

Focal Point Ireland: national report for 2019 - Legal framework

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

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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 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

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.

Under Section 2, the following SIs specified in Schedule 2 were given statutory effect:

- S.I. No. 164/1979 – Misuse of Drugs (Licence Fees) Regulations, 1979
- S.I. No. 321/1982 – Misuse of Drugs (Safe Custody) Regulations, 1982
- S.I. No. 326/1988 – Misuse of Drugs (Exemption) Order, 1988
- S.I. No. 328/1988 – Misuse of Drugs Regulations, 1988
- S.I. No. 69/1998 – Misuse of Drugs (Designation) Order, 1998, and
- S.I. No. 225/1998 – Misuse of Drugs (Supervision of Prescription and Supply of Methadone) Regulations, 1998.

Misuse of Drugs (Amendment) Act 2016

The Misuse of Drugs (Amendment) Act 2016 was enacted on 27 July 2016. The aim of the Act was to amend schedules to the Misuse of Drugs Acts 1977–2015. The main provisions of the 2016 Act included the addition of new substances, revocation ministerial regulations and orders confirmed in the Misuse of Drugs (Amendment) Act 2015, and some technical amendments.

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 and came into operation on 21 November 2017. The aims of this Act were “to provide for the establishment, licensing, operation and regulation of supervised injecting facilities (SIFs) 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”. Merchants Quay Project CLG in Dublin was selected as the preferred bidder to deliver this service. Further information on the status of this service can be found in Section T.3.1.4 of the Policy workbook.

Misuse of Drugs Regulations 2017

The Misuse of Drugs Regulations 2017 came into operation in May 2017. Part 3 of the Regulations imposed restrictions on the production, supply, importation and exportation of controlled drugs as specified in Schedules 1–5 of the Regulations, which refer to drugs that are controlled under the MDAs 1977–2016. These Regulations provided for the following:

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. 225/1998). The 2017 Regulations provided 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 for Health was replaced with the Health Service Executive (HSE). Responsibilities regarding record maintenance were also reassigned from the Minister for Health to the HSE.

Further information on all legislation, SIs, 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

Table 1.1.1 shows a summary of penalties provided for under various Sections of the MDA, 1977 for various Sections of the MDA, 1977, the Criminal Justice (Psychoactive Substances) Act 2010-2016, the Road Traffic Act 2016, the Criminal Justice (Community Service) Act, 1983, and the 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 2018.

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

Subject to Section	Penalty
<p>Misuse of Drugs Acts 1977–2016</p> <p>Section 3[†] 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"> • On summary conviction – Class D fine not exceeding €1,000, or • On conviction on indictment – fine not exceeding €1,270. <p>Second offence:</p> <ul style="list-style-type: none"> • On summary conviction – Class D fine not exceeding €1,000, or • On conviction on indictment – fine not exceeding €2,540. <p>Third and subsequent offences:</p> <ul style="list-style-type: none"> • 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 • 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.
<p>b) Any other case</p>	<p>On summary conviction –</p> <ul style="list-style-type: none"> • Class C fine not exceeding €2,500, or • Imprisonment not exceeding 12 months at the court's discretion, or • Both fine and imprisonment. <p>Or</p> <p>On conviction on indictment –</p> <ul style="list-style-type: none"> • Fine of such amount as court considers appropriate, or • Imprisonment not exceeding seven years at the court's discretion, or • Both fine and imprisonment.
<p>Section 6[†] Directions prohibiting prescribing, supply, etc. of controlled drugs by practitioners or pharmacists convicted of offences</p> <p>or</p>	<p>On summary conviction –</p> <ul style="list-style-type: none"> • Class C fine not exceeding €2,500, or • Imprisonment not exceeding 12 months at the court's discretion, or • Both fine and imprisonment <p>Or</p>

Subject to Section	Penalty
<p>Section 7[†] 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[†] Prohibition of cultivation of opium poppy or cannabis plant</p> <p>or</p> <p>Section 19[†] 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[†] Offences relating to acts outside the State</p>	<p>On conviction on indictment –</p> <ul style="list-style-type: none"> • Fine of such amount as court considers appropriate, or • Imprisonment not exceeding 14 years at the court’s discretion, or • Both fine and imprisonment.
<p>Section 15^{+†} Possession of controlled drugs for unlawful sale or supply</p>	<p>On summary conviction –</p> <ul style="list-style-type: none"> • Class C fine not exceeding €2,500 in District Court, or • Imprisonment not exceeding 12 months at the court’s discretion, or • Both fine and imprisonment. <p>Or</p> <p>On conviction on indictment –</p> <ul style="list-style-type: none"> • Imprisonment for life or such shorter term as the court may determine, and • At the court’s discretion, fine of such amount as the court considers appropriate, or • Both fine and imprisonment.
<p>Section 15A[‡] Offence relating to possession of drugs with value of €13,000 or more</p> <p>or</p> <p>Section 15B[‡] Importation of controlled drugs in excess of certain value (amounts to €13,000 or more)</p>	<p>Offences under Section 15A or 15B,</p> <p>On conviction on indictment –</p> <ul style="list-style-type: none"> • Imprisonment for life or such shorter term as the court may determine, and • At the court’s discretion, fine of such amount as the court considers appropriate. <p>The court can:</p> <ul style="list-style-type: none"> • Take into account whether the offender has a previous conviction for a drug trafficking offence • Impose a sentence with a term of not less than 10 years as the minimum term of imprisonment to be served by the offender • Determine a sentence unjust if exceptional and specific circumstances relating to the offence exist • If exceptional circumstances exist, take into account: <ul style="list-style-type: none"> ○ whether offender pleaded guilty to the offence ○ when and under what circumstances the guilty plea was provided ○ whether offender was helpful during the investigation ○ whether offender was previously convicted of a drug trafficking offence, and

Subject to Section	Penalty
	<ul style="list-style-type: none"> ○ whether it is in the interest of the public to impose a shorter sentence. <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"> • If there are no exceptional circumstances, offender is liable to a minimum sentence of 10 years.
<p>or</p> <p>Section 15C^o Supply of controlled drugs into prisons and places of detention</p>	<p>On summary conviction –</p> <ul style="list-style-type: none"> • Class B fine not exceeding €4,000 in District Court, or • Imprisonment not exceeding 12 months at the court’s discretion, or • Both fine and imprisonment. <p>Or</p> <p>On conviction on indictment –</p> <ul style="list-style-type: none"> • Fine of such an amount as the court considers appropriate, or • Imprisonment not exceeding 10 years at the court’s discretion, or • Both fine and imprisonment.
<p>Section 18[†] Forged or fraudulently altered prescriptions</p>	<p>On summary conviction –</p> <ul style="list-style-type: none"> • Class D fine not exceeding €1,000, or • Imprisonment not exceeding six months at the court’s discretion, or • Both fine and imprisonment. <p>Or</p> <p>On conviction on indictment –</p> <ul style="list-style-type: none"> • Fine of such an amount as the court considers appropriate, or • Imprisonment not exceeding three years at the court’s discretion, or • Both fine and imprisonment.
<p>Section 21[†] (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>On summary conviction –</p> <ul style="list-style-type: none"> • Class C fine not exceeding €2,500, or • Imprisonment not exceeding 12 months at the court’s discretion, or • Both fine and imprisonment. <p>Or</p> <p>On conviction on indictment –</p> <ul style="list-style-type: none"> • Fine of such an amount court considers appropriate, or • Imprisonment not exceeding 14 years at the court’s discretion, or • Both fine and imprisonment. <p>On summary conviction –</p> <ul style="list-style-type: none"> • Class C fine not exceeding €2,500**, or • Imprisonment not exceeding six months at the court’s discretion, or • Both fine and imprisonment. <p>Or</p> <p>On conviction on indictment –</p> <ul style="list-style-type: none"> • Fine of such an amount court considers appropriate, or • Imprisonment not exceeding two years at the court’s discretion, or • Both fine and imprisonment.

Subject to Section	Penalty
Section 21 Offences other than those mentioned in subsections 1 or 2	On summary conviction – <ul style="list-style-type: none"> • Class D fine not exceeding €1,000**, or • Imprisonment not exceeding six months at the court's discretion, or Both fine and imprisonment
Section 23 [†] Power of Garda Síochána to search persons, vehicles, vessels or aircraft	On summary conviction – <ul style="list-style-type: none"> • Class E fine not exceeding €500**.
Section 5 [†] Printing, etc. of certain books, etc., communication of certain information and possession of certain documents an offence	On summary conviction – <ul style="list-style-type: none"> • Where the offence is an offence under subsection (2) of that Section, a Class C fine not exceeding €2,500**, or • In any other case, Class C fine not exceeding €2,500**.
Criminal Justice (Psychoactive Substances) Act 2010 Section 3 [§] Prohibition of sale, etc. of psychoactive substances Section 4 [§] Prohibition of sale of certain objects Section 5 [§] Prohibition of advertising of psychoactive substances, etc.	On summary conviction – <ul style="list-style-type: none"> • Class A fine not exceeding €5,000, or • Imprisonment for a term not exceeding 12 months at the court's discretion, or • Both fine and imprisonment. Or On conviction on indictment – <ul style="list-style-type: none"> • Fine of such an amount as court considers appropriate, or • Imprisonment not exceeding five years at the court's discretion, or • Both fine and imprisonment.
Road Traffic Act 2016 Section 8 offences involving certain drugs Signing a medical exemption certificate containing information which he/she knows to be false Section 11 Mandatory intoxicant testing Section 12 Impairment testing Section 13/13B Obligation to provide oral fluid and blood specimens in relation to certain offences involving drugs Failure to provide breath or oral fluid or blood specimen at request of Garda, or failure to perform impairment test	On summary conviction – <ul style="list-style-type: none"> • Class C fine not exceeding €2,500. On summary conviction – <ul style="list-style-type: none"> • Class A fine not exceeding €5,000, or • Imprisonment for a term not exceeding six months at the court's discretion, or • Both fine and imprisonment.
Maritime Safety Act 2005 Section 27 Conduct endangering vessels, structures or individuals	On summary conviction – <ul style="list-style-type: none"> • Class A Fine not exceeding €5,000 • Imprisonment to a term not exceeding six months, or • Both fine and imprisonment.

Subject to Section	Penalty
<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>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 conviction on indictment</p> <ul style="list-style-type: none"> • Fine not exceeding €100,000 • Imprisonment for a term not exceeding two years • Both fine and imprisonment <p>On summary conviction –</p> <ul style="list-style-type: none"> • Class A fine not exceeding €5,000, or • Imprisonment for a term not exceeding three months, or • Both fine and imprisonment. <p>On summary conviction –</p> <ul style="list-style-type: none"> • Class A fine not exceeding €5,000. <p>On summary conviction –</p> <ul style="list-style-type: none"> • Class A fine not exceeding €5,000, or • Imprisonment for a term not exceeding three months, or • Both fine and imprisonment. <p>On summary conviction –</p> <ul style="list-style-type: none"> • Class A fine not exceeding €5,000, or • Imprisonment for a term not exceeding six months, or both fine and imprisonment. <p>On conviction of indictment</p> <ul style="list-style-type: none"> • Fine not exceeding €100,000 • Imprisonment for a term not exceeding two years or • Both fine and imprisonment
<p>Criminal Justice (Community Service) Act 1983</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"> • Fine not exceeding £300

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

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 1.1.1), imposition of a Peace Bond/Probation Order, and suspended sentence (see Table 3.2.1, Section T3.2 in this workbook for the most recent figures).

In addition, different factors can operate either to mitigate 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” (p.2) (European Monitoring Centre for Drugs and Drug Addiction 2015).

In Ireland, 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.

Please see Section T2.2 of this workbook for further information and an update on alternatives to punishment, such as the Garda Diversion Programmes, the Adult Cautioning Scheme and the Bail Supervision Scheme.

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

Drug

Sentencing in cannabis possession cases

As per the MDA 1977, 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

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

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

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 this workbook for recent figures for recidivism in Ireland.

Aggravating and mitigating factors

Section 27(3D) of the MDA 1977 sets out a number of different mitigating and aggravating factors (in paragraphs (b) and (c) respectively) that a court must consider when imposing a sentence under Section 15A 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).

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

Criminal Justice (Psychoactive Substances) Act 2010

The main legislation controlling NPS in Ireland is the Criminal Justice (Psychoactive Substances) Act 2010. The Act formed part of a multifaceted approach to reduce the availability of substances that were not controlled by the MDAs 1977–2007. Under the main provisions of the Act, it is an offence to sell, import or export NPS; to sell equipment that enables cultivation; and to advertise NPS.

There were no changes to this Act in 2018. See Table 1.1.1 for penalties associated with this offence.

Supplementations to normal drug law

Due to the evolving nature of the drug situation in Ireland, since its initial implementation, drug law has been frequently amended with a number of supplementations; such as, amendments, statutory instruments, regulations and declarations:

- The Misuse of Drugs Act 1977 (Controlled Drugs) (Declaration) Order 2010 (S.I. No. 199/2010) declared a range of 'legal highs' to be controlled drugs.
- To give effect to this decision, on the same day, the Minister for Health and Children signed:
 - the Misuse of Drugs (Amendment) Regulations 2010 (S.I. No. 200/2010)
 - the Misuse of Drugs (Designation) (Amendment) Order 2010 (S.I. No. 201/2010), and
 - the Misuse of Drugs (Exemption) (Amendment) Order 2010 (S.I. No. 202/2010).

Under these SIs, approximately 200 'legal high' substances, which had been on sale in head shops and which included the vast majority of products of public health concern, were declared to be controlled drugs.

Since 2010, other amendments have been made via orders, declarations, regulations and exemptions to the list of controlled drugs. For example:

- S.I. No. 551/2011 – Misuse of Drugs Act 1977 (Controlled Drugs) (Declaration) Order 2011
- S.I. No. 552/2011 – Misuse of Drugs (Amendment) Regulations 2011
- S.I. No. 553/2011 – Misuse of Drugs (Designation) (Amendment) Order 2011
- S.I. No. 554/2011 – Misuse of Drugs (Exemption) (Amendment) Order 2011
- S.I. No. 544/2012 – Misuse of Drugs (Licence Fees) (Amendment) Regulations 2012
- S.I. No. 323/2014 – Misuse of Drugs (Amendment) Regulations 2014
- S.I. No. 324/2014 – Misuse of Drugs (Designation) (Amendment) Order 2014
- S.I. No. 571/2014 – Misuse of Drugs Act 1977 (Controlled Drugs) (Declaration) Order 2014
- S.I. No. 583/2014 – Misuse of Drugs (Amendment) (No. 2) Regulations 2014, and
- S.I. No. 584/2014 – Misuse of Drugs (Designation) (Amendment) (No. 2) Order 2014.
- S.I. No. 174/2017 – Misuse of Drugs (Designation) Order 2017
- S.I. No. 175/2017 – Misuse of Drugs (Exemption) Order 2017
- S.I. No. 531/2017 – Misuse of Drugs Act 1977 (Controlled Drugs) (Declaration) Order 2017
- S.I. No. 532/2017 – Misuse of Drugs (Amendment) Regulations 2017, and
- S.I. No. 533/2017 – Misuse of Drugs (Designation) (Amendment) Order 2017.

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 T1.1 of this workbook for further information on this Act.

T1.1.4 Other topics of interest

Other 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 its introduction, the Act has been amended a number of times:

Road Traffic Act 2014

The Road Traffic Act 2014 amended and extended the Road Traffic Acts 1961–2011:

Section 11 empowered 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 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.

Road Traffic Act 2016

The Road Traffic Act 2016 amended and extended the Road Traffic Acts 1961–2015 and provided for several measures to improve safety on Irish roads. The Act extended the definition of ‘analysis’ and provided a new definition for ‘medical exemption certificate’ to cater for individuals testing positive for drugs being taken for medical reasons. Under the Act, it is an offence a) for certain drugs to be present above a certain level (see Table 1.1.1.4), and b) for attempting to drive a vehicle while under the influence. In addition, gardaí were given powers to carry out drug testing using special devices and set up checkpoints. Individuals are required to accompany garda to a nearby location to carry out impairment tests safely and are obligated to provide oral fluid specimens if suspected of offences involving drugs. The Medical Bureau of Road Safety are tasked with analysing collected specimens. Penalties associated with road offences can be found in Table 1.1.1, Section T1.1.1 of this workbook.

Table 1.1.4.1 Drugs specified in the Road Traffic Act 2016

Reference No. (1)	Drug (2)	Level (units in whole blood) (3)
1	Δ^9 -Tetrahydrocannabinol (Cannabis)	1ng/ml
2	11-nor-9-carboxy- Δ^9 -tetrahydrocannabinol (Cannabis)	5ng/ml
3	Cocaine	10ng/ml
4	Benzoylcegonine (Cocaine)	50ng/ml
5	6-Acetylmorphine (Heroin)	5ng/ml

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, the Road Traffic Act 2010, the Road Traffic Act 2002, the Road Traffic Act 1994 and the Road Traffic Act, 1961, and to provide for related matters.

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 in 2018. Compulsory random drug testing (CRDT), which was introduced in 2002, is intended as a deterrent. In 2009, an additional measure – targeted drugs testing – was introduced in order to improve the existing system. Targeted drugs testing measures mean that any member of the Defence Forces – that is, any personnel employed in the Army, Air Corps, Naval Service or Reserve – who obtains a positive result in CRDT can agree, at the discretion of the relevant General Officer Commanding, to undertake a maximum of six targeted drug tests over 18 months (Department of Defence 2009, 24 April) (Department of Defence 2009, 24 April)(Department of Defence 2009, 24 April). A positive CRDT results in dishonourable discharge from the Defence Forces. Each year, 10% of Defence Forces personnel are tested (Kehoe 2017, 11 April). Up-to-date data for CRDT and targeted drugs testing can be found in Section T2.3, Tables 2.3.1 and 2.3.2 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 Railway Safety Commission is expected to provide an annual report on all measures provided for in the Act that are implemented. The Railway Safety (Amendment) Bill 2018 is currently before the Houses of the Oireachtas (see Section T3.4 of this workbook).

There are two agencies that operate under this legislative framework: Iarnród Éireann and Transdev Ireland, which operates the Luas tram network. These agencies 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 and any accidents or incidents are investigated by the Railway Accident Investigation Unit. Random drug and alcohol testing is carried out.

Safety, health and welfare at work

There were no changes to the Safety, Health and Welfare at Work Act 2005, under 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

The "Prisons Act 2007. Revised. Updated to 30 November 2018", 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 of prisoners (see Section 26(5)). For further information on drug testing in prison, see Section T1.2.3 of this workbook.

Organised crime offences – referral of cases to Special Criminal Court

The Criminal Justice Act 2006 specified 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 four provisions of Part 7 of the 2006 Act.

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 2018. Under provisions of the Act, offenders can be penalised for the same offence under several legislations at the same time. Customs officers have the power to search, seize and detain anything that may be used evidence for an offence under the MDA, 1977. In addition, if a Customs officer believes 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 AGS 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 in 2018. Under Section 2 of the Act, and with conditions noted in Section 4, permission can be obtained from the Minister for Law Enforcement to intercept a package if it is for the purpose of a criminal investigation.

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 the same event, this can be viewed as one conviction.

The main outcome of this Act is that legally, individuals are under no obligation to disclose certain spent convictions after seven years. It was believed that this legislation was an important milestone in the rehabilitation of offenders in Ireland (Fitzgerald 2016, 29 April). Amendments to extend and overcome limitations of this Act have been proposed. See Section T3.4 for information on the Criminal Justice (Rehabilitative Periods) Bill 2018, which aims to overcome limitations of this Act.

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. Sections 1, 3, 5, 6, 8–10, and 13 of the 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.

Criminal Justice (Corruption Offences) Act 2018

The main purpose of the Criminal Justice (Corruption Offences) Act 2018 was to provide a single Act to repeal and replace several Acts that dealt with corruption in Ireland, for example: the Public Bodies Corrupt Practices Act, 1889, the Prevention of Corruption Acts, 1906 and 1916, Section 38 of the Ethics in Public Office Act, 1995, the Proceeds of Crime (Amendment) Act, 2001 (Part 5) and the Prevention of Corruption (Amendment) Acts 2001, and 2010. In addition, it provides renewed provision for the main requirements of a number of international anti-corruption instruments already ratified by Ireland:

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 of the Criminal Justice Act 2006, 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 this 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 (S.I. No. 540/2017 – European Union (Freezing and Confiscation of Instrumentalities and Proceeds of Crime Regulations 2017) was enacted in November 2017 to implement Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union. The Directive allows for law enforcement agencies of Member States to confiscate and recover the profits that criminals make from serious and organised cross-border 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.

T1.2 Implementation of the law

T1.2.1 Sentencing practice related to drug legislation

Sentencing practices 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), and
- Importation of controlled drugs, valued at €13,000 or more, for unlawful sale or supply (MDA, 1977 Section 15B, as amended).

See Section T5.2 of this workbook for further information.

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

The maximum penalty for an offence which is outlined in the legislation permits a court to deliberate on all the circumstances of a case and impose an apt penalty up to the maximum specified in the legislation (Fitzgerald 2017, 12 April). The sentence imposed by the court must be proportionate not only to the crime, but also to the individual offender. Through this process the court must identify where on the sentencing range a case should lie, and then take into consideration any mitigating factors that may exist (Fitzgerald 2017, 12 April)

Several reports have criticised Ireland's approach to sentencing. The Law Reform Commission (LRC) (2011) examined legislation concerning mandatory sentencing with the aim of determining whether legislative provisions for sentences were appropriate and beneficial. One area specific to the MDAs is the presumptive mandatory minimum sentence. It was highlighted that despite legislation being passed for specific purposes, there were disparities in how that legislation was implemented by the courts (Law Reform Commission 2011). In a subsequent report, the LRC

recommended that the presumptive sentencing regime for drug offences be repealed (Law Reform Commission 2013).

A similar conclusion was drawn by the Penal Policy Review Group, which recommended that no further mandatory sentences or presumptive minimum sentences be introduced, stating: “In addition, the continuation of existing presumptive minimum sentences and the threshold for their application in drugs and other offences should be reviewed ... with a view to determining if this type of sentencing satisfies the need for proportionality in sentencing and fulfils the objective of reducing crime. As an initial step to comply with the principle of proportionality, the Review Group recommended an increase in the value of drugs, currently €13,000, possession of which triggers the presumptive minimum sentence of 10 years to a level commensurate with that sentence.” (p. 99) (Strategic Review Group on Penal Policy 2014).

In 2017, the LRC published Issues paper: Suspended Sentences (Law Reform Commission 2017), which builds on their 2013 publication, Report: Mandatory Sentencing (Law Reform Commission 2013) (see Section T3.3 of this workbook for an update of work by the LRC).

Drug testing in prisons

As part of the previous Irish Prison Service and Probation Service 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 2018 includes the following:

- The integrated planning module on the prisoner information management system has been completed, and services data are 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 in order 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 are available in prisons. Quarterly meetings are held that incorporate training and information sessions.

Please see Section T1.3.1, Prison workbook, 2019, for Information on the new Irish Prison Service and Probation Service joint strategic plan 2018-2020 (Irish Prison Service and Probation Service 2018).

Information on mandatory drug testing in prisons can be found in Section T1.2.1 of the Prison workbook, 2019.

T2. Trends

T2.1 Changes in penalties and definitions of core offences

There have been no changes to the definition of the core offences since 2000. In terms of identifying the beginning of a trend, the most significant changes in the criminal laws applicable to drug-related crime began in 1996 following the assassination, in the summer of that year, of Veronica Guerin, a high-profile journalist who had written a number of exposés about criminals linked to the illicit drug trade. This was a catalyst for a range of legislative and policy initiatives introduced in response to the drug problem at that time; for example:

- The Criminal Justice (Drug Trafficking) Act, 1996 allowed for the detention of suspected drug dealers for interrogation for up to seven days, and placed restrictions on the ‘right to silence’ (Keane 1997) (Ryan A 1997)
- The Criminal Assets Bureau Act, 1996 and the Proceeds of Crime Act, 1996 established the Criminal Assets Bureau (CAB) with the power to seize the illegally acquired assets of criminals involved in serious crimes, including drug dealing and distribution (McCutcheon J and Walsh D 1999). This legislation allows the State to remove the property of citizens where it believes such property to be the proceeds of crime, by means of a civil process and without the requirement of a criminal conviction, thereby bypassing the traditional protections of the criminal law.

- The Bail Act, 1997, facilitated by the passage of a referendum, places restrictions on the right to bail and allows for preventive detention, something previously unconstitutional under Irish law (Kilcommins, *et al.* 2004).
- The Criminal Justice Act, 1999 introduced mandatory minimum sentences of 10 years for drug dealing involving drugs with a street value of €13,000 or more.
- The Housing (Miscellaneous Provisions) Act, 1997 enabled local authorities to evict individuals for drug-related antisocial behaviour.
- The Non-Fatal Offences Against the Person Act, 1997 included provisions specifically addressing the use of HIV-infected syringes in robberies and aggravated burglaries. This piece of legislation, along with the Housing (Miscellaneous Provisions) Act, 1997, was introduced in response to pressure from local communities to address open drug dealing by some residents in local authority housing estates (Connolly 2006).

Since 2000, significant laws have been introduced, initially in response to organised crime, but later in response to head shops selling NPS. See also Pike (Pike 2008), Appendix II for a list 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 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 CAB. Under the provisions:
 - 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.
 - The threshold value of property subject to the Act reduced from €13,000 to €5,000.

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.

The most recent available data for Youth offences is for 2017. It accounted for 10% of overall offences. Although AGS statistics showed that approximately 8% of offences committed by children under the age of 18 years in 2017 were for controlled drug offences, the proportion of other offence types committed by children were higher, and included:

- Damage to property and the environment (35%)
- Robbery, extortion and hijacking (35%)
- Sexual (35%)
- Burglary and related offences (29%)
- Theft and related offences (24%), and
- Weapons and explosives offences (23%) (Committee appointed to Monitor the Effectiveness of the Diversion Programme 2018)
- Following a Youth Justice review, the Irish Youth Justice Service (IYJS) was established in 2005 within the Department of Justice and Equality (DOJE) to oversee and support the operation of the youth justice system and provisions of the Children's Act 2001 (Irish Youth Justice Service 2019). The main objective was 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 levels
- Establish and support consultation and liaison structures with key stakeholders, including at local level, to oversee the delivery of this service and response, and
- Develop and promote information sources for the youth justice sector to inform further strategies, policies and programmes (Irish Youth Justice Service 2005).

The IYJS was later reorganised as a co-located office within the Department of Children and Youth Affairs (DCYA) and the DOJE. The DCYA is responsible for the operation of detention facilities which are centralised at Oberstown Children Detention Campus. The DOJE supports the operation of the Garda Diversion Programme and related programmes and initiatives (Irish Youth Justice Service n.d.-a).

- 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.). Under the GJDP, when a child comes into contact with the justice system, the Gardaí may, in certain circumstances, issue a caution and provide supervision instead of going to court. As part of the caution, it may also be a requirement that the child tries to address some of the upset that has been caused by their behaviour, for example by apologising to victims, following a curfew or agreeing to take part in activities such as sport. They may also be referred to the GYDPs, which target young people aged 12–17 years who are engaged in criminal/antisocial behaviour that leaves them at risk of remaining within the criminal justice system or at risk of engaging in that behaviour (Irish Youth Justice Service 2019).

GYDPs aim to bring about the conditions whereby the behavioural patterns of young people towards law and order can develop and mature through positive interventions and interaction with the project. The objectives of the GYDPs are to:

- Promote focused and effective interventions to challenge and divert young people from offending behaviour
- Utilise GYDP resources in areas of greatest need and to establish effective crime prevention supports in cooperation with other youth service providers nationwide, and
- Actively promote crime prevention policy through focused educational interventions, influencing the positive development of young people towards becoming responsible citizens (Irish youth Justice Service n.d.-b).

In order to obtain a place in these programmes, approval is sought from the GYDP referral committee, which assesses cases on an individual basis after taking several areas into consideration:

- Completion of the Youth Level of Service/Case Management Inventory Screening Version (YLS/CMI SV) assessment tool; those scoring above 3 are considered moderate to higher risk and are viewed as suitable for admission to the programme.
- The ability and willingness of the young person to engage with the GYDP, and
- Whether participation in the GYDP is the most apt support for the young person (Irish Youth Justice Service 2019).

Once accepted into the programme, participants complete the Youth Level of Service/Case Management Inventory 2.0 (YLS/CMI 2.0). This is a more detailed assessment of the risks and needs of the young person and allows for a case management plan to be developed. This helps youth justice workers to identify and prioritise areas of risk/need that should be targeted in order to address the offending behaviour. Reassessments and case management reviews are undertaken every six months in order to monitor progress. Only trained personnel are allowed to use the YLS/CMI SV and YLS/CMI 2.0.

Children aged between 10 and 11 years may also be considered at the discretion of the referral committee if there is a clear rationale for doing so; for example, when a child is considered to be at high risk.

The Youth Crime Policy and Programmes Division (YCPPD) of the IYJS oversees the operation and funding of GYDPs across Ireland (Irish Youth Justice Service 2019). The IYJS secured co-funding for the GYDPs through the European Social Fund Operational Programme 2014–2020 with the sole aim of improving the education and employability prospects of young people engaged in the projects (Irish youth Justice Service n.d.-b). In order to fully comply with requirements regarding co-funding of projects by the European Social Fund Programme for Employability, Inclusion and Learning 2014–2020 and to support the development of the GYDP, this project has been under major review. In the past 12 months, several activities have been carried out:

The Annual Garda Youth Diversion Projects National Conference was held in November 2018 (Bamber 2018). The Conference was designed to allow attendees to have their say and contribute to policy and future development of the GYDP service. Activities included panel discussions that featured young people involved in a young person's consultation and an Action Research Project led by Dr Sean Redmond and workshops led by volunteers involved in the GYDPs aimed to address four topics affecting youth justice workers:

1. Best practice support for GYDPs
2. Enhancing communications and relationships
3. Resources, and
4. Practice issues.

The discussions aimed to consider and produce solutions to many of the problems faced by the GYDPs (Bamber 2018).

In 2017, there were 20,006 referrals to the Garda Diversion Programme, representing an increase of 13.6% since 2016 (n=17,615); of these, 53% (n=10,607) were children. Nearly one-third of overall referrals were considered unsuitable (29%; n=5,891), 38% (n=7,551) were dealt with by informal caution, and 20% (n=3,940) were dealt with by formal caution (Committee appointed to Monitor the Effectiveness of the Diversion Programme 2018). In 2017, overall 10,607 referrals were made for children, this was substantially lower than 2016 figures (n=17,615). Of these referrals, 13% (n=1,402) were unsuitable for the diversion programme, 19% received a formal caution and 57% (n=6,004) were dealt with by informal caution. The proportion of children receiving an informal caution was over 20% higher in 2017 when compared with 2016 figures (35%). Explanations put forward by the monitoring committee to explain this increase were the increase in the overall number of referrals, along with the increase in offences where informal cautions were normally given for first or second offences, such as:

- Theft from shop (+17%)
- Theft of pedal cycle (+74%)
- Public order (+8%)
- Drunkenness (+30%)
- Trespass (+19%), or
- Minor assault (+14%).

Nineteen per cent (n=2,029) of children were dealt with by formal caution (Committee appointed to Monitor the Effectiveness of the Diversion Programme 2018). Nearly three-quarters of offences were carried out by children who were male (Committee appointed to Monitor the Effectiveness of the Diversion Programme 2018). In 2019, the IYJS was allocated €15.3 million by the DOJE to cover the costs of 106 GYDPs (Stanton D 2019, 18 June).

- Similarly, 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 years 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.

- A belief that in most cases, community sanctions are more effective and lasting (The Probation Service 2015).

YPP projects support and motivate young people to address the cause of their offending behaviour and to make positive changes in their lives so as to avoid further offending. Some of the areas of work include educational needs, self-care living skills, drug and alcohol misuse, and emotional and mental health.

There are currently 16 YPP projects funded by the Probation Service (The Probation Service 2019). Four of these YPPs are part of the European Social Fund Programme for Employability, Inclusion and Learning 2014–2020 (European Social Fund 2019):

- Le Chéile, which is a nationwide mentoring service
- The Céim ar Chéim and Southill projects, based in Limerick City, and
- The Dóchas don Óige project for 12–16-year-olds, based in Galway.

Participants come from marginalised backgrounds and socioeconomically deprived areas and require the highest levels of support and interventions (European Social Fund 2019). There were 115 new participants enrolled in 2018 (European Social Fund 2019). The European Social Fund provided €3,364,163 to support the operation of these projects.

- The Drug Treatment Court (DTC) programme targets people with drug addiction problems who come before the District Court on minor criminal charges linked to their drug addiction and who plead guilty or have been convicted of the charge(s) (Courts service n.d.).

In order to obtain a place in the programme, the person must have pleaded guilty or been convicted of non-violent crimes in the District Court. They (or their solicitor) can then ask the judge to remand them to the DTC. They are assessed by the Probation Service to determine their suitability/motivation to participate. The person must be:

- Serious about addressing their drug habit
- Willing to undergo treatment
- Over the age of 17 years, and
- Residing in Dublin (preferably with a Dublin 1, 2, 3, 6, 7, or 8 postcode).

The judge decides whether to send him/her to the DTC. Once a person is accepted into the programme, his/her charge(s) is/are put on hold.

The DTC is supported by an interagency, multidisciplinary team consisting of:

- DTC liaison nurse
- DTC coordinator
- Probation officer
- Gardaí working at the DTC, and
- Education coordinator
- Other people who can help participants.

The members of the team have specific roles in relation to each phase of the programme, and the DTC coordinator is their main point of interaction.

At the induction stage, potential participants meet the members of the team. For all participants, accessing treatment is essential. A participant can opt to try to detoxify in the community or in hospital, or go drug free, or take methadone maintenance or methadone reduction treatment. The participant will come to an agreement about their treatment with the team and will attend counselling and group work. As well as the drug treatment, the participant will be required to take part in educational and/or other programmes within the community to give him/her new skills or improve skills he/she may already have. Participants must abstain from their main drug of choice upon admission. As they pass through the programme, further testing is carried out for other drugs.

For each participant, a Personal Progression Credits Chart is drawn up, where they get ongoing feedback as to how they are getting on in the programme. The programme consists of three phases: bronze, silver and gold. Decisions on the participant's success at each phase is made by the judge based on information provided by the team. Depending on individual needs and motivation, the programme can last at least one year, but participants must make sufficient

progress to ensure that they move through the phases in less than 12 months (Courts service n.d.)

The focus of this intervention is on addressing the substance misuse issues and thereby supporting the offender to desist from crime, reducing the likelihood of further offending. The process is diversionary, providing 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 95 participants referred to the DTC programme in 2018 (Courts Service 2019). Six participants graduated at the gold level during 2018. This indicates that they have completed all stages of the programme, are not using any non-prescribed drugs, and are either working or are enrolled in a course. At year end, there were 26 participants in the bronze phase, 11 in the silver phase and 10 in the gold phase (Courts Service 2019). Doing well in the programme could, on the recommendations of the DTC judge, result in a suspended sentence (Courts service n.d.).

The most recent national drug strategy in Ireland, *Reducing Harm, Supporting Recovery: A health-led response to drug and alcohol use in Ireland 2017–2025* (Department of Health 2017) identified the future direction and objectives of the DTC as a strategic action (see Section 3.1.3.4, p. 58) (Department of Health 2017)). In 2018, discussions about the future direction and objectives of the DTC were initiated by the Department of Health, and discussions have been carried out with the Courts Service to progress the independent evaluation of the DTC. These discussions are expected to continue in 2019 with the aim of appointing independent evaluators by Q4 2019. The evaluation of the DTC is expected to be completed in 2020 (Drugs Policy Unit Department of Health 2019). Pending the outcome of the evaluation, operation of the DTC will continue to be supported. In 2018, efforts continued to promote the DTC in order to achieve new referrals to the programme via ongoing engagement with stakeholders (Drugs Policy Unit Department of Health 2019). These efforts have continued in 2019.

- 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. The support for community courts in Ireland has come from several areas:
 - In a 2007 report making the case for community courts in Ireland, the National Crime Council (NCC) recommended the establishment of such a court in Dublin’s inner city to deal with “quality of life offences committed in the Store Street and Pearse Street Garda station catchment areas” (National Crime Council 2007).
 - In early 2014, the Dublin City Business Association (DCBA) called for the establishment of a community court as a means of addressing low-level crimes such as vandalism, theft, antisocial behaviour, drug use and drug dealing in the capital city (see Section 9.6.2 of the 2014 National Report (Health Research Board 2014) for an account of a seminar on community courts organised by the DCBA).
 - In July 2014, the Houses of the Oireachtas Joint Committee on Justice, Defence and Equality published its report on community courts, recommending that a pilot Community Court be established in central Dublin “under the supervision of a single judge, supported by an implementation group and with the support of local community groups and services” (Joint Committee on Justice Defence and Equality 2014)
 - An interagency Working Group on Alternatives to Prosecution (WGAP) was established in 2017 by the Criminal Justice Strategic Committee to consider options for moving forward with the establishment of a community court (personal communication, Department of Health, 2017). Drawing on recommendations put forward by the Houses of the Oireachtas Joint Committee on Justice, Defence and Equality, the WGAP also looked at ways of targeting low-level offenders and effectively addressing offending behaviour through a community justice intervention programme (Flanagan 2017, 5 July). The Minister for Justice and Equality, Deputy Charlie Flanagan, is keen “to build on this work and is considering a number of possibilities including the creation of a statutory conditional cautioning system which is being considered in the context of a comprehensive inter-agency examination” (Flanagan 2017, 5 July).

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 in May 2015 with representatives of the DOJE and other Irish justice agencies to scope out implementation steps.
- 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 E – no progress phase. Areas still to be addressed include:
 - Paper on alignment between this initiative and alternatives to prosecution project to be actioned by the Courts Policy and sent to the IOG for consideration (Penal Policy Review Group 2017).
 - Decision to be made by the IOG on alignment between this initiative and the alternatives to prosecution project (Penal Policy Review Group 2017)
 - The DOJE 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 (Penal Policy Review Group 2018).
 - The Courts Policy to arrange a meeting of relevant groups to consider alternatives under recommendations for Adult Caution Scheme and youth diversion programme, specifically conditional cautioning (Implementation Oversight Group to the Minister for Justice and Equality 2019), and
 - Community court unlikely to progress; alternative options, including conditional cautioning, under consideration (Implementation Oversight Group to the Minister for Justice and Equality 2019).
- The Garda Síochána Adult Caution Scheme was implemented in Ireland in 2006 and only applies to offences committed on or after 1 February 2006 and to persons aged 18 years and older (An Garda Síochána n.d.). It is a non-statutory scheme which operates under the common law and discretionary powers of AGS (personal communication, Department of Health, 2017). The main premise behind the Scheme is that it provides an alternative to prosecuting the offender for a crime where it is not in the public interest to prosecute. Gardaí consider three areas before administering a caution: the public interest, the decision to caution, and the views of the victim. It is mainly applied to first-time offenders (personal communication, Department of Health, 2017). The acting district officer or acting inspector administers the caution, and the offender accepts the caution in writing. In contrast to the Garda Juvenile Diversion Programme, supervision is not arranged under the (Working group to consider alternative approaches to the possession of drugs for personal use 2019). Moreover, giving a caution is not conditional on carrying out another task, for example, reimbursing the victim. It is rare for an offender to receive a second caution; approval from the Office of the Director of Public Prosecutions is required to do so.

The list of offences currently available for disposal under the Adult Caution Scheme does not include drug offences (Working group to consider alternative approaches to the possession of drugs for personal use 2019). In 2014, it was recommended by the Penal Policy Review Group that relevant agencies 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 has been ongoing. The WGAP (referred to in the previous point) was established to review alternatives to prosecution and make recommendations in regard to the introduction of measures to amend/complement/replace existing alternatives (Sheehan 2019). One of the things that the WGAP considered was the efficacy of extending the Adult Cautioning Scheme to the offence of possession of drugs for personal use. It concluded that extending the Scheme in this way was “in the best interests of the criminal justice system, the offender and the wider public, as well as better according with Government policy generally” (WGAP, 2016, unpublished cited in (Sheehan 2019), p.12}.

Recommendations put forward by the WGAP are that:

- (i) The scope of the Adult Cautioning Scheme should be extended to encompass possession of a controlled substance for personal use

- (ii) The Garda authorities prepare (in consultation with the Office of the Director of Public Prosecutions) and issue guidelines for officers on the application of the Scheme to simple possession offences
- (iii) The Garda authorities agree with the Department of Health/Health Service Executive (HSE) the content of a drug awareness/advisory leaflet, to include national and local contact points for support, which would be given to each recipient of a caution for simple possession
- (iv) The Garda authorities issue a Directive to cease the practice of recording informal cautions in respect of named individuals on their computer system PULSE (Police Using Leading Systems Effectively), and
- (v) The addition of simple possession to the Scheme be the subject of a formal evaluation by the Garda authorities within 18 months of coming into effect and in consultation with other relevant stakeholders (Sheehan 2019)

In addition, the WGAP believes that possession of drugs for personal use should be viewed as a first offence such that when the Adult Cautioning Scheme is applied, it should not differentiate between substances in the same way that the Misuse of Drugs Act does. The WGAP agreed that if the Scheme was extended to include conditional cautioning, it would be necessary to do so on a statutory basis and it would require deliberation in a cross-sectoral forum to determine the correct course of action (Working group to consider alternative approaches to the possession of drugs for personal use 2019) (Sheehan 2019)

The IOG has reported that work in this area is currently rated at D discussion/consultation/planning phase. Three of five milestones have been achieved:

1. Three meetings have taken place with stakeholders (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 WGAP for the DOJE (Sheehan 2019)
4. A revised policy was to be drafted and finalised by AGS in Q1 2019. This has not been achieved.
5. Commencement of the Implementation Phase has not been achieved.

Despite the level of work that has been done, concerns have been raised by AGS.

- The Bail Supervision Scheme (BSS) provides another alternative option to detaining a young person who comes before the courts and offers the possibility of granting bail with intensive supervision. By reducing the need for remand places, this also provides an opportunity to focus on developing successful community resources designed to prevent young people from being detained in a youth justice facility and from entering further down the path of criminality.

Central to the delivery of the BSS is the use of the Multisystemic Therapy (MST) model. First implemented by Extern in 2001, this evidence-based model of intervention is family based and seeks to change how young people function in their natural ecology (home, school and community) in ways that promote positive social behaviour, while at the same time reducing levels of antisocial behaviour. The delivery of MST is typically home based, and therapists have small caseloads of four to six families, which enables them to work intensively with each family, typically over a three- to five-month period. The therapists' working hours are flexible, ensuring they are available when families need them, and families are able to access support 24 hours a day, seven days a week through the 'on-call' system. The MST therapist consults with and coaches' parents and carers on strategies that enable them to set and enforce appropriate rules and expectations, decrease the young person's involvement with negative peers, and promote association with positive peers and involvement with prosocial activities (Extern n.d.).

BSS staff liaise with agencies including An Garda Síochána, Oberstown Children Detention Campus (OCD), and YPP, as well as through meetings with the judge and staff in the Dublin District Children Court in Smithfield (Court 55), as well as those involved in both defence and prosecution legal teams. They also liaise with a wide range of agencies within the ecology of the young people in the programme, including educational establishments, youth groups, community groups and local sports groups (Extern n.d.).

In November 2016, the DCYA commissioned Extern to provide a pilot BSS. Since May 2017, a review and evaluation process has been carried out by researchers from the Research Evidence into Policy Programmes and Practice (REPPP) project in the School of Law, University of Limerick in order to examine the effectiveness of the programme.

A contribution analysis was used to retrospectively evaluate the BSS in relation to:

- Processes (including implementation)
- Inputs/outputs
- Confidence in the scheme (by collaborative agencies), and
- Impact – remand trends and outcomes (behavioural change, including reduced offending and adherence to bail conditions).

The rationale for using this approach was that it provides plausible evidence, it is theory driven, it incorporates multiple data sources and types, and it triangulates multiple methodologies. With the aim of testing a Theory of Change model, data were collected from several sources:

- (i) In partnership with the Garda Analysis Service, and in collaboration with Extern, ODCD and the IYJS, a quasi-experimental design assessed changes in the young people's offending levels from six months prior to the BSS intervention to their offending levels six months post-BSS.
- (ii) A documentary analysis of Extern administrative data assessed children's behavioural changes and the implementation of the BSS.
- (iii) An analysis of Extern and IYJS administration data analysed input, output and remand trends.
- (iv) An inductive analysis of interviews with children, their caregivers, key stakeholders who have first-hand experience of the BSS, and management facilitated the development of theories regarding the processes which impact positively on children's behavioural change and adherence to bail conditions. This design also assessed the implementation of the BSS and the courts'/stakeholders' perceptions of and confidence in the BSS.

A summary of the findings presented in September 2019 indicated that:

- Levels of reoffending had reduced
- There was evidence of improved adherence to bail conditions, and
- The majority of young people were attracted to non-custodial sanctions.

The final report is expected in December 2019 (Naughton and Redmond 2019, 10 September)

- Following a series of pilots started in 2007, the Irish Sentencing Information System now maintains an online database with information on sentencing in the criminal courts. The aim is to have a computerised information system on sentences and other penalties imposed for offences in criminal proceedings, which may inform judges when they are considering the sentence to be imposed in an individual case. The sentencing information system enables a judge to enter relevant criteria and access information on the range of sentences and other penalties that have been imposed for particular types of offences in previous cases. The project is overseen by a steering committee of judges, together with an expert on sentencing law, appointed by the Courts Service Board. Further information on sentencing can be found in Sections T1.2.1 and T5.2 of this workbook.

T3. New developments

T3.1 Changes in laws in the last year

Misuse of Drugs Acts amendments

Several amendments were made to the Misuse of Drugs Acts (MDAs) 1977–2016 in the past 12 months.

Misuse of Drugs (Prescription and Control of Supply of Cannabis for Medical Use) Regulations 2019

S.I. No. 262/2019 – Misuse of Drugs (Prescription and Control of Supply of Cannabis for Medical Use) Regulations 2019 was signed on 26 June 2019. These regulations allow for the use of certain

cannabis products for the treatment of persons with certain medical conditions when they are under the care of a medical consultant.

Prescription and supply under the Cannabis for Medical Use Register

Part 2 of the Regulations provide for the prescription and supply of cannabis under the Cannabis for Medical Use Register (CMUR):

- Under Section 4, a practitioner prescribing cannabis must be a medical consultant, must include their name and address on the prescription, and must continue to be responsible for and supervise the patient while they are being treated. In addition, only a person named on the CMUR who has been given a CMUR number from the HSE can be issued a prescription.
- Under Section 4(6), when a prescription is being issued for the first time:
 - it must be intended to treat the person for a specific condition
 - the HSE must be provided with:
 - the person's name, address, date of birth and the name of condition being treated
 - the notifying practitioner's name, registration number and medical speciality, and
 - any other information required by the HSE.
- Section 5 of the Regulations provides for the establishment and maintenance of the CMUR. The CMUR records the information provided by the practitioner under Section 4(6). The HSE can alter or delete an entry; however, it may need additional information from the medical consultant supervising the treatment. The HSE is also responsible for assigning the CMUR number to each person entered into the register.
- Under Section 6, only a pharmacist or a person operating a retail pharmacy business shall supply a specified controlled drug to a practitioner. These suppliers must maintain records of the
 - Date of supply
 - Name of drug; quantity; dosage
 - Name, address and registration number of the prescriber
 - The CMUR number
 - Name and address of person who is being prescribed the drug, and
 - The date of prescription.

Further information on the CMUR can be found in Section T3.1 of the Drugs Policy workbook.

Commercial supply under licence

Part 3 of the Regulations provides for the commercial supply of cannabis under licence:

- Under Sections 11 and 12, a specified controlled drug should only be supplied to a pharmacist, retail pharmacy business or hospital. For each consignment supplied, the supplier must maintain a record of each consignment received and supplied for a minimum of five years. The following information should be recorded:
 - Name of the drug, including brand name
 - Dosage form of the drug
 - Quantity of drug received and supplied
 - Batch number of the drug received, and
 - Name and address of the producer that specified controlled drug in the form it was received, and
 - Name and address of supplier of each consignment

This information should be made available to the Minister for Health when requested for review.

- Section 13 prohibits the exportation of imported specified controlled drugs outside of the State.

This legislation provides for the operation of the Medical Cannabis Access Programme on a pilot basis for five years.

Reporting, enforcement and advertising

Part 4 of the Regulations provides for the reporting, enforcement and advertising of a specified controlled drug within the scope of Part 2 or Part 3. Under Section 15, a person shall report suspected adverse reactions and quality defects to the Health Products Regulatory Authority (HPRA) within 15 days of being provided with the information. Where there are quality or safety issues relating to a specified controlled drug or batch, the HPRA can authorise the withdrawal or recall of the product (Section 16). If notice is received from the Minister for Health or the HPRA to stop prescribing, supplying or importing a specified drug, the specified controlled drug should no longer be supplied or imported (Section 17). Under Section 18, the advertisement or supply of information related to a specified controlled drug to the general public is restricted.

Misuse of Drugs (Designation) (Amendment) Order 2019

On 26 June 2019, S.I. No. 281/2019 – Misuse of Drugs (Designation) (Amendment) Order 2019 was passed. Section 4 provides for drugs specified in Schedule 1 to be designated as drugs to which subsection (1) of Section 13 of the MDA, 1977 applies. Under Section 5, the manufacture, production, preparation, sale, supply, distribution and possession of the drugs specified in Schedule 1 of this Order is unlawful except for the purposes specified in Schedule 2:

- “(a) research, forensic analysis or use as an essential intermediate or starting material in an industrial manufacturing process;
- (b) the growing of hemp from seed varieties specified, by the Commission of the European Communities, as being eligible for the purposes of Article 1 of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013”.

Misuse of Drugs (Amendment) Regulations 2019

On 26 June 2019, S.I. No. 282/2019 – Misuse of Drugs (Amendment) Regulations 2019 was passed and amended the Misuse of Drugs Regulations 2017. These Regulations can be taken together as one and shall be known going forward as the Misuse of Drugs Regulations 2017 to 2019.

“Under Section 3, Paragraph 1(a) of Schedule 1 (as amended by Regulation 3 of the Regulations of 2017) to the Principal Regulations is amended—

- (a) by substituting “Cannabinol derivatives, not being dronabinol or its stereoisomers” for “Cannabinol derivatives”, and
- (b) by substituting for “Cannabis (not being a preparation specified in paragraph 5 of Schedule 4 Part 1)” the following:

“Cannabis (not being a preparation specified in paragraph 5 of Part 1 of Schedule 4 or a preparation or product specified in paragraph 10 of Schedule 2)”.

Under Section 4, Schedule 2 to the Principal Regulations is amended—

- (a) in paragraph 1, by inserting “Dronabinol” after “Dipipanone”, and
- (b) by inserting after paragraph 9 the following paragraph:

“10. A preparation or product specified in Schedule 1 to the Misuse of Drugs (Prescription and Control of Supply of Cannabis for Medical Use) Regulations 2019 (S.I. No. 262 of 2019) and permitted for supply pursuant to those Regulations.”

Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018

The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018 was enacted on 14 November 2018 and a Commencement Order was signed by Minister Flanagan for all sections (except Section 32) came into effect on 26 November 2018. The Act amended the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to give effect to certain provisions of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, and provided for related matters.

The Act extends and adds to obligations in existing legislation on financial institutions and other businesses relating to anti-money laundering, such as carrying out customer due diligence and

reporting suspicious transactions. Significant provisions of the Act include those relating to the powers of the Garda appointed to the Financial Intelligence Unit Ireland, and the extension of provisions requiring enhanced due diligence to be applied to politically exposed persons (PEPs).

Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019

The Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019 was enacted on 15 May 2019. The main purpose of the Act is to give effect to Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions. Hence, if an Irish person committed an offence in another EU Member State while working or studying and was sentenced to a probation order, community service order or alternative measure under the supervision of the probation service in that State, he or she can apply to return home and be supervised by the Irish Probation Service (Stanton 2019, 22 January). Similarly, it will allow a resident of another Member State who commits an offence in Ireland for which he or she receives a sentence of probation, to return to his or her country of residence under the supervision of the probation services in that State. The Act also allows for the transfer of serious offenders who are subject to post-release supervision.

Judicial Council Act 2019

The Judicial Council Act 2019 was enacted on 23 July 2019. The Act provides for the establishment of a Judicial Council. The Council, which will be an independent body, will promote and maintain excellence and high standards. In addition, it will provide a statutory basis for the training of judges and for the investigation of complaints against judges.

Under the provisions of the Act, the Judicial Council will also be responsible for establishing a number of subcommittees:

Judicial Studies Committee: Under Section 17, the Judicial Studies Committee will be responsible for preparing and distributing information relevant to judges. In addition, it will facilitate the continuing education and training of judges with regard to their function.

Personal Injuries Guidelines Committee: Under Section 18, the Judicial Council is required to establish a Personal Injuries Guidelines Committee within three months of the Council's establishment. This Committee will consist of seven judges put forward by the Chief Justice. Each judge will be required to submit draft guidelines and amendments for personal injuries for appropriate general damages for various types of personal injury within six months of its commencement. Following completion of the first review, a follow-up review of the guidelines is required within three years, and once every three years thereafter.

Sentencing Guidelines and Information Committee: Within six months of the first Judicial Council meeting, under Section 23(1), the Council is required to establish a Sentencing Guidelines and Information Committee. Under provisions of the Act the Committee shall

- (a) "prepare and submit to the Board for its review draft sentencing guidelines and draft amendments to sentencing guidelines adopted by the Council.
- (b) monitor the operation of sentencing guidelines,
- (c) collate information on sentences imposed by the courts, and
- (d) disseminate that information from time to time to judges and persons other than judges".

Under Section 24(1), the Committee will be composed of 13 members: eight judges put forward by the Chief Justice (Section 24(1)(a)), one of which will act as chairperson (Section 24(2)); and five 'lay members', who will be appointed by the Government (Section 24(3)).

Under Section 29, the Minister of Justice and Equality is required to start a review of enactments which provide for the imposition of minimum sentences for offences (subsection (a)). The Minister may consider:

- (i) "whether the continued imposition of such minimum sentences through the operation of such provisions is appropriate in respect of all offences to which such provisions apply, and

- (ii) the extent to which in practice such minimum sentences are imposed in accordance with such provisions,” and

Under subsection 29(b) within 12 months of that review, the Minister is required to report the findings of the review to each House of the Oireachtas.

Judicial Support Committees: Under Section 30, five Judicial Support Committees will be established and will be known as the:

- (a) Supreme Court Judicial Support Committee
- (b) Court of Appeal Judicial Support Committee
- (c) High Court Judicial Support Committee
- (d) Circuit Court Judicial Support Committee, and
- (e) District Court Judicial Support Committee.

These will be available to each of the courts to advise and assist the Judicial Council in the performance of its functions.

Judicial Conduct Committee: Under Section 43, the Judicial Council is required to establish the Judicial Conduct Committee to promote and maintain high standards of conduct among judges with regard to principles of judicial conduct requiring judges to uphold and exemplify judicial independence, impartiality, integrity, propriety (including the appearance of propriety), competence, and diligence, and to ensure equality of treatment to all persons before the courts. This committee will investigate complaints against judges and refer them for resolution by informal means. It is required to prepare and submit a review draft of guidelines for judicial conduct, including guidance on when a judge should recuse him or herself from presiding over legal proceedings. Under this Act, the Judicial Conduct Committee is considered independent in the performance of its functions and shall have such powers deemed necessary or useful to carry out its functions. It may obtain legal, medical or other advice in connection to performing its functions and may bring or defend legal proceedings or any other act or thing necessary for the performance of its functions.

Minister Flanagan believes that the enactment of this Act is a “landmark development, which will help to shape the way in which our judiciary operates at all levels by promoting consistent standards of excellence, preserving the very valuable confidence that the public has in our judiciary and in the administration of justice in this country” (Department of Justice and Equality 2019, 9 July)

Parole Act 2019

The Parole Act 2019 was enacted on 23 July 2019. The purpose of the Act is to confer responsibility for granting parole upon an independent statutory body. It is divided into three parts. Part 1 addresses preliminary and general matters; Part 2 addresses the Parole Board, its powers and compositions; and Part 3 deals with parole applications, guiding principles, and the parole process.

Part 2, Section 8 of the Act provides for the establishment of the Parole Board (known as An Bord Parúil). The Board will function independently and on a statutory basis. The functions conferred on the Board will include:

- Providing information to persons serving sentences of imprisonment, victims and members of the public in relation to its functions
- Providing information to the Minister in relation to the functions of the Board
- Making recommendations upon the request of the Minister to help him coordinate prisoners released on parole and draw up policy related to prisoners released on parole, and
- Undertaking or assisting in research projects that may inform how the Board operates and assist the Minister in decision-making.

Under Section 13(1), the Board will have powers that are deemed necessary to carry out its functions and will be able:

- (a) “to authorise written reports from appropriate individuals related to specific individuals
- (b) to assign a legal representative to relevant person if they do not already have one during deliberations of parole application or parole order revocations,

- (c) to interview relevant person and receive oral submissions from him or her or his or her legal representative,
- (d) to receive written submissions from a relevant person or his or her legal representative,
- (e) to assign a legal representative to the relevant victim where he or she wishes to make submissions to the Board, unless he or she already has one,
- (f) to meet with a relevant victim for the purposes of receiving oral submissions from him or her or his or her legal representative,
- (g) to receive written submissions from a relevant victim or his or her legal representative, and
- (h) to apply to the Courts Service for a transcript of a court hearing which was held for the purposes of the consideration or imposition by the court of a sentence on a relevant person”.

For the purpose of considering parole applications, variations to conditions or release dates outlined in a public order or revocations of a parole order, under Section 13(2), the Board has the power to request written reports by or on behalf of Irish justice agencies or clinicians working with applicants. When a report is requested under this section, the Board will outline all matters that need to be addressed in the report and may include one or more of the following: sentence details, conduct of applicant, risk or likelihood of reoffending, ability to comply with conditions outlined in the parole order, level of rehabilitation achieved so far, ability to reintegrate into society, and risk to the public or victim. Parole will only be granted if the prisoner does not pose an undue risk to the public.

Part 3 of the Act outlines the parole process. For example, under Section 24(1), eligibility for parole for individuals serving life imprisonment sentences has increased from 7 to 12 years. Individuals who are serving prison sentences that exceed those outlined in the regulations prescribed by the Minister in subsection (3) are also eligible for:

- (a) “a term of imprisonment of not less than 8 years, and
- (b) the portion of such a term to be served by a person prior to becoming eligible for parole”.

In some circumstances, individuals may not be eligible for parole; for example, in relation to drug offences, under Section 24(12), where an individual is serving a specified minimum sentence of imprisonment under Section 27(3A) of the Misuse of Drugs Act, 1977, pursuant to subsection (3C) or (3F) or that section, he/she shall not be eligible for parole before the minimum term has expired. Where parole applications have been refused or revoked, applicants will not be eligible to reapply for parole prior to the date specified by the Board (Section 24(5) and (6)).

This legislation has been welcomed by Minister Flanagan, who views it as a “ground-breaking piece” that will ensure that the way decisions are made by the Parole Board are “open, transparent, fair and fully informed” (Department of Justice and Equality 2019, 9 July). The Irish Penal Reform Trust has long campaigned for the establishment of an independent parole board. Its Executive Director, Fiona Ni Chinnéide, has stated that this legislation will “provide more clarity and independence in decision-making on the release of eligible prisoners” (Staines 2019, 11 July).

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 2018 (Courts Service 2019). In 2018, the District Court received 391,296 new offences, and made orders in respect of 296,971 offences that proceeded, which represents a 2.2% increase on the 290,565 orders made in 2017. Orders made in respect of summary offences and indictable offences dealt with summarily for drug offences increased by more than 19% between 2017 (14,736) and 2018 (17,571). Of these, 4,200 were struck out or dismissed, 3,106 led to a fine, 2,175 led to probation, 336 led to community service and 527 led to imprisonment or detention (see Table 3.2.1).

Table 3.2.1 Summary and indictable offences dealt with summarily: outcomes

Offence type	Dis	S/O	TIC	Fine	Bond	Disq	C/S	Prob	Imp	Susp	Other	Fixed	Total
Summary	22	173	91	71	6	3	11	52	50	31	91	-	601
Indictable*	279	3726	1855	3035	165	17	325	2123	477	528	4440	-	16970
Total	301	3899	1946	3106	171	20	336	2175	527	559	4531	-	17571

Note: There is usually only one order made when an offence is dismissed, struck out or taken into consideration. There may be more than one order made when the penalty imposed in respect of an offence is a fine, bond, disqualification, community service, probation, imprisonment/detention, or sentence suspended.

Key: Dis = dismiss, S/O = strike out, TIC = taken into consideration, Disq = disqualified, C/S = community service,

A total of 15,022 offences involving 4,725 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 2019). There were 1,801 drug offences, which was nearly 8% lower than the 2017 figure (1,955). These offences involved 513 defendants; 1,273 resulted in a guilty plea, while 247 led to imprisonment (Courts Service 2019). Further data can be found in Tables T1.2.1.1–T1.2.1.7 in Section T1.2.1 of the Drug market and crime workbook.

Prison sentences for drug offences

On 30 November 2018, there were 3,962 prisoners in custody across the prison system, which was 6% higher than 2017 (3,738). Of these, 12% (371 out of 3,171) were serving sentences for drug-related offences (Irish Prison Service 2019). Please see Section T1.2.1 and Table T1.2.2.1 of the Prison workbook, for a breakdown of people serving sentences for drug-related offences, by category and by sentence length, at 30 April 2016.

Recidivism

The recidivism rate is the percentage of people who were convicted of a crime incident that was recorded within three years of the date of their Probation Order. 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. There is no new data available at this time. The most recent recidivism data available for prisoners is 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 2018).

As shown in Figure T3.2.1, a decreasing trajectory was shown for probation recidivism rates between 2008 and 2012. The rates of recidivism in 2012 (46.9%) and 2011 (46.8%) were approximately 8% lower than those reported in 2008. It is important to note that the figures presented here are categorised as 'Under Reservation', as they do not meet the standards required of official statistics published by the CSO. In addition, due to a programme error identified during the processing of the 2011 data, rates for 2008, 2009 and 2010 were underestimated. This error has now been rectified and the rates for 2008, 2009 and 2010 presented in this report have been amended accordingly.

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 2018), 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 2018).

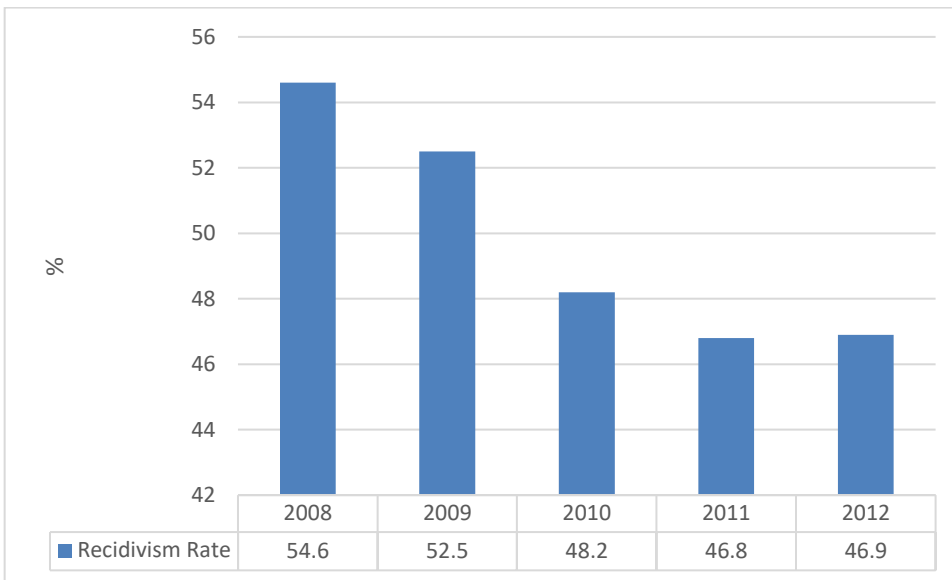


Figure T3.2.1 Recidivism Rates between 2008-2012

Source: Central Statistics Office, 2019, website

Figure T3.2.2 shows the rate of reoffending behaviour in adult and young offenders who received probation and community service orders between 2008 and 2012.

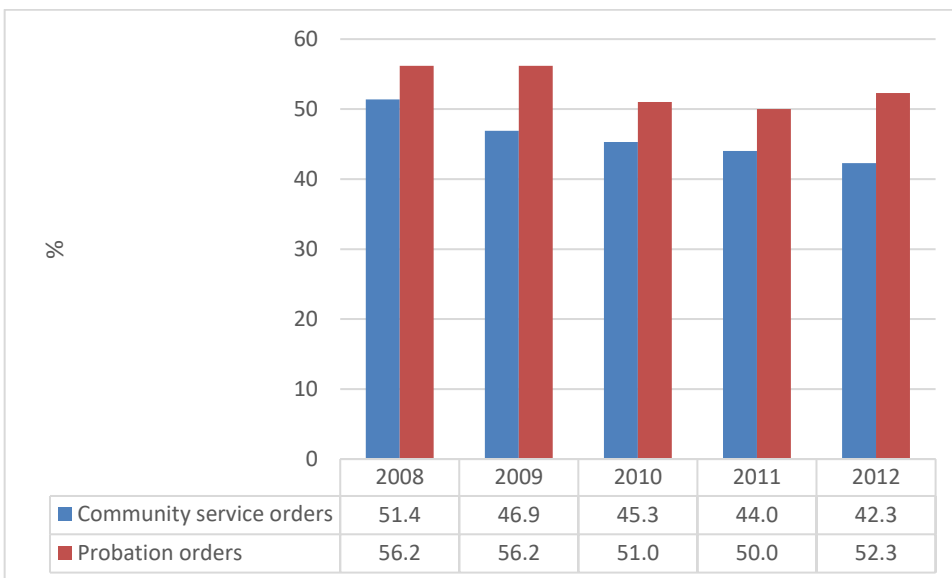


Figure T3.2.2 Proportion of Community Service and Probation Orders received between 2008-2012

Source: Central Statistics Office, 2019

Of those offenders referred for controlled drug offences in 2012, approximately 22% (296 out of 2,039) of reoffences were for controlled drug offences, of which, 29% of these offences were for subsequent controlled drug reoffences (85 out of 296). A large proportion of subsequent drug reoffences (70%) were initially referred for other offence categories, for example:

- Theft and related offences (16%)
- Public order and other social code offences (13%)
- Attempts/threats to murder, assaults, harassments and related offences (8%)
- Burglary and related weapons and explosives offences (7%)
- Road and Traffic offences (7%)
- Dangerous or negligent acts (5%)
- Damage to property and the environment (5%)

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

T3.3 Evaluation of the law in the last year

The LRC is responsible for reviewing and putting forward proposals for reform; for example, enacting legislation to clarify and modernise Irish legislation. After extensive public consultation in 2017 and 2018, the LRC *Fifth Programme of Law Reform* was approved and launched in 2019 (Law Reform Commission 2019). Fifteen projects were identified and approved by the Attorney General's Consultative Committee in 2018 and by the Oireachtas Joint Committee on Justice and Equality in February 2019.

One project within the area of Criminal Law and Criminal Procedure that was approved was Structured Sentencing. The expectation is that it is to be completed within three years. Please see Sections T1.1.2 and T1.2.3 for more information on sentencing in Ireland. The impact of legislation on the use of NPS's was examined by Smyth *et al.* (2015) (Smyth, Bobby P., *et al.* 2015) and Smyth *et al.* (2017) (Smyth, Bobby P, *et al.* 2017) (see Section T5.2 of this workbook for further detail on these studies).

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.

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 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 2019 to 29 June 2020 were brought before the Dáil (Flanagan 2019, 12 June) and the Seanad (Flanagan 2019, 13 June). Prior to resolution, a report was presented to the Houses of the Oireachtas showing usage figures for the previous years. Between 1 June 2018 and 31 May 2019, Sections 3, 4, 6, 8, 12 and 17 of the Offences Against the State (Amendment) Act were not used. Minister Flanagan cautioned that this should not suggest that the provisions are redundant or not necessary, as usage can change from year to year (Flanagan 2019, 12 June). 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.

The division took place in the Dáil on 12 June 2019, and the question was declared carried (Tá 63; Níl 21) (Flanagan 2019, 12 June). The question was put, and declared carried without a vote, in the Seanad on 13 June 2019 (Conway 2019, 13 June)

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 Member's 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 proposed 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 crimes 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. There has been no progress on this Bill in the past 12 months.

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 in May 2018 to be scrutinised, was approved (Department of Transport Tourism and Sport 2018, 22 May). The Committee scrutinised the General Scheme in June 2018. This Bill has not progressed in the past 12 months.

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 were similar to those applied to road motorists. Following amendments to road traffic legislation, statutory limits for professional drivers such as taxi, bus or Heavy Goods Vehicle (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 T.1.1.4 of this workbook for more information on the Railway Safety Act 2005.

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 and has not progressed in the past 12 months. The aim of the Bill is to establish a Sentencing Council and to provide for related matters. The main function of the Council will be to prepare sentencing guidelines relating to the sentencing of criminal offenders. Guidelines may be general in nature or limited to a particular offence, category of offence, or category of offender. While introducing the Bill, Mr O'Brien acknowledged that:

“sentencing for some crimes has increased over the past number of years. However, there does appear to be a wide level of disparity for sexual offences and other offences.”

“research on judicial sentencing habits conducted that has shown sentence lengths ranging from fourteen days to five months in an assault case; while for a theft case, sentences ranged between thirty days and nine months and between two and twelve months in road traffic and burglary cases.”

“it is essential that there is public confidence in consistency of sentencing.”

“A Sentencing Council can promote a clear, fair, and consistent approach to sentencing and I am hopeful this Bill will receive support across the board.” (Sinn Féin 2017)

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 Garda Commissioner's and the Garda Síochána's performance of their 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). This Bill is currently before Dáil Éireann, Third Stage and has not progressed in the past 12 months.

Defence Forces (Evidence) Bill 2019

The Defence Forces (Evidence) Bill 2019 was initiated in August 2019. The Bill provides powers to military police to take bodily samples – for example, drugs and alcohol – from military persons suspected of certain crimes for the purpose of investigations within the Irish jurisdiction and outside the jurisdiction when Defence Forces personnel are deployed overseas. It also provides for the establishment of a DNA (Military Police) Database System to be administered by Forensic Science Ireland. The Bill is similar to the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014, which provides for the taking of DNA samples by AGS and for the establishment of a DNA database system with a view to assisting AGS in the investigation of crimes. The Bill has currently completed the First Stage in Dáil Éireann. For further information on the Defence Forces see section T1.1.4.

Criminal Justice (Rehabilitative Periods) Bill 2018

The Criminal Justice (Rehabilitative Periods) Bill 2018 is a Private Member's Bill and was initiated in December 2018. The Bill was initially proposed by Senator Lynn Ruane, who stated that the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 (see Section T1.1.4) is limited both in practice and when compared with other EU Member States, and is not working as it is not fair or proportionate (Ruane 2019, 13 February). She believes that people have the capacity to change and deserve a second chance (Ruane 2019, 13 February). The main purpose of the proposed Bill is to amend the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 to provide for broader and fairer access to spent convictions and to provide for proportionality in determining the period before a conviction becomes spent, and to provide for related matters.

The Bill makes four amendments to the 2016 Act:

- It extends sentences eligible to be spent from 12 months to 24 months for custodial sentences and from 24 months to 48 months for non-custodial sentences.
- It raises the limit on the number of convictions eligible to be spent from one to two.
- It introduces the principle of proportionality to the relationship between the length of the sentence and the length of the rehabilitative period before the conviction becomes spent.
- In recognition of the specific rehabilitative needs of young people, adults between the ages of 18 and 24 are given an additional opportunity for a spent conviction and would face proportionally shorter rehabilitative periods before their convictions are spent.

The Schedule to the Bill sets out two rehabilitative period matrices for custodial and non-custodial sentences, where the rehabilitative period for a conviction is made proportional to the length of the sentence and a distinction is made with generally shorter periods for young adults (see Tables 3.4.1 and 3.4.2). The Bill is currently before Seanad Éireann, Third Stage. The Committee stage was to take place on 19 February 2019.

Table 3.4.1 Rehabilitative period matrices for custodial sentences

Reference number	Relevant sentence imposed	Duration of relevant period for persons aged 24 years and over	Duration of relevant period for persons who have reached the age of 18 years but have not reached the age of 24 years
(1)	(2)	(3)	(4)
1.	Term of imprisonment of 6 months or less.	4 years	2 years
2.	Term of imprisonment of 12 months or less but more than 6 months.	5 years	2 years 6 months
3.	Term of imprisonment of 18 months or less but more than 12 months.	6 years	3 years
4.	Term of imprisonment of 24 months or less but more than 18 months.	7 years	3 years 6 months
5.	Term of imprisonment of 24 months or less, the execution of which is suspended in part.	Relevant period that applies to that part of the sentence that is not suspended unless it is duly reactivated.	Relevant period that applies to that part of the sentence that is not suspended unless it is duly reactivated.
6.	Term of imprisonment imposed in one or more consecutive or concurrent sentences not exceeding 24 months in total.	Relevant period that applies to the longer or longest sentence.	Relevant period that applies to the longer or longest sentence.
7.	Fine and any of the sentences mentioned at items 1 to 6.	Relevant period that applies to the custodial part of the sentence concerned.	Relevant period that applies to the custodial part of the sentence concerned.

Table 3.4.2 Rehabilitative period matrices for non-custodial sentences

Reference number	Relevant sentence imposed	Duration of relevant period for persons aged 24 years and over	Duration of relevant period for persons who have reached the age of 18 years but have not reached the age of 24 years
(1)	(2)	(3)	(4)
1.	Term of imprisonment the execution of which is suspended for a specified period and which suspension is not	The period of suspension specified by the court.	The period of suspension specified by the court.

Reference number	Relevant sentence imposed	Duration of relevant period for persons aged 24 years and over	Duration of relevant period for persons who have reached the age of 18 years but have not reached the age of 24 years
	subsequently revoked in whole or in part.		
2.	Class A fine, Class B fine, or Class C fine.	3 years	1 year 6 months
3.	Class D fine or Class E fine.	1 year	1 year
4.	Fine exceeding the maximum amount that can be imposed as a Class A fine.	5 years	2 years 6 months
	Community service order imposed on a person as an alternative to a sentence of imprisonment for a term of 24 months or less.	2 years	2 years
5.			
6.	Any other relevant non-custodial sentence (other than an order to which Section 3(3) of the Criminal Justice (Community Service) Act, 1983 applies).	Relevant period that applies to the custodial equivalent of the sentence concerned.	Relevant period that applies to the custodial equivalent of the sentence concerned.

Criminal Justice (Mutual Recognition of Decisions on Supervision Measures) Bill 2019

The Criminal Justice (Mutual Recognition of Decisions on Supervision Measures) Bill 2019 was initiated in Seanad Éireann on 31 July 2019 to transpose Council Framework Decision 2009/829/JHA on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention. The main purpose of the Bill is to provide an Irish resident who is charged with an offence while in another EU Member State to have their bail conditions monitored in Ireland instead of being remanded in custody. It also provides for an individual from another EU Member State to be granted bail on condition that they are being monitored in the State where they normally reside. The Bill is currently progressing through the Houses of the Oireachtas and is at First Stage.

Alternative approaches to the possession of drugs

Decriminalisation of drugs continued to be discussed by a Government-Led Working Group on 'alternative approaches to possession of drugs for personal use' in Ireland between 2018 and 2019 (Sheehan 2019). More information on this work can be found in section T2.2. of this workbook and Sections T3.1 and T4.1 of the Policy workbook.

T4. Additional information

T4.1 Sources of information

No new studies

T4.2 New areas of specific importance

Sale of Illicit Goods Bill 2017

A Private Member's Bill, the Sale of Illicit Goods Bill 2017 was initiated on 4 April 2017 by Deputy Declan Breathnach (Breathnach 2017, 4 April). Smuggling is viewed as a major issue in Ireland. The main purpose of the Bill is to provide new measures to address the illegal alcohol, tobacco and solid fuel trade. Under the provisions of the Bill it will be an offence for an individual to:

- Buy or attempt to buy alcohol or tobacco if he/she is aware that taxes and excise duties have not been paid (Sections 4 and 5)
- Buy alcohol or tobacco where it is known that the product is counterfeit (Sections 4 and 5), or
- Purchase alcohol or tobacco from an unregistered or unlicensed retailer (Section 8).

This Bill is at third stage and was referred to the Select Committee in Dáil Éireann on 25 October 2018 for debate in Private Members' time.

Public Health (Alcohol) Act 2018

The Public Health (Alcohol) Act 2018 was signed into law on 17 October 2018. The Act was fiercely contested by the alcohol industry, and the three-year interval between the publication of the Bill and

the passage of the Act was the longest ever in Ireland. This Act is particularly significant because, for the first time in Ireland, alcohol is being treated as a public health issue.

The aim of the Act is to reduce alcohol consumption in Ireland and the harms it causes at a population level.

The primary objectives are to:

- Ensure that the supply and price of alcohol are regulated and controlled in order to minimise the possibility and incidence of alcohol-related harm
- Delay the initiation of alcohol consumption by children and young people
- Reduce the harms caused by the misuse of alcohol, and
- Reduce alcohol consumption to 9.1 litres of pure alcohol per person per annum by 2020.

The Act provided for the provisions discussed below.

Minimum price of alcohol products

Section 11 provides for the introduction of minimum unit pricing (MUP) for all products containing alcohol, which is set at 10 cent per gram of alcohol in the product. Unlike a tax increase, where a retailer can choose to absorb the increase in price, MUP will be compulsory across all alcohol products. Under the new legislation:

- A 750 mL bottle of wine with a strength of 12% will cost a minimum of €7.10
- A 700 mL bottle of vodka with a strength of 35% will cost at least €20.71, and
- A 500 mL can of beer with a strength of 5% will cost a minimum of €1.97.

Labelling of alcohol products

Section 12(1) of the Act stipulates that it will be an offence to sell alcohol products in containers that do not have:

- (i) “a warning that is intended to inform the public of the danger of alcohol consumption,
- (ii) a warning that is intended to inform the public of the danger of alcohol consumption when pregnant,
- (iii) a warning that is intended to inform the public of the direct link between alcohol and fatal cancers,
- (iv) the quantity in grams of alcohol contained in the container concerned,
- (v) the energy value expressed in kilojoules and kilocalories contained in the container concerned, and
- (vi) details of a website, to be established and maintained by the Executive, providing public health information in relation to alcohol consumption”.

Advertisement restrictions

A range of restrictions will apply to the advertisement of alcohol products, with a particular emphasis on protecting children and young people. The main restrictions include:

- Section 13(2): Advertisements must contain health warnings regarding alcohol consumption, including during pregnancy, and a link to a public health website.
- Section 13(7): Content of advertisements will be restricted to specific information about the nature of the product.
- Section 14 provides for a ban on advertising of alcohol products:
 - in or near a school
 - in or near an early years’ service (e.g. early years’ service/creche)
 - in a park, open space or playground owned or maintained by a local authority
 - on public transport, and
 - in a train or bus station, and at a bus or Luas stop.
- With the exception of motorsport, the Act does not ban alcohol sponsorship of sport. However, Section 15 of the Act prohibits advertising in sports grounds for events where the majority of competitors or participants are children, or directly on a sports area for all events (e.g. on the actual pitch, racetrack, tennis court, etc.).
- Under Section 16, alcohol sponsorship of other events aimed at children or where most of the participants are children will also be prohibited.
- Under Section 17, the Act will also restrict the sale of children’s clothing which promotes alcohol consumption or bears alcohol brands/products.

- Under Section 18, the marketing and advertising of alcohol in print media will be restricted in relation to volume and type of publication.
- Under Section 19, it is an offence to broadcast for an alcohol product on TV between 3.00 am and 9.00 pm, and on the radio between 3.00 pm and midnight and between midnight and 10.00 am.
- Under Section 20, advertisements for alcohol in cinemas will be limited to films classified for those over 18 years of age.

Visibility of alcohol products in licensed premises

Section 22 of the Act provides for structural separation of alcohol products in mixed retail outlets (e.g. supermarkets and grocery stores). Retailers must choose from one of three options:

- 1) Storing alcohol in an area of the store that is separated by a physical barrier
- 2) Storing alcohol products in one or more closed storage units or cabinets, or
- 3) Storing alcohol products in no more than three open storage units in the premises.

Restrictions on the sale and supply of alcohol products

Section 23 outlines numerous restrictions regarding the sale and availability of alcohol products. Several measures regarding limiting the sale and availability of alcohol products are outlined in the Act. One of the most important of these is the restriction of price-based promotions, to which young people may be particularly sensitive. Under Section 23, the Minister for Health will have the power to make regulations around:

- The sale or supply of alcohol at a reduced price or free of charge to a certain target group
- The sale or supply of alcohol at a reduced price to someone because they have already purchased a certain quantity of alcohol or another service
- The sale or supply of alcohol during a limited time period (three days or less) that was less than the price charged for the same product the day before the offer was introduced, and
- The promotion of a business or event in a way that is likely to encourage people to drink alcohol in a harmful manner.

The Public Health (Alcohol) Act 2018 has been welcomed, as it provides several evidence-based measures designed to reduce alcohol consumption at a population level. Following its enactment, Minister Harris moved quickly to commence a number of provisions. Sections 1–3, 5–9, 17, and 22–31 came into operation in November 2018 and Sections 14 and 20 will come into operation in November 2019. Notably, MUP (Section 11) has not come into operation yet. The reason for this is that approval was given on the basis that it would be introduced in Northern Ireland at the same time. However, there is currently no Northern Ireland Executive to engage with (Harris 2019, 10 July). Minister Harris intends to seek a revised Government decision to implement MUP in Ireland as soon as possible (Harris 2019, 10 July).

T5. Sources methodology and references

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Department of Justice and Equality	http://www.justice.ie/
Extern	https://www.extern.org/
Forensic Science Ireland	http://www.forensicscience.ie/
Garda Ombudsman	https://www.gardaombudsman.ie/
An Garda Síochána	http://www.garda.ie/
Health Products Regulatory Authority	http://www.hpra.ie/
Health Research Board	http://www.drugsandalcohol.ie/
Houses of the Oireachtas	https://www.oireachtas.ie/
Irish Prison Service	https://www.irishprisons.ie/
Irish Sentencing Information System	http://www.irishsentencing.ie/
Irish Statute Book	http://www.irishstatutebook.ie/
Probation Service	http://www.probation.ie/

Law Reform Commission
Policing Authority
Revenue Commissioners

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T5.2 New studies

No New studies

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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