiscation, extended confiscation, non-conviction-based confiscation (in restricted circumstances) and third-party confiscation.

### **Criminal Justice Money (Laundering and Terrorist Financing) (Amendment) Bill 2018**

The aim of Criminal Justice Money (Laundering and Terrorist Financing) (Amendment) Bill 2018

is to amend the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to enable the Fourth EU Money Laundering Directive to be transposed into national law and to carry out recommendations of the Financial Action Task Force. The Bill increases the responsibilities of credit and financial institutions, lawyers, accountants and those dealing with high-value goods in relation to money laundering and terrorist financing. For example, it is necessary to carry out risk assessments regarding money laundering and terrorist financing, putting guidelines in place to alleviate that risk and taking reasonable steps to protect clients. In addition, the Bill outlines the functions and powers of the Financial Intelligence Unit of the Garda Síochána. The Bill was passed by Dáil Éireann on 3 July 2018.

### **T3.2 Changes in the implementation of the law in the last year**

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

The Courts Service publishes data on the outcomes for drug offences in its annual report. The latest report relates to 2017 (Courts Service 2018). In 2017, the District Court received 391,207 offences, and made orders in respect of 290,567 offences, which represents a 4.7% increase on the 284,678 orders made in 2016. Orders made in respect of drug offences increased by over 12% between 2016 (13,127) and 2017 (14,736). Of these, 3,497 were struck out or dismissed, 2,747 led to a fine, 2,015 led to probation, 337 led to community service and 345 led to imprisonment or detention.

A total of 13,974 offences involving 4,645 defendants were received in the Circuit Court (a higher court with the jurisdiction to impose more severe sentences). It is important to note that there may be more than one offence brought against a defendant (Courts Service 2017). There were 1,955 drug offences, which was 24% higher than the 2016 figure (1,576). These offences involved 557 defendants; 1,158 resulted in a guilty plea, while 204 led to imprisonment (Courts Service 2018). Further data can be found in Tables T1.2.1.1 to T1.2.1.7, Section T1.2.1 in the Drug market and crime workbook.

#### **Prison sentences for drug offences**

On 30 November 2017, there were 3,738 prisoners in custody across the prison system. Of these, 12%, that is, 347 out of 2,990, were serving sentences for drug-related offences (Irish Prison). Please see Section T1.2.2 and Table T1.2.2.1 of the Prison workbook, National Report, 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018b) for a breakdown of people serving sentences for drug-related offences, by category and by sentence length, at 30 April 2016.

#### **Recidivism**

Recidivism rates can serve as an indicator of whether penalties for offending act as a deterrent to future offending behaviour. The Central Statistics Office (CSO) provides recidivism data for Ireland from two sources: prisons and probation. The most recent recidivism data available for prisoners was for 2010. These data can be found in the Legal framework workbook, National Report, 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a). No new data are available at this time.

Information on reoffending behaviour in adult and young offenders who received probation and community service orders for 2010 can be found in the Legal framework workbook, National Report, 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a). No new data are available at this time.

See Section T1.1.2 of this workbook for penalties for reoffending.

### **T3.3 Evaluation of the law in the last year**

The Law Reform Commission (LRC) is responsible for reviewing and putting forward proposals for reform; for example, enacting legislation to clarify and modernise Irish legislation. As stated in the Legal framework workbook, National Report, 2017 (Irish National Focal Point to the European

Monitoring Centre for Drugs and Drug Addiction 2018a), the most recent paper published by the LRC was in August 2017. The paper, entitled *Issues paper on Suspended Sentences*, built on previous reports by the LRC, including the 1996 report entitled *Sentencing* and the 2013 report entitled *Mandatory Sentences*.

As stated in previous workbooks, sentencing for possession or importation of drugs for sale or supply was examined by the Irish Sentencing Information System (Mackey 2014), while the impact of legislation on the use of NPS was examined by Smyth, James, Cullen and Darker (2015) (Smyth, Bobby P., *et al.* 2015) (see Section T1.1.3 and T3.3 of the Legal framework workbook, National Report, 2016 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2016)) and Smith, Lyons and Cullen (2017) (Smyth, Bobby P., *et al.* 2017) (see Section T4.1 of the Legal framework workbook, National Report, 2017) (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a).

### **T3.4 Major political discussions in the last year relating to legislation and implementation.**

#### **Offences Against the State (Amendment) Act 1998 and Criminal Justice (Amendment) Act 2009.**

As has occurred in previous years, on 13 June 2018, motions that sections 2–4, 6–12, and Section 17 of the Offences Against the State (Amendment) Act 1998 and Section 8 of the Criminal Justice (Amendment) Act 2009 should continue in operation from 30 June 2018 to 29 June 2019 were brought before the Dáil (Flanagan, C 2018, 13 June-a) and the Seanad (Flanagan, C 2018, 14 June). Minister Flanagan stated that no one should be under any illusion regarding the threat faced by society and the criminal justice system from organised crime groups who are relentless in pursuing their criminal activities. The provisions in the 1998 and 2009 Acts are considered vital in the fight against terrorism and serious organised crime and support AGS to continue this work successfully.

**Offences Against the State (Amendment) Act 1998.** The question was put, and declared carried, in the Dáil on 14 June 2018 (Horkan 2018, 14 June). The division took place in the Dáil on 14 June 2018, and the question was declared carried (Tá 74; Níl 35) (An Ceann Comhairle 2018, 14 June). It was noted that in the previous 12 months 23 convictions were secured and a further 84 persons were awaiting trial (O'Callaghan 2018, 13 June).

**Criminal Justice (Amendment) Act 2009.** The question was put, and declared carried, in the Seanad on 14 June 2018 (Horkan 2018, 14 June). The division took place in the Dáil on 14 June 2018, and the question was declared carried (Tá 72; Níl 32) (An Ceann Comhairle 2018, 14 June). It was noted that no cases came for trial before the Special Criminal Court under Section 8 of the Criminal Justice (Amendment) Act 2009 (Flanagan, C 2018, 13 June-b).

Further information on both Acts can be found in Section T1.1.4 of this workbook.

#### **Criminal Law (Recruitment of Children to engage in Criminal Activity) Bill 2018**

A Private Members Bill, Criminal Law (Recruitment of Children to Engage in Criminal Activity) Bill was initiated in March 2018 by Deputy Anne Rabbitte. The aim of the Bill is to make provision for the creation of an offence in circumstances where an adult recruits a child to carry out a criminal offence on his or her behalf and to provide for related matters. The offence shall be deemed to be committed when an adult recruits a child, either knowingly or in a manner that is reckless as to whether the person is a child, to commit the crime. To be guilty of the offence the person must know that the child is likely to commit the crime as a result of their incitement, or is reckless as to whether the child will commit the crime (Stanton 2018, 7 March). Deputy Rabbitte, proposes that a person found guilty should be punished upon conviction to an imprisonment term not exceeding 10 years.



This Bill would overcome a gap identified by Dr Geoffrey Shannon, an expert on child and family law in Ireland, who notes that current legislation only applies to particular crime and does not apply to repeated incidents or to encouraging crime. This Bill would apply to any adult, even if it is an older sibling or family member who is grooming vulnerable children to be involved in crime. For example, in the drug trade, “runners” are typically young people directed by adults to pick up packages and drop them elsewhere (Stanton 2018, 7 March). In light of the importance of this topic and the recent work on the Greentown study, this Bill was welcomed (Stanton 2018, 7 March). The second stage of the Bill will be taken in Private Members’ time.

### **Railway Safety (Amendment) Bill 2018**

A General Scheme of the Railway Safety (Amendment) Bill 2018, which was brought before the Joint Committee on Transport, Tourism and Sport to be scrutinised in May 2018, was approved (Department of Transport Tourism and Sport 2018, 22 May). The Committee scrutinised the General Scheme in June 2018. The aim of this Bill is to amend the Railway Safety Act 2005, with the view to putting stricter drug and alcohol provisions in place for train drivers and other railway safety-critical workers. When the Railway Safety Act 2005 was first adopted, blood alcohol limits for train drivers was similar to those applied to road motorists. Following amendments to Road Traffic legislation (see Section T1.1.4), statutory limits for professional drivers such as taxi, bus or HGV drivers have been lowered. In contrast, no changes were made to limits under the Railway Safety Act 2005, and therefore train drivers are currently allowed to have four times more alcohol in their system than the equivalent professional road driver (Department of Transport Tourism and Sport 2018, 22 May). See Section T1.1 for more information on the Railway Safety Act 2005. See Section T2.3 of the Drug market and crime workbook for up-to-date figures on random drug testing in Irish railway-critical workers.

### **Parole Bill 2016**

As stated in the National Report, 2016, the Parole Bill 2016 was initiated on 25 May 2016 (Health Research Board. Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2017). The Select Committee on Justice and Equality completed its consideration and made amendments to the Parole Bill 2016 in May 2017. This Bill is still before Dáil Éireann, Third Stage, where work continues on amendments. The expectation was that it would not be available until after the summer recess (Flanagan, C 2018, 13 June-b). Further information on this Bill can be found in the Legal framework workbook, National Report, 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a).

### **Controlled Drugs and Harm Reduction Bill 2017**

A Controlled Drugs and Harm Reduction Bill 2017 was brought before the Seanad by an Independent Senator in May 2017. The aim of the Bill is to amend the legislation to provide for the decriminalisation of controlled drugs when the amount in possession is for personal use (personal communication, Department of Health, 2017). The Bill was brought before the Seanad by Senator Lynn Ruane. Although it received positive commentary, legitimate questions and concerns were raised. The Bill was not put back on the agenda, as the national drugs strategy was published by the Minister of State, Catherine Byrne. Commitment was made by the Minister to establish a consultation process, which is currently under way (Ruane 2018, 20 June). Further detail on this Bill can be found in Section T3.1 of the Policy workbook, National Report, 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018c).

### **Sentencing Council Bill 2017**

A Private Member’s Bill, the Sentencing Council Bill, which was initiated in February 2017 by Deputy Jonathan O’Brien is currently before Dáil Éireann, Second Stage. Further information on this Bill can be found in the Legal framework workbook, National Report, 2017 (Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a).

## **Garda Síochána (Amendment) Bill 2017**

The Garda Síochána (Amendment) Bill 2017 was initiated in April 2017 by Deputy Jim O’Callaghan. The aim of the Bill is to amend the Garda Síochána Acts 2005-2015 to provide for enhanced powers to be granted to the Policing Authority for the purpose of overseeing the performance of the Garda Commissioner and the Garda Síochána of its functions relating to policing services. It also amends the provisions of the Acts related to the Garda Síochána Inspectorate and to provide for related matters (O’Callaghan 2017, 6 April). The bill is currently before Dáil Éireann, Third Stage.

## **Decriminalisation: Personal possession of illegal drugs**

On the implementation of the national drug strategy entitled ‘Reducing harm supporting recovery’, an expert working group was set up to investigate alternative approaches for the possession of illegal drugs for personal use. The working group is required to make recommendations to Minister for Health and the Minister for Justice and Equality within 12 months. To inform deliberations, a public consultation was launched on 31 May 2018 to seek the views of the public on the effectiveness of current law. In addition, the public’s views on what alternatives could be considered were sought via an online questionnaire (Department of Health 2018, 1 June). The consultation closed on 13 July 2018. More than 16,000 submissions have been received (Byrne 2018, 28 June). It is hoped that the report of the working group will be available in October 2018. Further information on decriminalisation can be found in Section T4.1.2 of this year’s Policy workbook.

## **Community Justice Intervention**

A working group within the justice sector has been examining proposals for the development of a ‘Community Justice Intervention’ initiative aimed at tackling low-level adult offenders (i.e. those committing relatively minor offences in specific offence categories) and effectively addressing their offending behaviour. This would potentially involve diversion from the courts system and would allow for more effective responses to one-off and repeat low-level offending, with the emphasis on speedy processing aimed at reducing the risk of reoffending; additionally, it would provide quick referral to the necessary services for those who need them. The working group is still examining a range of options, including developing a conditional cautioning system. However, due to the existence of many models, careful deliberation is required in order to find a suitable outcome (Flanagan, C 2018, 17 April).

## **T4. Additional information**

### **T4.1 Sources of information**

Joint Committee on Justice and Equality. *Report on penal reform and sentencing*. Dublin: Houses of the Oireachtas; 2018. Available from <https://www.drugsandalcohol.ie/28994/>

### **Summary**

Increased interest in penal reform and sentencing in Ireland has resulted in the publication of several reports (Houses of the Oireachtas Joint Committee on Justice Defence and Equality 2013, Joint Committee on Justice 2015, Strategic Review Group on Penal Policy 2014, Thornton Hall Project Review Group 2011). An updated report, which re-examined this subject, was published by the Joint Committee on Justice and Equality in May 2018 (Joint Committee on Justice and Equality 2018). The report brings together existing evidence and the views of key stakeholder groups, such as the Irish Penal Reform Trust (IPRT), Victims’ Rights Alliance, Probation Service, Irish Prison Service, Jesuit Centre for Faith and Justice, Prison Officers’ Association and Simon Communities of Ireland. The overall aim was to determine what the main issues were and to identify ‘specific actions’ to overcome them. The themes that emerged from the engagement with stakeholders resulted in several recommendations by the committee.

### **Prison numbers and conditions**

Although daily prison populations in Ireland are average compared with our European counterparts, committal rates were viewed as high. Overcrowding was identified as an issue in some prison estates along with problems, such as safety of offenders and staff, health and wellbeing. The committee recommended that prison numbers should be capped, and a Government strategy should be implemented to decrease the prison population by 50%. A one size fits all was not considered suitable for a prison setting nor was the over-reliance on closed prisons. The committee urged that new prisons should be more flexible and utilise state-of-the-art, community-based, semi-open facilities.

The increase in female prisoners was viewed as dramatic. It was suggested that a possible way to reduce the number of females in prison was to provide step-down units post-release. However, the committee recommended that a Housing First approach should be used instead. It was proposed that young people aged 18–24 years should be recognised as a distinct group that comes under the remit of the Irish Youth Justice Service and the Department of Children and Youth Affairs. In addition, each youth detention centre should be paired with third-level and further education colleges. Finally, the committee called for an accommodation policy which should ensure that all prisoners are in single occupancy cells.

### **Complaints and inspections**

The committee recommended that a mechanism for considering prisoner complaints should be set up as well as a complaints procedure. The group also called for legislation to provide for inspections in all detention places within the Irish justice system and for the immediate ratification of the optional protocol to the United Nations Convention against Torture.

### **Family/visitation**

The influence of family and children was highlighted as a driving force for behaviour change. The committee believed that these relationships should be promoted and maintained during incarceration and post-release. Establishing mother and baby units would further promote and support child wellbeing and family life.

### **Addiction and mental health**

The evidence provided indicated that a large proportion of committals presented with addiction or substance abuse (70%) and mental health issues. Access to rehabilitation services is vital and prisoners need to be aware of what they can access. Currently, prisoners experience extensive delays in accessing services. The committee urged that it was imperative that sufficient resources were provided to help address prisoners' mental health needs.

Although the committee welcomed violent and disruptive prisoner (VDP) units in the Midlands Prison, the establishment of VDP units across the prison estate was recommended. Moreover, prison staff require support regarding their wellbeing as well as appropriate compulsory training to allow them to manage and help prisoners with health problems. Problems, such as addiction, homelessness and reoffending are not isolated events but are often interconnected and hence a multiagency intervention should be applied pre- and post-release.

### **Education, retraining and therapeutic approach**

The main argument put forward by stakeholders was that a therapeutic instead of a punitive prison setting was more helpful in the rehabilitation of prisoners to society. The committee called for a similar model to be used in Ireland. Moreover, education and training facilities were viewed as

necessary to enable prisoners to develop skills that will hold them in good stead upon release. The committee believed that an opportunity to locate units of therapy and education in Irish prisons exists; this approach has already been shown to be successful in other countries, for example, the Villabona project in Spain.

### **Health**

Due to recent criticisms of how healthcare is managed in Irish prisons by the European Committee for the Prevention of Torture, the committee recommended that the Health Information and Quality Authority should carry out a review of prison healthcare and that additional resources need to be assigned to allow the Health Service Executive to provide prison healthcare.

### **Solitary confinement and extended lock-up**

Solitary confinement and extended lock-up should be phased out. The committee called on the Government to facilitate the passage of the Private Members' Bill entitled the Prisons (Solitary Confinement) (Amendment) Bill 2016 without delay. This Bill provides a definition of solitary confinement and provides that prisoners should not be held 15 days or more in solitary confinement.

### **Sentencing and remission / early release policies**

Greater emphasis should be placed on alternatives to imprisonment, such as community-based sanctions and non-custodial sentences. As many as 50% of committals are the result of unpaid fines, despite the existence of the Fines (Payment and Recovery) Act 2014, which allows for alternatives, such as recovery orders and earnings orders. The committee has called for a review to determine whether these provisions are being used or not. They also contend that the payment threshold is too high (€100) and should be removed and the length of time taken to pay fines should be returned to two years, as stated in the original Fines Act 2010.

With regard to drug offences, the committee believed that non-custodial treatment options should be utilised more widely. Under current legislation, the court may place an offender under supervision of a named person or organisation for a certain period of time, and/or refer him/her for treatment or further education/training. The committee has called for a review to determine why these options are not being utilised. They further call for the expansion of Garda diversion and community projects as additional alternatives to imprisonment.

The committee welcomed the Community Return Scheme, which is an incentivised scheme where participants receive supervised community service rather than staying in prison. This programme allows qualifying prisoners to be released early to carry out unpaid community work. Prisoners that pose no threat, have served between one and eight years in prison, and at least one-half of their sentence are eligible to participate. Thus far, this programme has been shown to be successful and the committee believed that it should be expanded to release more prisoners.

### **Spent convictions**

Limitations of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 were highlighted and require immediate attention. Under this Act, circumstances, such as being young, having an addiction or experiencing poverty are not considered as factors that may have influenced and/or resulted in criminal behaviour. In addition, although provisions exist for young people aged up to 18 years, none exist for those aged between 18 and 24 years. Moreover, the Act does not allow for the rehabilitation of offenders that have carried out more serious crimes.

### **Homelessness**

The committee proposed that a Housing First approach should be used such that prisoners upon release from prison are provided with their own home and adequate supports. This approach has been shown to result in higher reintegration into society and lower risk of reoffending.

### **Parole**

The transformation of the current parole system into a statutory parole board independent of government control and which uses transparent and just decision-making processes was viewed as essential.

### **Victims of crime**

Rather than offenders paying a fine, a victim surcharge system was recommended by the committee, where offenders pay a surcharge to the victim. This charge would then go towards providing support to organisations that support victims.

### **Conclusion**

The IPRT welcomed the recommendations of the committee, which it believed took into consideration many of the issues raised by the IPRT to the Oireachtas committee (Irish Penal Reform Trust 2018, May 11, Leogue 2018, May 11). Although progress has been made since the initial report in 2013, clearly based on the evidence presented in the updated report, more work needs to be done. The committee looks forward to working proactively and productively with the Minister to address issues in the penal system in the future.

Carr N and Maguire N. Pre-sentence reports and individualised justice: consistency, temporality and contingency. *Ir Prob J.* 2017; 14: 52–71. Available from: <https://www.drugsandalcohol.ie/28303/>

### Summary

With the aim of decreasing the dependence by criminal justice systems on imprisonment, numerous reports have encouraged drawing on a wider array of alternatives to prison, for example, pre-sentence reports (PSRs). PSRs are requested by judges from probation officers after a defendant is found guilty and before sentencing. They contain in-depth information about the defendant, such as personal circumstances, background, ability to engage in rehabilitation, risk of reoffending, and may also provide guidance on sentencing and rehabilitation, which may or may not inform sentencing. Primarily, research has highlighted the importance of PSRs; however, although they are regularly used in Ireland, despite no statutory requirement to do so, the process involved is not clearly understood.

This article presents the main findings of a study entitled *Individualising justice: pre-sentence reports in the Republic of Ireland*, which was commissioned by the Probation Service to investigate the role of PSRs within the Irish criminal justice system (Carr and MaGuire 2017); MaGuire, 2017 #3444}. More specifically, this study:

- Investigated the circumstances in which pre-sentence reports are used by judges.
- Explored the construction of pre-sentence reports by probations officers and how they were interpreted by judges.
- Explored how PSRs impact on sentencing.

### **Methodology**

The study was mainly qualitative and utilised a range of methods:

- Observation of probation interview practices (n=21), ranging from two to four per defendant

- Content analysis of pre-sentence reports from the District Court (n=5) and Circuit Court (n=4)
- Semi-structured interviews with probation officers (n=9) and judges (n=5)

## Results

As shown in Table T4.1.1, three of the cases reviewed were related to drug offences.

**Table T4.1.1 Overview of cases related to drug offences**

Case	Offence	Sentence	Length of time between report request and court sentence
CC02	Possession of drugs with intent to supply	Suspended prison sentence (three years). No supervision	140 days
DC03	Unlawful possession of drugs (x2); Possession of drugs with intent to supply	Adjourned supervision – seven months then case struck out	215 days
DC04	Possession of drugs for the purpose of sale or supply; Unlawful possession of drugs; Possession of a knife	Suspended prison sentence (nine months)	198 days

Source: (Carr and MaGuire 2017), pp. 59–60

### Probation officer perspectives

Due to the high association between sentence recommendations and actual sentencing outcomes, probation officers felt confident that their reports were well received in court. However, they were uncertain as to whether judges read the reports in full or whether judges and probation officers had a shared understanding of risk assessment.

### Judges perspectives

In the main, judges' perceptions of PSRs and their part in sentencing was positive. They welcomed clear direction from probation officers because their expertise was in the 'social' area and risk assessment, which many judges did not understand. Feelings towards the Probation Service was also positive. Judges believed that imprisonment could have a harmful impact and thus community sentences were a step towards rehabilitation. However, referral decisions were moderated due to knowledge that resources were lacking and the belief that cases needed to be prioritised.

### Limitations

As acknowledged by the authors, although the information gleaned provided an increased understanding of PSRs and the process involved in Ireland, this study centred on one metropolitan area. It is already known that court practices and cultures and the use of PSRs and community sanctions differ throughout Ireland. Consequently, generalisability of the findings of this study to other areas is questionable. Additionally, a central characteristic of the five judges who participated in this study was that they were all advocates of PSRs and community sanctions. Hence, the beliefs reported may not be reflective of judges who are not inclined to use PSRs or community sanctions. It was understood from the initial design of the study that defendant perceptions of PSRs and the process would be sought using interviews. However, the length of time taken between requesting a PSR and sentencing made it challenging and impossible to follow-up the defendants. If this information had been collected, it would have added another dimension to the findings.

## Conclusion

The authors concluded that PSRs play a vital but somewhat unrecognised part within the Irish criminal justice system. They allow two diverse professional groups, probation officers and judges, to communicate and interact. Despite differences in the philosophical underpinnings of these professions, they both appreciate the functionality of the PSR, formally in assisting judicial decision-making and informally by providing a pause in the process, which gives defendants a chance to engage, thus illustrating their ability and commitment to change. Nevertheless, as evidenced by this study, there were variations in how PSRs are utilised, which could be explained by inadequate policy and legislative guidance. As acknowledged by the authors, this study provided insight and further understanding of PSRs and the process involved in their utilisation from an Irish context. However, further research is required to address the limitations identified.

Brandon AM and O'Connell M. Same crime: different punishment? investigating sentencing disparities between Irish and non-Irish nationals in the Irish criminal justice system. *Br J of Criminol*, 2017; azx080: 1–20. Available from <http://www.drugsandalcohol.ie/28629/>

## Summary

A central view of justice in democratic societies is that people are regarded equally and respectfully and are not exposed to discrimination, directly or indirectly (Shute, *et al.* 2005). An area of concern worldwide is the occurrence of discrimination centred on ethnic, cultural or social groups within the criminal justice system (Clark, *et al.* 2012). Historically, Ireland has been associated with mass emigration. However, since the nineties and noughties, due to the economic downturn, this trend has been reversed and Ireland has become a multicultural society that is now home to many EU citizens (Bracken 2015). The change in Ireland's population has similarly been reflected within the Irish criminal justice system. Hence, the study described here by Brandon and O'Connell is timely and aimed at determining whether racial bias was present in Irish sentencing practices between Irish and non-Irish nationals (Brandon and O'Connell 2017). Based on the findings of the literature review, attention was paid specifically to offences that involved theft and robbery and those that were subject to ethnic profiling, such as motoring and drug offences. The research question that was addressed was are non-Irish nationals receiving harsher sentences than Irish nationals for the same offence?

## Methods

The data, which was collated by the Irish Prison Service, covered a 12-month period between 2015 and 2017. Table T4.1.2 shows the prevailing characteristics of the prison population under examination. The final dataset comprised 35 offence categories.

**Table T4.1.2: Summary of characteristics of participants examined**

Protective factor	Total	Irish	Non-Irish
Cases	11158	9949	1209
Males	8691	7642	1049
Females	2467	2307	160
Age	17–90 years		
Mean age	33.41 (SD=10.43)	33.83	34.96

Source: Brandon and O'Connell, 2017, p. 11

## Results

### Non-Irish national representation

Across all offence categories, 10.84% of committals were non-Irish nationals. As shown in Table 4.1.3, cross-tabulation analyses indicated that although non-Irish nationals were under-represented in a range of offences, they were over-represented in four offence categories: driving under the

influence; having no vehicle insurance; theft; and possession of drugs for sale or supply to the value of <€13,000.

### Nationality bias in sentencing

Independent t-tests were applied to determine whether mean sentence length received by non-Irish nationals differed from sentences received by Irish nationals. The results showed that Irish nationals received significantly longer sentences for assault and no road tax. Non-Irish nationals received significantly longer sentences for estreatment of bail, using a vehicle without an NCT certificate, and failure to comply with a Garda.

Regarding offences for possession of drugs for sale or supply to the value of <€13,000, although non-Irish nationals received sentences 10.95 months longer than Irish males, Cohen's d was small (d=0.33). Similarly, a regression analysis by gender illustrated that sentences received by non-Irish males were 10.78 months longer than those received by Irish males (p=0.018).

**Table T4.1.3: Under-representation and over-representation of non-Irish nationals across different offence categories**

Offence categories	Under-represented	Over-represented
Attempted robbery	✓	
Vehicle theft	✓	
Criminal damage	✓	
Robbery	✓	
Parking fine offences	✓	
Assault causing harm	✓	
Intoxication in a public place	✓	
Threatening behaviour in a public place	✓	
Unlawful possession of drugs	✓	
No television licence	✓	
Driving under the influence		✓
No vehicle insurance		✓
Theft		✓
Possession of drugs for sale/supply (to the value of <€13,000)		✓

Source: (Brandon and O'Connell 2017), p. 11

### Impact of a previous custodial sentence

The authors examined the possibility that previous custodial sentences influenced sentencing outcomes; 66.9% had a previous custodial sentence. No difference was shown for possession of drugs for sale or supply. However, non-Irish nationals received longer sentences for two offences: estreatment of bail and using a vehicle without an NCT certificate.

### Discussion

Although the findings of this study could suggest the presence of a racial bias within the Irish criminal justice system, the authors contend that other reasons could be put forward to explain the outcomes found. For instance, non-Irish nationals may not have a clear understanding of the Irish justice system. An earlier admission of guilt can result in community punishment instead of imprisonment or a reduction in custodial sentence by up to one-third, which could result in shorter sentences.

Additionally, how data is recorded may not be accurate. For example, the Irish Traveller community are deemed to be over-represented in the Irish criminal justice system; however, they are mainly invisible, in that any sentences received are included with the data for Irish nationals. Hence, the differences between Irish and non-Irish may be larger than this study shows. Likewise, some non-Irish residents and prisoners may in fact be British citizens, and hence may not be viewed as foreign at all. Some of those receiving custodial sentences for possession of drugs for sale or supply may not be resident in Ireland, yet the level of detail covered by this dataset does not cover this fact.



## **Limitations and future research**

The authors acknowledged several limitations in the study. Although the number of cases and the timeframe of this study was a considerable strength for data analysis, the authors recognised that some factors could not be considered as they were not available; for example, mitigating and aggravating circumstances. With the aim of establishing a more in-depth picture of the link between ethnicity and sentencing, the authors have recommended that further research should consider including detailed measures of offence seriousness.

## **Conclusion**

This is the first study to examine differences between Irish and non-Irish nationals within the Irish criminal justice system. It has demonstrated that even when other factors, such as gender and previous sentences, have been accounted for, non-Irish nationals received longer sentences than Irish nationals. The authors have recognised that this study is not without limitation; however, the results suggest that racial bias does occur in Ireland's criminal justice system and further investigation of this area is justified.

O'Hara K. Examining the comparative use, experience, and outcomes of community service orders as alternatives to short prison sentences in Ireland. Dublin: Dublin Institute of Technology, 2016. Available from: [http://www.iprt.ie/files/KOH\\_FINAL\\_PhD\\_THESIS\\_Website.pdf](http://www.iprt.ie/files/KOH_FINAL_PhD_THESIS_Website.pdf)

## **Summary**

In October 2017, the IPRT in association with the Irish Criminal Bar Association held a seminar and launched a PhD research project *Examining the comparative use, experience, and outcomes of community service orders as alternatives to short prison sentences in Ireland* by Dr Kate O'Hara (O'Hara 2016).

## **Background**

Community service orders first emerged in Ireland following the enactment of the Criminal Justice (Community Service) Act 1983 in December 1984. According to this legislation, a community service orders could only be enforced after imprisonment had been considered. With the aim of overcoming issues of underutilisation, reducing short-term prison (STP) stays, and helping offenders and the wider society, the Act was amended in 2011 to allow and encourage courts to impose a community service order as an alternative to short-term sentences (<12 months) as long as certain criteria were met.

## **Aims and objectives**

The main objective of Dr O'Hara's study was twofold: first, to examine how CSOs were utilised and, second, to compare views, experiences and recidivism rates between two groups: those that received community service orders (n=6784) and those that received STP sentences (n=5231).

## **Methodology**

The study used a mixed methodology approach. Data related to STPs (n=6784) and community service orders (n=5231) for the years 2011 and 2012 were provided by the Irish Prison Service and the Probation Service. This was subsequently linked to criminal history and re-arrest data from AGS. The analysis involved a comparative analysis (quantitative) and interviews (qualitative, n=21). Lastly, the frequency of rearrests was examined 12 and 24 months after leaving prison or beginning the community service order.

## **Results**

The results indicated that, although offenders in the STP group were older than those in the community service order group, the number of previous convictions for the STP and CSO groups was similar. The likelihood of obtaining a community service order was influenced by province, court location, and court type. More community service orders were issued in Ulster, while fewer were issued in Munster and Connacht. No association was shown between community service orders and Leinster. The analysis of courts by location indicated that more community service orders were issued from rural courts. Moreover, a higher number of offenders received a community service order when a court was located far from a prison. These results should be interpreted with caution however as many of the effect sizes were small.

Sanctions for drug offences resulted in a higher number of community service orders than STP sentences. Although this outcome was significant, the effect size was low. The average community service order length for drug offences was 164 hours (SD=56.1), while the average alternative prison sentence was 6.7 months.

For individuals whose original offences were drug offences:

- At six months, rearrests were higher in the community service order group when compared to the STP group, 21% (n=121) and 17% (n=68), respectively.
- At one year, rearrests were higher in the community service order group when compared to the STP group, 33% (n=194) and 30% (n=120), respectively.
- At two years (2011 only), rearrests were lower in the CSO group when compared to the STP group, 50% (n=151) and 54% (n=116), respectively.

Only a small proportion of offenders whose original conviction was for drug offences were reconvicted for drug offences; 21% (n=25) received community service orders and 13% (n=18) received STPs. Subsequent convictions included violent offences, property offences, road traffic offences, public order offences and other offences. Information on other offence categories can be viewed in Dr O'Hara's thesis.<sup>1</sup>

## **Conclusion**

Dr O'Hara concluded that this was the first study of its kind to be carried out in an Irish jurisdiction. In order to implement and consider community service orders and other alternatives to imprisonment as acceptable, more research was needed along with changes to policy and practice.

In response to Dr O'Hara's work, Judge David Riordan, the Probation Service, Professor Mary Rogan, Mr David Perry BL, and the IPRT welcomed the findings of the study and acknowledged that it increased the knowledge and understanding of community service orders in Ireland. The Probation Service provided an outline of changes made thus far and examples of work carried out by offenders that have received community service orders to date and their plans for the future.

To coincide with this seminar, the IPRT published a discussion paper where they explore how the application of community service orders within the Irish criminal justice system can be improved (Irish Penal Reform Trust 2017). They identify a number of areas that need to be addressed to achieve this, such as evidence-informed policy, legislative reform, monitoring and review, promoting consistency, raising awareness, tailored community sanctions, addressing substance misuse, and further research.

Professor Rogan drew attention to the fact that the data in this study came from a variety of sources and of the importance of accurate, good-quality data accessible to researchers. She believes that this will provide a sustainable model to enable further exploration of the impact and usefulness of policies that are being implemented within the Irish justice system, while also allowing for changes

and improvements to be captured. Collaborative work between the academic sector and practice and policy-makers was identified as the best route to achieving this.

## **T4.2 New areas of specific importance**

### **Cannabis for Medicinal Use Regulation Bill 2016**

As stated in previous reports, extensive debate has arisen about medicinal cannabis (see Section T5 of the Legal framework workbook, National Report, 2016 and Section T4.2 of the Legal framework workbook, National Report 2017) (Health Research Board. Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2017, Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction 2018a). The Cannabis for Medicinal Use Regulation Bill 2016, which was a Private Members Bill that aimed to make cannabis available as a medicinal product for individuals who receive certification from a registered doctor, was rejected by the Joint Committee on Health in 2017, as it was viewed as having technical issues and implementation difficulties. The Committee recommended that access to medicinal cannabis in Ireland would be best achieved via an access programme and secondary legislation (Joint Committee on Arts 2007). The access programme is not yet operational, but work is ongoing. An expert group has drawn up clinical guidance for healthcare professionals and on the type of cannabis products that are appropriate for medicinal use. In the meantime, prescriptions for cannabis for medical treatment by medical consultants for individual patients are being facilitated via the Ministerial Licence application route (Harris 2018, 14 July) (see Section T3.1 of this year's Policy workbook).

### **Misuse of Drugs (Supervision of Prescription and Supply of Methadone and Medicinal Products containing Buprenorphine authorised for Opioid Substitution Treatment) Regulations 2017**

The Misuse of Drugs (Supervision of Prescription and Supply of Methadone and Medicinal Products containing Buprenorphine authorised for Opioid Substitution Treatment) Regulations 2017 came into operation on 22 November 2017 and replaced the Misuse of Drugs (Supervision of Prescription and Supply of Methadone) Regulations 1998 (S.I. No 225 of 1998). The Regulations provide for the addition of certain buprenorphine medicinal products authorised for opioid substitution treatment to the Schedule of products that come under the scope of these regulations. Additionally, several references and definitions have been updated. For the purpose of receiving information, the Minister has been replaced by the Health Service Executive. Responsibilities regarding record maintenance have been reassigned from the Minister to the Health Service Executive.

## **T5. Sources methodology and references**

### **T5.1 Sources**

Courts Service	<a href="http://www.courts.ie">http://www.courts.ie</a>
Defence Forces	<a href="http://www.military.ie/en/home/">http://www.military.ie/en/home/</a>
Department of Health	<a href="https://health.gov.ie/">https://health.gov.ie/</a>
Department of Justice and Equality	<a href="http://www.justice.ie/">http://www.justice.ie/</a>
Forensic Science Ireland	<a href="http://www.forensicscience.ie">http://www.forensicscience.ie</a>
Garda Ombudsman	<a href="https://www.gardaombudsman.ie">https://www.gardaombudsman.ie</a>
An Garda Síochána	<a href="http://www.garda.ie">http://www.garda.ie</a>
Health Products Regulatory Authority	<a href="http://www.hpra.ie">http://www.hpra.ie</a>
Health Research Board	<a href="http://www.drugsandalcohol.ie">http://www.drugsandalcohol.ie</a>
Houses of the Oireachtas	<a href="https://www.oireachtas.ie">https://www.oireachtas.ie</a>
Irish Prison Service	<a href="https://www.irishprisons.ie">https://www.irishprisons.ie</a>
Irish Sentencing Information System	<a href="http://www.irishsentencing.ie">http://www.irishsentencing.ie</a>

Irish Statute Book	<a href="http://www.irishstatutebook.ie">http://www.irishstatutebook.ie</a>
Probation Service	<a href="http://www.probation.ie">http://www.probation.ie</a>
Law Reform Commission	<a href="http://www.lawreform.ie/">http://www.lawreform.ie/</a>
Policing Authority	<a href="http://www.policingauthority.ie/">http://www.policingauthority.ie/</a>
Revenue Commissioners	<a href="http://www.revenue.ie">www.revenue.ie</a>

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### T5.3 References

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## **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.

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