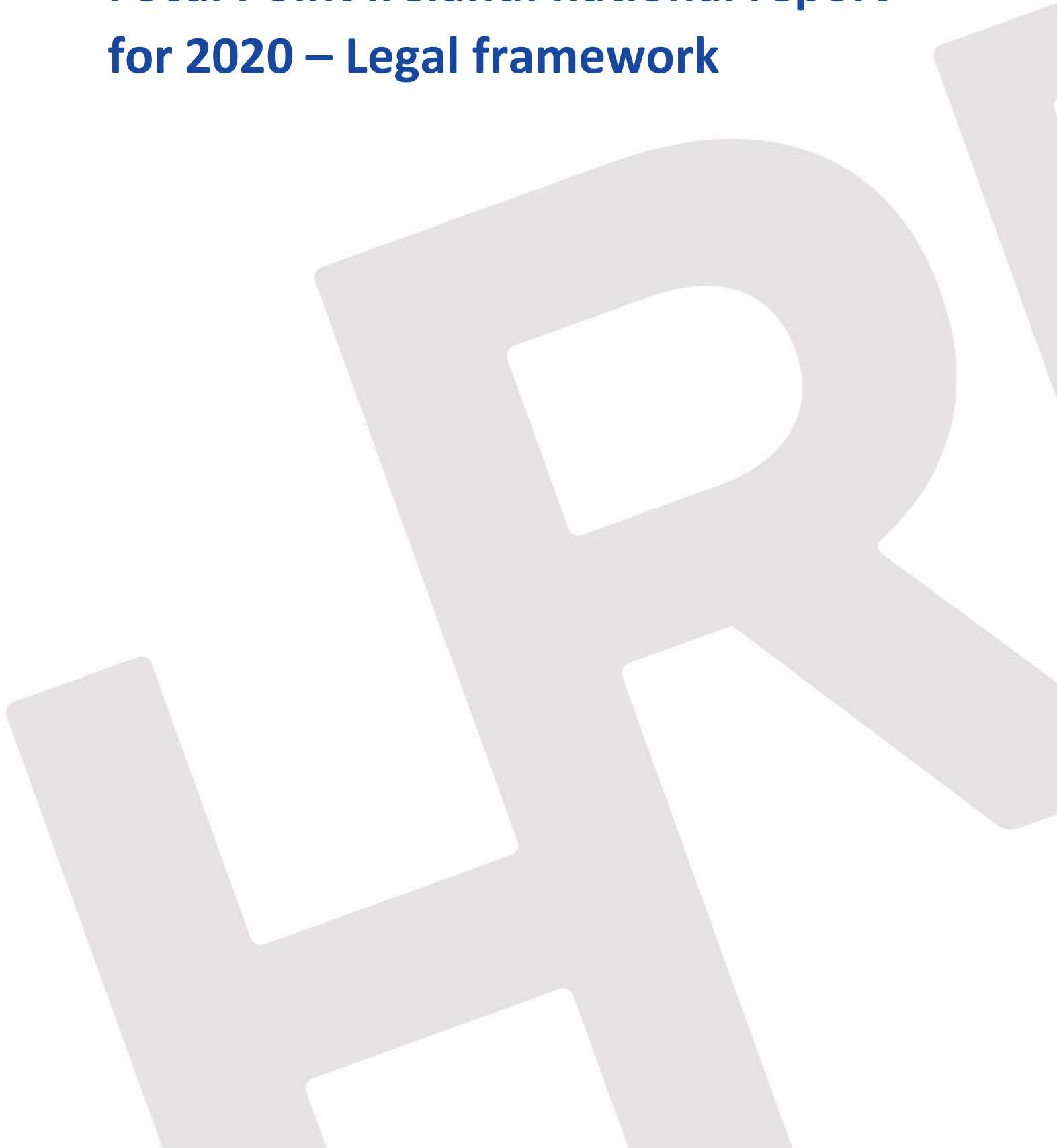


Focal Point Ireland: national report for 2020 – Legal framework



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

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T0. Summary

T0. Summary 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 MDAs 1977–2007. Under the main provisions of the 2010 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 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 ever-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 statutory instruments (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 MDAs 1977–2015. The main provisions of the 2016 Act included the addition of new substances, revocation of 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 (now Merchants Quay Ireland) 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 *Drug 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.

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.

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.

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.

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 T1.1.1 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, 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 under, and also by whether it is a first, second or subsequent offence. There were no changes to these penalties in 2019.

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

Subject to Section	Penalty
MDAs 1977–2016	
Section 3 ⁺ Restriction on possession of controlled drugs a) Where controlled drug is cannabis or cannabis resin and	First offence: <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.

Subject to Section	Penalty
<p>court is satisfied that possession was for own use</p>	<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 3 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 the court considers appropriate, or Imprisonment not exceeding 7 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>Section 7[†] Special directions prohibiting prescribing, etc. of controlled drug in certain cases</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>Section 16 Prohibition of certain activities, etc. relating to opium</p> <p>or</p>	<p>Or</p> <p>On conviction on indictment –</p> <ul style="list-style-type: none"> Fine of such amount as the court considers appropriate, or Imprisonment not exceeding 14 years at the court’s discretion, or Both fine and imprisonment.
<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>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

Subject to Section	Penalty
	<ul style="list-style-type: none"> • 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, 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 ○ 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[°] 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 <p>Both fine and imprisonment.</p>
<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 3 years at the court’s discretion, or

Subject to Section	Penalty
<p>Section 21 (1)[†] Attempts, etc. and miscellaneous other offences 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>	<ul style="list-style-type: none"> • 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 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 14 years at the court’s discretion, or • Both fine and imprisonment.
<p>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 6 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 2 years at the court’s discretion, or • Both fine and imprisonment.
<p>Section 21 Offences other than those mentioned in subsections 1 or 2</p>	<p>On summary conviction –</p> <ul style="list-style-type: none"> • Class D fine not exceeding €1,000 or • Imprisonment not exceeding 6 months at the court’s discretion, or • Both fine and imprisonment.
<p>Section 23[†] Power of Garda Síochána to search persons, vehicles, vessels or aircraft</p>	<p>On summary conviction –</p> <ul style="list-style-type: none"> • Class E fine not exceeding €500.
<p>Section 5[†] Printing, etc. of certain books, etc., communication of certain information and possession of certain documents an offence</p>	<p>On summary conviction –</p> <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.
<p>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.</p>	<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 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 5 years at the court’s discretion, or • Both fine and imprisonment.
<p>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</p>	<p>On summary conviction –</p> <ul style="list-style-type: none"> • Class C fine not exceeding €2,500. <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 6 months at the court’s discretion, or • Both fine and imprisonment.

Subject to Section	Penalty
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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 –
- Class A fine not exceeding €5,000, or
 - Imprisonment to a term not exceeding 6 months, or
 - Both fine and imprisonment.

Maritime Safety Act 2005

Section 27 Conduct endangering vessels, structures or individuals

- On conviction on indictment
- Fine not exceeding €100,000, or
 - Imprisonment for a term not exceeding 2 years, or
 - Both fine and imprisonment.

Section 28 Prohibition on operating vessels while under influence of alcohol or drugs

- On summary conviction –
- Class A fine not exceeding €5,000, or
 - Imprisonment for a term not exceeding 3 months, or
 - Both fine and imprisonment.

Section 29 Drunkenness, etc., of passengers or members of crew

- On summary conviction –
- Class A fine not exceeding €5,000.

Section 30 Control of consumption of alcohol or drugs on board a vessel (commander or crew)

- On summary conviction –
- Class A fine not exceeding €5,000, or
 - Imprisonment for a term not exceeding 3 months, or
 - Both fine and imprisonment.

Section 32 Prohibition on endangering vessels or persons on board

- On summary conviction –
- Class A fine not exceeding €5,000, or
 - Imprisonment for a term not exceeding 6 months, or
 - Both fine and imprisonment.

- On conviction on indictment –
- Fine not exceeding €100,000, or
 - Imprisonment for a term not exceeding 2 years, or
 - Both fine and imprisonment.

Criminal Justice (Community Service) Act, 1983

Section 7 Requirements under community service order and failure to comply with such requirements

- On summary conviction –
- 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

† As amended by the Misuse of Drugs Act, 1984

° As amended by the Criminal Justice Act 2006

‡ As amended by the Criminal Justice Act 2007

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

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 Section T1.2.1 of the *Drug markets and crime workbook* for the most recent figures).

In addition, different factors can operate either to mitigate an offence or as aggravating influences which can affect the punishment. In some cases, a court may issue alternatives to punishment, which are defined as “measures that are rehabilitative, such as treatment, education, aftercare, rehabilitation and social reintegration” (European Monitoring Centre for Drugs and Drug Addiction 2015) (p. 2).

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 and 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 3 years.

Factors that influence this outcome include the character, antecedents, age, health, or mental condition of the person charged, or 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 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 1 year (summary), or up to 3 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 are 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 3 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 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 2019. See Table T1.1.1 for penalties associated with this offence.

Supplementations to normal drug law

Due to the evolving nature of the drug situation in Ireland, since their initial implementation, drug laws have been frequently amended with a number of supplementations, such as amendments, SIs, 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 to the list of controlled drugs via orders, declarations, regulations and exemptions. 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
- 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
- S.I. No. 533/2017 – Misuse of Drugs (Designation) (Amendment) Order 2017, and
- S.I. No. 281/2019 – Misuse of Drugs (Designation) (Amendment) Order 2019.

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 several 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 T1.1.1.4); and b) to attempt to drive a vehicle while under the influence. In addition, gardaí were given powers to carry out drug testing using special devices, and to set up checkpoints. Individuals are required to accompany a 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 is tasked with analysing collected specimens. Penalties associated with road offences can be found in Table T1.1.1, 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)	1 ng/ml
2	11-nor-9-carboxy- Δ^9 -tetrahydrocannabinol (Cannabis)	5 ng/ml
3	Cocaine	10 ng/ml
4	Benzoyllecgonine (Cocaine)	50 ng/ml
5	6-Acetylmorphine (Heroin)	5 ng/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. the Defence Forces, the 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). 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). 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 markets 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 craft. 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 of this workbook.

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), and
- 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.

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 are carried out.

Safety, health and welfare at work

The Safety, Health and Welfare at Work Act 2005 provides for securing the safety, health and welfare of persons at work. Under Section 13(1)(b) 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 the direction of, a criminal organisation, and
- 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, and
- The Director of Public Prosecutions (DPP) under Section 45(2) of the Act of 1939 to direct that 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:

- They changed the rules of evidence applied to the offence of membership of unlawful organisations.
- They created new substantive offences relevant to the activities of unlawful organisations and those who support them.
- They strengthened the hands of the courts regarding those supporting activities of unlawful organisations or engaging in offences on their behalf.
- They extended the maximum period of detention permitted under Section 30 of the Offences Against the State Act, 1939.

For information on the recent confirmation of this Act, see Section T3.4 of this workbook.

Revenue Commissioners Customs Division

Following enactment in June 2015, the Customs Act 2015 commenced in full in December 2016. Under provisions of the Act, offenders can be penalised for the same offence under several pieces of legislation at

the same time. Customs officers have the power to search, seize and detain anything that may be used as evidence of 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. 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 7 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 7 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. 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, and
- State Airports Act 2004.

The amendment to the Dublin Transport Authority Act 2008 allows an authorised person or member of AGS 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, 2005 (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 and commenced on 08 January 2019. 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 (EU). 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.

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 the Minister for Justice and Equality for all sections (except Section 32) to come 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 to provide 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 Garda appointed to the Financial Intelligence Unit, and the extension of provisions requiring enhanced due diligence to be applied to politically exposed persons.

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 while working or studying in another EU member state and was sentenced to a Probation Order, Community Service Order or alternative measure under the supervision of the probation service in that member 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 service in that member 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 the Irish justice system. 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 several subcommittees, including a Judicial Studies Committee; a Personal Injuries Guidelines Committee; a Sentencing Guidelines and Information Committee; and a Judicial Conduct Committee.

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.

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 in 2014 by the Irish Sentencing Information System (Mackey 2014).

Four offences were covered in the study:

- Possession of controlled drugs for unlawful sale or supply (MDA, 1977 Section 15, as amended)
- Possession of controlled drugs, valued at €13,000 or more, for unlawful sale or supply (MDA, 1977 Section 15A, as amended)

- Importation of controlled drugs for unlawful sale or supply (several provisions found in the Customs Acts; the 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 NPS.

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 2013b).

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.” (Strategic Review Group on Penal Policy 2014) (p. 99).

In 2017, the LRC published *Issues paper: Suspended Sentences* (Law Reform Commission 2017), which built on its 2013 publication, *Report: Mandatory Sentences* (Law Reform Commission 2013b) (see Section T3.3 of this workbook for an update on more recent work by the LRC).

Drug testing in prisons

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

Please see Section T1.3.1 of the *Prison workbook* for information on the joint *Irish Prison Service and Probation Service Strategic Plan 2018-2020* (Irish Prison Service and Probation Service 2018).

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 7 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 was 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.

- Following a youth justice review, the Irish Youth Justice Service (IYJS) was established in 2005 within the DOJE to oversee and support the operation of the youth justice system and provisions of the Children 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 with other child-related strategies, where appropriate
 - 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 Juvenile Diversion Programme and related programmes and initiatives (Irish Youth Justice Service n.d.-b).

- 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 and the Garda Youth Diversion Projects (GYDPs). They avail of restorative justice and restorative practices to try and target offending behaviour in young people aged under 18 years (An Garda Síochána n.d.). Under the Garda Juvenile Diversion Programme, 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 in order 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.-a).

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 GYDP 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 6 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.

Issues in the administration of GYDP referrals were highlighted and discussed at a private meeting between the Policing Authority and the Garda Commissioner in January 2019 (Policing Authority of Ireland 2020). AGS agreed to provide regular and detailed briefings as examination of issues continues (Policing Authority of Ireland 2020).

The Youth Crime Policy and Programmes Division 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.-a). 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 Garda Youth Diversion Projects Annual Conference was held on 6 November 2019 (Egan 2020). The Conference was designed to allow attendees to have their say and contribute to policy and future development of the GYDP service, and the future direction of youth justice policy. Facilitated discussions of nine areas identified in a pre-conference survey were carried out in the afternoon:

1. Action Research Project
2. Early Intervention Pilot Initiative
3. Family support
4. Managing trauma
5. Self-care
6. Specialist project evaluation
7. Supporting the role of the gardaí in GYDPs
8. Work to learn, and
9. Youth Justice Strategy.

The discussions aimed to consider, and produce solutions to, many of the problems faced by the GYDPs (Egan 2020).

In 2018, there were 16,491 referrals to the Garda Diversion Programme, representing an 18% decrease since 2017 (N=20,006). The number of individual children referred in 2018 (N=8,561) was 19% lower than in 2017 (N=10,607). Seventy per cent of children and youth referred to the GYDP were male, and 29% were female. Twenty-one per cent (n=3,500) of these children and youth were admitted to the GYDP programme and 1,249 (8%) were considered unsuitable (Egan 2020).

- Similarly, the Irish Probation Service has a Young Persons Probation (YPP) division of trained staff who work specifically with children and young people aged 12–18 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 (Probation Service 2020). Four of these projects are part of the European Social Fund Programme for Employability, Inclusion and Learning 2014–2020 (Probation Service 2020):

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

The fifth, Tús Nua (Dublin) provides a specialised service supporting homeless women that have been released from prison or women that have a previous history of offending (Probation Service 2020).

- 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 2019).

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) (Courts service n.d.)

The judge then 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 (Courts service n.d.).

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. Participants are required make sufficient progress to ensure that they move through each phase in less than 12 months, but this is often dependant on the motivation and needs of the individual (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 99 participants referred to the DTC programme in 2019 (Courts Service 2020). Ten participants graduated at the gold level during 2019. 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 33 participants in the bronze phase, 9 in the silver phase and 4 in the gold phase (Courts Service 2020). Doing well in the programme could, on the recommendation of the DTC judge, result in a suspended sentence (Courts service n.d.).

The most recent national drugs 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 of the strategy document) (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 were expected to continue in 2019 with the aim of appointing independent evaluators by Q4 2019. The evaluation of the DTC was expected to be completed in 2020 (Drugs Policy Unit Department of Health 2019). No update is currently available. 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 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) (p. 39).
 - 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) (p. 9)
 - 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). Deputy Charlie Flanagan who was Minister for Justice and Equality at that time, was 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).

No new reports have been submitted from the Implementation Oversight Group (IOG) to the Minister for Justice and Equality since February 2019. The most recent report laid out the progress that had been made so far, as follows:

- 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:
 - A paper on alignment between this initiative and the alternatives to prosecution project is to be actioned by the Courts Policy and sent to the IOG for consideration (Penal Policy Review Group 2017).
 - A decision is to be made by the IOG on alignment between this initiative and the alternatives to prosecution project (Penal Policy Review Group 2017).
 - The DOJE is to review changes made following consideration of recommendations for the Adult Caution Scheme and the youth diversion programme for 18–21-year-olds and their impact on recommendations for a community court before making final decisions (Penal Policy Review Group 2018).
 - The Courts Policy is to arrange a meeting of relevant groups to consider alternatives under recommendations for the Adult Caution Scheme and the youth diversion programme, specifically conditional cautioning (Implementation Oversight Group to the Minister for Justice and Equality 2019).
 - The community court is unlikely to progress; alternative options, including conditional cautioning, are 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 Adult Cautioning Scheme (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 regarding 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, cited in (Sheehan 2019), p. 12).

Recommendations put forward by the WGAP are that:

- (i) The scope of the Adult Cautioning Scheme 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 MDAs do. 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).

No reports have been issued by the IOG since February 2019; at that time, work in this area was 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. In October 2019, as a result of issues with the administration of the GYDPs, the Policing Authority commissioned an external evaluation of the Adult Caution Scheme. An interim draft report was discussed on 29 January 2020, and it was hoped that the final draft would be available in March 2020.

- 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 continuing 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 3–5-month period. The therapists' working hours are flexible, ensuring they are available when families need them, and families can access support 24 hours a day, 7 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 AGS, Oberstown Children Detention Campus (OCDC), 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, OCDC and the IYJS, a quasi-experimental design assessed changes in the young people's offending levels from 6 months prior to the BSS intervention to their offending levels 6 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.

The final report was published in December 2019 (Naughton, *et al.* 2019). Further information on this study can be found in Section T4.2.

- 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 (Amendment) Regulations 2020

S.I. No. 99/2020 – Misuse of Drugs (Amendment) Regulations 2020 was signed on 10 April 2020. These Regulations allow for the amendment of the Misuse of Drugs Regulations 2017 and take the national electronic prescription transfer system established by S.I. No. 98/2020 – Medicinal Products (Prescription and Control of Supply) (Amendment) Regulations 2020 into account.

Criminal Records (Exchange of Information) Act 2019

The Criminal Records (Exchange of Information) Act 2019 was enacted on 26 December 2019. The aim of the Act is to allow for the exchange of criminal records information between Ireland and other EU member states. The Act transposes two decisions into Irish law:

- Council Framework Decision 2009/315/JHA of 26 February 2009, which gives effect to the organisation and content of the exchange of information extracted from the criminal record between member states, and
- Council Decision 2009/316/JHA of 6 April 2009, which gives effect to the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA.

The Act contained several provisions, such as:

- Section 3, which provides for the recording of the nationality of convicted persons.
- Section 4, which provides for the exchange of information where a person from another member state is convicted of an offence in Ireland.
- Section 5, which provides for the exchange of information where an Irish national is convicted of an offence in another member state.
- Section 6 which provides for the exchange of information from the Criminal Records Database to be used in criminal proceedings against the individual. The individual can be a national of Ireland or a national of another member state. A copy of the criminal record can be provided on request.
- Section 9, which provides for time limits for replies to requests for information. These must be carried out no later than 10 working days from when the request was received.

Annex A provides an outline of common offence categories where the exchange of information would come under this Act, including: crimes within the jurisdiction of the International Criminal Court; participation in a criminal organisation; terrorism; human and illicit trafficking; offences related to drugs or precursors and other offences against public health; offences against the State; offences against information systems and other computer-related crime; forgery; falsification of documents; and offences against traffic regulations.

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 (Courts Service 2020). Data for 2019 can be found in Section T1.2.1 of the *Drug markets and crime workbook*.

Prison sentences for drug offences

On 30 November 2019, there were 4,017 prisoners in custody across the prison system, which was 1.4% higher than 2018 (3,962). Of these, 11% (358 out of 3,208) were serving sentences for drug-related offences (Irish Prison Service 2020). 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 3 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 provides recidivism data for Ireland from two sources: prisons and probation services. It is important to note that the figures for reoffending in prisons and probation are categorised as ‘Under Reservation’, as they do not meet the standards required of official statistics published by the CSO.

Prison reoffending statistics

The most recent recidivism data available from the CSO indicate that 40% of prisoners released from prison in 2017 reoffended within 1 year of release, and 33% of “fine” offenders for the same period reoffended within 1 year. Details of 3-year custodial reoffending indicate that 55.2% of prisoners released in 2014 reoffended within 3 years (Central Statistics Office 2015, Central Statistics Office 2020). Of those who reoffended, 29.6% (n=123) were initially imprisoned for a controlled drug offence; however, only 39% (n=48) of those reoffenders were reconvicted for a controlled drug offence (Central Statistics Office 2015, Central Statistics Office 2020).

Probation reoffending statistics

Figure T3.2.1 shows probation reoffending rates classified by time-period to first reoffence for cohorts from 2008 to 2015 (Central Statistics Office 2015, Central Statistics Office 2020). Between 2008 and 2018, a decreasing trajectory was shown for probation recidivism rates within the first 12 months. However, a slight increase was evident in 2014 (28.7%) and again in 2015 (30.3%), although this increase is still lower than the 12-month recidivism rate reported in 2008 (35.5%). A similar trajectory is evident for recidivism rates within 24 months of being placed under the management of the Probation Service.

Within 36 months of being placed under the management of the Probation Service, recidivism rates in 2013 (45.4%) were lower than those reported in 2008 (54.6%).

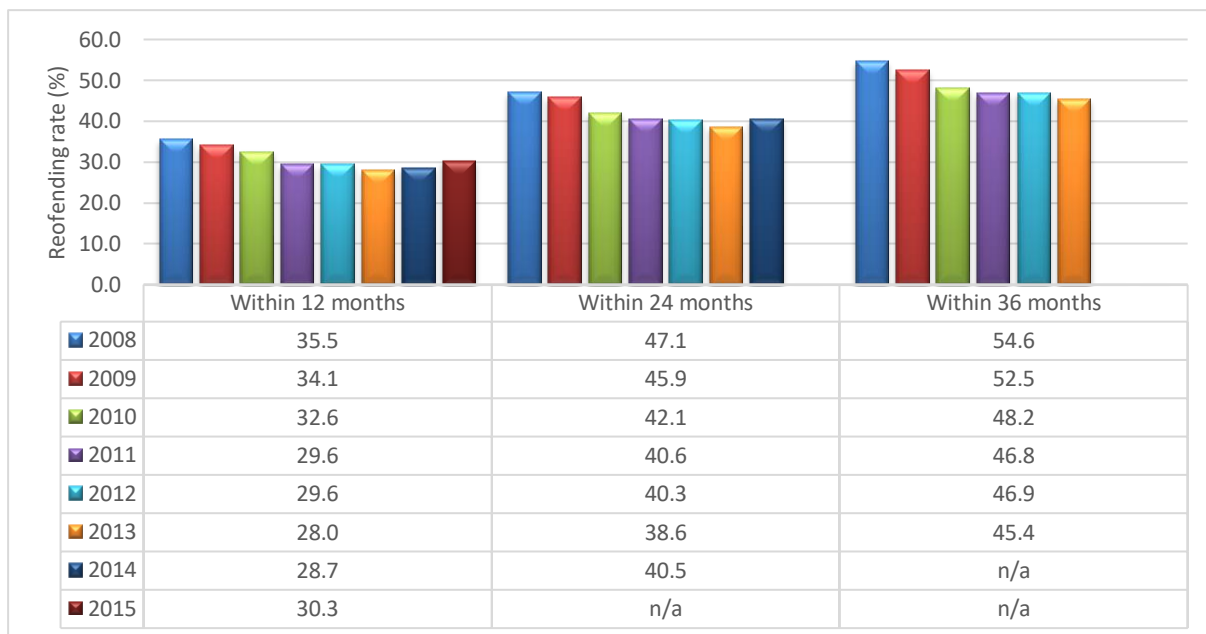


Figure T3.2.1 Recidivism rates, 2008–2015

Source: Central Statistics Office, 2020.

Figure T3.2.2 shows the rate of reoffending behaviour in adult and young offenders who received Probation Orders, Community Service Orders and Post Release Supervision Orders between 2008 and 2015.

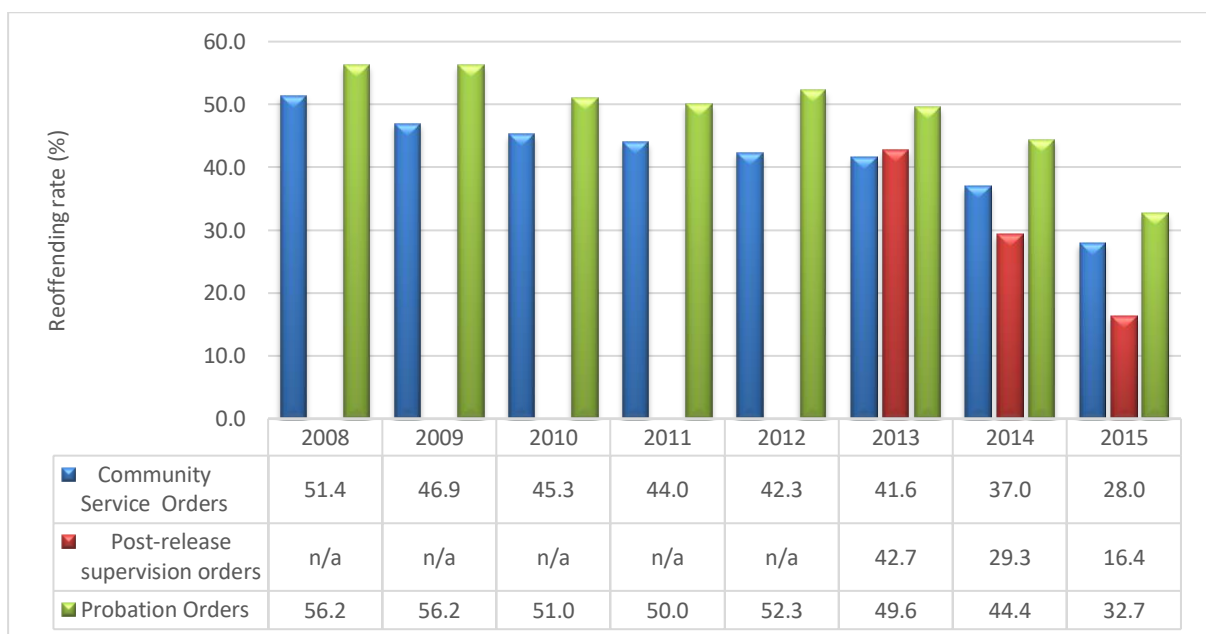


Figure T3.2.2 Proportion of Community Service Orders, Post-release supervision orders and Probation Orders received, 2008–2015

Source: Central Statistics Office, 2020.

Table T3.2.1 shows a breakdown of controlled drug offence referrals between 2012 and 2015. While the number of controlled drug offence referrals has decreased between 2012 and 2015, it still accounted for 12% of overall referrals in 2015.

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

Table T3.2.1 Breakdown of controlled drug offence probation referrals, 2012–2015

Year	Total number of probation referrals	Total number of controlled drug offences	%
2012	2039	296	15%
2013	2074	257	12%
2014	1849	198	11%
2015	1250	148	12%

Source: Central Statistics Office, 2020.

T3.3 Evaluation of the law in the last year

The Law Reform Commission (LRC) is responsible for reviewing and putting forward proposals for reform; for example, enacting legislation to clarify and modernise Irish legislation. In August 2020, the LRC published a report on suspended sentences. This report, which formed part of the LRC’s *Fourth Programme of Law Reform* (Law Reform Commission 2013a), builds on the LRC’s previous report, *Issues Paper: Suspended Sentences* (Law Reform Commission 2017). It examined the legislation and the underlying principles behind the use of suspended sentences in Ireland. Centred on intensive research and widespread consultation with government and non-government agencies, practitioners, and experts, the report’s authors concluded that a suspended sentence as a sanction is an appropriate flexible sentencing option that can be imposed in a court of law (Law Reform Commission 2020). Moreover, this approach is “compatible with sentencing aims of retribution, deterrence (general and specific) and rehabilitation” (Law Reform Commission 2020) (p. 62).

In the LRC’s more recent *Fifth Programme of Law Reform* (Law Reform Commission 2019), the Attorney General’s Consultative Committee and the Oireachtas Joint Committee on Justice and Equality approved a project on structured sentencing. No update is available on this project.

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 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 details 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

As has occurred in previous years, 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 2020 to 29 June 2021 were brought before the Dáil on 24 June 2020 (Flanagan 2020, 24 June) and the Seanad on 29 June (Buttimer J 2020, 29 June). Prior to resolution, a report was presented to the Houses of the Oireachtas showing usage figures for the previous year. Overall, within this review period, these provisions were used 70 times. Under the provisions of the Offences Against the State Act, 1939, 146 people have been arrested, 40 of whom were detained for offences contrary to the provisions of the Offences Against the State (Amendment) Act, 1998. Seven offenders have been convicted and 35 are awaiting trial. Under

Section 8 of the Criminal Justice (Amendment) Act 2009, details were provided about the ongoing fight against organised and gangland crime in Ireland.

The division took place in the Dáil on 24 June 2020, and the question was declared carried (Offences Against the State (Amendment) Act, 1998: Yes=32, No=2; Section 8 of the Criminal Justice (Amendment) Act 2009: Yes=33, No=3) (Flanagan 2020, 24 June). The question was put, and declared carried without a vote, in the Seanad on 29 June 2020 (Conway 2020, 29 June).

Centred on the arguments put forward by Deputies, then-Minister for Justice and Equality, Charlie Flanagan agreed to commission an independent comprehensive review of the Offences Against the State (Amendment) Act, 1998, and of the operation of the criminal courts (Flanagan 2020, 24 June).

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

Defence Forces (Evidence) Bill 2019

The Defence Forces (Evidence) Bill 2019 was initiated in August 2019. The Bill provides powers to military police to test for drugs and alcohol by taking bodily samples and— 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 Second Stage in Dáil Éireann and has been referred to the Select Committee for further discussion. For further information on the Defence Forces, see Section T1.1.4 of this workbook.

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. Amendments were made to the text of the Bill at Committee Stage. This Bill is currently before Seanad Éireann, Fourth Stage.

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 has completed Second Stage and has been referred to the Select Committee for further discussion.

Criminal Justice (Theft and Fraud Offences) Amendment Bill 2020

The Criminal Justice (Theft and Fraud Offences) Amendment Bill 2020 was initiated on 1 January 2020 to give effect to Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the EU's financial interests by means of criminal law. The bill also amended the Criminal Justice (Theft and Fraud Offences) Act, 2001 and the Criminal Justice Act, 1994, and provided for related matters. It is currently before Seanad Éireann, Second Stage.

This year has been a complex year in government in Ireland. The 32nd Dáil dissolved on 14 January, and many Bills that were being debated and were moving through the houses lapsed; for example:

- **Misuse of Drugs (Amendment) Bill 2019**

The Misuse of Drugs (Amendment) Bill 2019 was initiated on 4 December 2019. The aim of the Bill was to amend the Misuse of Drugs Act, 1977 to create two new criminal offences, which criminalise buying drugs from a minor – that is, children aged under 18 years – and utilising children to distribute drugs. The aim was to protect children who are being groomed to be involved in the illegal drug trade. The general principles of the Bill were extensively debated in Private Members' time. Although the then-Minister for Justice and Equality, Deputy Charlie Flanagan, intended to continue to develop this legislation, with the dissolution of the Houses of Government, the Bill lapsed in January 2020. Further information on this Bill can be found in Section T3.1.3 of the *Drug policy workbook*.

- **Criminal Justice (Money Laundering and Terrorist) (Amendment) Bill 2019**

The Criminal Justice (Money Laundering and Terrorist) (Amendment) Bill 2019 was initiated on 19 December 2019. The aim of the Bill was to provide for the amendment of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 in order to establish a cross-border statutory agency to investigate and report on criminal activity between Northern Ireland and the Republic of Ireland. It was believed that the Bill would formalise strengthen and expand existing cross-border crime task force arrangements (Smith 2019, 18 December). Prior to the dissolution of the Dáil, the Bill had moved to Second Stage to be discussed in Private Members' time. This Bill lapsed in January 2020.

Although both these Bills lapsed with the dissolution of the Dáil and Seanad, the *Programme for Government: Our Shared Future* was published by Fianna Fáil, Fine Gael and the Green Party in June 2020, prior to the formation of the new Government (Fianna Fail, *et al.* 2020). Several actions were identified in the new Programme for Government that illustrate the new Government's commitment to the existing national drugs strategy (Department of Health). Further information on this Programme and the proposed legislation can be found Section T3.1.1 of the *Drug policy workbook*.

T4. Additional information

T4.1 Sources of information

Naughton C, Redmond S and Coonan B. Evaluation of the Bail Supervision Scheme for Children (pilot scheme). Department of Children and Youth Affairs, Dublin, 2019, Available at <https://www.drugsandalcohol.ie/31491/>

Summary

In December 2019, Katherine Zappone, Minister for Children and Youth Affairs, launched the report *Evaluation of the Bail Supervision Scheme for Children (pilot scheme)* (Naughton, *et al.* 2019). The evaluation, which was commissioned by the DCYA, was carried out by the REPPP research team from the School of Law, University of Limerick. The overall aim of the evaluation was to examine behavioural change outcomes and the processes that contributed to those outcomes between May 2017 and June 2018. The DCYA commissioned Extern to deliver the pilot BSS intervention to children deemed to be at high risk of being detained in a prison in Dublin.

What is the BSS?

Bail supervision has mainly been used to increase bail compliance among youth. It can result in reduced reoffending and, consequently, in a reduced demand for detaining youth during the remand period. In Ireland, the DCYA established the BSS to give courts another option for children at risk of being denied bail. In addition, in contrast to other jurisdictions, the view in Ireland is that the remand period is a time when behaviour change can occur. The BSS applies the evidence-based Multisystemic Therapy (MST) model as part of routine court processes, such as supports provided by the Courts Service, YPP and AGS.

Multisystemic Therapy

MST is an intensive, family-based intervention that aims to enable change by making sure that young people remain at home, in education, training or working, and that they are not arrested for new charges. The main objective is to help move the young person towards prosocial activities and peers. The MST model also enhances family functionality and support networks and enables caregivers to develop skills that are considered vital to allowing them to generalise learning and manage issues that may arise in the future. The intervention is implemented in the home and caregivers are given 24/7 support for a period of 3–5 months.

Eligibility requirements

To ensure that the BSS targeted young people at highest risk, referrals were initially made by Oberstown Children Detention Campus (OCDC) and were later made by Court 55. Eligible young people had to meet specific requirements; they had to:

- Reside within 20 miles of the Dublin District Children Court (the Scheme's catchment area)
- Be aged between 12 years and 17 years, 9 months (inclusive), and
- Be living with appropriate adult or caregiver for the duration of Scheme.

Offers to participate in the Scheme occurred at the young person's second court appearance when they were referred by OCDC and at their first court appearance when they were referred by Court 55. Because MST occurred during pre-trial court processes, the BSS team engaged with statutory agencies, such as, AGS, OCDC, Tusla, YPP, and the Courts Service and non-statutory agencies, such as, defence and prosecution legal teams, and local agencies, such as, educational establishments, youth services, community groups, drug counselling services and local sports groups.

Evaluation methodology

The evaluation was centred on Contribution Analysis, which is a theory of change that involves a rigorous and systematic six-step process. This approach can produce credible evidence showing that behaviour outcomes can be attributed to an intervention. A quasi-experimental design was applied and allowed for comparisons to be made between BSS participants and a ‘naturally occurring’ control group consisting of youth remanded to custody from areas outside the catchment area.

Research questions

Three research questions were addressed:

1. “Did the Bail Supervision Scheme (BSS) work? More specifically, did the BSS contribute to changes in the young person’s behaviour including reduced re-offending and adherence to bail conditions?
2. How did the BSS work? More specifically, how many young people were referred to, enrolled in and completed the BSS during the evaluation period and what were the factors that facilitated or acted as a barrier for referrals?
3. Why did the BSS work? More specifically, how did the BSS processes facilitate or act as a barrier to obtaining the observed outcomes?” (Naughton, *et al.* 2019).

Findings

The evaluation found that offending behaviours were reduced, young people had greater compliance with their bail conditions, and custodial sanctions were reduced. A summary of the key findings is presented in Table T4.1.1.

Table T4.1.1: Key findings

Research Questions	Outcomes
Did the BSS work?	<p>The reduction in offending behaviours among young people enrolled in the BSS was almost twice that of the control group.</p> <p>There was evidence of improved adherence to bail conditions.</p> <p>85% of young people who completed the BSS with a planned exit attracted a non-custodial option at their sentencing hearing.</p>
How did the BSS work?	<p>31 young people were referred, 20 enrolled, and 13 had a planned exit from the BSS.</p>
Why did the BSS work?	<p>Strong governance, advocates, and good news stories laid the foundations for buy-in and interagency collaboration.</p> <p>Governance was flexible, effective, and efficient.</p> <p style="text-align: center;">Implementing MST nested within the BSS</p> <p>MST was implemented with fidelity.</p> <p>The MST analytical model was described as a basic model that afforded the flexibility to adapt to individual families’ needs.</p> <p>The BSS team’s skills, strong teamwork, and problem solving, together with external MST input, contributed to successful outcomes.</p> <p>Family engagement in the BSS was vital to obtaining positive outcomes.</p> <p style="text-align: center;">Challenges in adapting the MST model to fit the BSS requirements</p> <p>The BSS requirement to report breaches in bail compliance hampered family engagement in the Scheme.</p>

Research Questions	Outcomes
Reputations	<p>Perceptions of inadequate treatment duration by caregivers and frontline professionals existed. However, these perceptions were countered by the statistical data indicating little or no further benefit from extending planned Scheme duration.</p> <p>MST eligibility criteria effectively excluded those living in residential care, those outside the acceptable age range, and those presenting with complex mental health needs.</p> <p>Stakeholders within the justice system reported confidence in the BSS.</p>

Source: Adapted from Naughton *et al.* (2019, p. 4).

Conclusion

Minister Zappone acknowledged the recognition that the BSS had received within Ireland and internationally and thanked all agencies, statutory bodies and non-statutory bodies that were involved. Following the success of the BSS in Dublin, in June 2020, the Minister provided funding to expand and extend the Scheme to courts in Cork and Limerick (Department of Children and Youth Affairs 2020).

T4.2 New areas of specific importance

Public Health (Alcohol) Act 2018

The Public Health (Alcohol) Act 2018 was signed into law on 17 October 2018. 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 provisions of the Act provided for the introduction of minimum unit pricing for all products containing alcohol; labelling of alcohol products; advertisement restrictions; structural visibility of alcohol products in licensed premises; and restrictions on the sale and supply of alcohol products. Further details about this legislation can be found at:

<http://www.irishstatutebook.ie/eli/2018/act/24/enacted/en/html?q=Public+Health+Alcohol>

Following on from the enactment of the Public Health (Alcohol) Act 2018 in October 2018, and since the last annual report, two Regulations were given statutory effect:

S.I. No. 4/2020 – Public Health (Alcohol) Act 2018 (Sale and Supply of Alcohol Products) Regulations 2020

The aim of these Regulations is to prohibit the use of bonus or loyalty card points in relation to alcohol products, to prohibit the sale of alcohol products at a reduced price when sold with another product or service, and to prohibit the sale of alcohol products at a reduced price for a period of 3 days or fewer.

S.I. No. 480/2019 – Public Health (Alcohol) (Fixed Payment Notice) Regulations 2019

These Regulations prescribe the form of a fixed payment notice under the Public Health (Alcohol) Act 2018 and the fixed payment payable in respect of the offence under that Act.

Further updates on this Act can be found in Section T3.2 in the *Drug policy workbook*.

Alternative approaches to the possession of drugs

Alternative approaches to the possession of drugs for personal use continued to be discussed in 2019. Further information on this work can be found in Section T2.2 of this workbook and Section T3.1 of the *Drug policy workbook*.

Supervised injecting facilities

An update on supervised injecting facilities can be found in Section T3.1 of the *Drug policy workbook*.

T5. Sources methodology and references

T5.1 Sources

Courts Service	http://www.courts.ie/
Defence Forces	https://www.military.ie/en/#1
Department of Health	https://health.gov.ie/
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 Drugs and Alcohol Library	http://www.drugsandalcohol.ie/
Houses of the Oireachtas	https://www.oireachtas.ie/
Irish Prison Service	https://www.irishprisons.ie/
Irish Statute Book	http://www.irishstatutebook.ie/
Probation Service	http://www.probation.ie/
Law Reform Commission	http://www.lawreform.ie/
Policing Authority	http://www.policingauthority.ie/
Revenue Commissioners	www.revenue.ie

T5.2 New studies

See Section T4.1 for a summary of one new study included in this workbook.

Cited previously

Smyth BP, Lyons S and Cullen W. Decline in new psychoactive substance use disorders following legislation targeting headshops: evidence from national addiction treatment data. *Drug Alcohol Rev*, 2017. Available at <http://www.drugsandalcohol.ie/27172/>

Abstract

New psychoactive substances (NPS) have hedonic effects that may lead to dependence. Head shops selling NPS increased in number in Ireland from late 2009, and legislation was enacted in May and August of 2010 that caused their closure. It was unknown whether such events impact the rate of NPS use disorders. A population-based study was carried out using the Irish national database of episodes of addiction treatment between 2009 and 2012. Trends in the rate of NPS-related treatment episodes among young adults were examined.

Of the 31,284 episodes of addiction treatment commenced by adults aged 18–34 years, 756 (2.4%) were NPS related. In 2012, the 12-month moving average rate had fallen 48% from its peak in 2010, from 9.0/100,000 to 4.7/100,000. Joinpoint analysis indicated that the rate of NPS-related episodes increased by 218% (95% confidence interval 86 to 445, $p=0.001$) every 4 months until the first third of 2010. From that point, the rate declined by 9.8% (95% confidence interval: -14.1 to -5.4 , $p=0.001$) per four-month period. There was no significant trend change in the rate of non-NPS-related treatment episodes.

Over the two years after the enactment of prohibition-styled legislation targeting NPS and head shops, the rate of NPS-related addiction treatment episodes among young adults declined progressively and substantially. No coinciding trend change in the rate of episodes linked to other drug groups was found.

Smyth BP, James P, Cullen W and Darker CD. “So prohibition can work?” Changes in use of novel psychoactive substances among adolescents attending a drug and alcohol treatment service following a legislative ban. *Int J Drug Policy*, 2015; 26(9), 887–889. Available at <http://www.drugsandalcohol.ie/24190/>

Abstract

“Background: Legislative changes targeting new psychoactive substance (NPS) use were introduced in Ireland over the summer of 2010 and resulted in the closure of 90% of head shops. The authors sought to examine the use of NPS among adolescents attending addiction treatment both before and after this legislation.

Methods: The authors included all adolescents entering assessment at one outpatient service comparing the six months immediately prior to the legislation in May 2010 to the same six-month period the following year. Clinicians identified problematic use of between one and four substances for each patient. Secondly, information was recorded on recent (within the past three months) use of NPS.

Results: There were 94 treatment episodes included, with a mean age of 16.8 years. Problematic use of any NPS fell from 14 patients (34%) in the pre-legislation period to zero ($p<0.001$). There was also a significant decline in recent use of any NPS (82% versus 28%, $p<0.001$). Recent use of cocaine and amphetamines also declined, but problematic use of these drugs was unchanged.

Conclusion: Use of NPS among adolescents attending drug and alcohol treatment was substantially reduced 6–12 months after the introduction of legislation prohibiting the sale of NPS and the resultant closure of most head shops”.

Mackey K. Analysis of sentencing for possession or importation of drugs for sale or supply. Irish Sentencing Information System, Dublin, 2014, Available at <http://www.drugsandalcohol.ie/21866/>

This study examined the sentencing practices of the courts in relation to the offences of possession or importation of controlled drugs for the purpose of sale or supply. Four offences were examined in the study:

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

Convictions under Sections 15A or 15B attract a “basic presumptive sentence” of 10 years or more (p. 23). A sentencing court may, however, impose a lower sentence where there are mitigating factors that amount to “exceptional and specific circumstances” (p. 10), which would render the imposition of a sentence of 10 years or more “unjust in all the circumstances” (p. 38).

- Part I of Mackey’s study analysed the legislative basis for these drug trafficking offences and the reserved judgments of the superior courts.
- Part II examined the application of sentencing principles in relation to the “basic presumptive sentence” (p. 23) provided for in Sections 15A and 15B of the MDA, 1977.
- Part III examined 79 judicial decisions involving 81 offenders before the Court of Criminal Appeal from 2009–2012. Twenty of these judgments related to ordinary offences and 59 to offences carrying the presumptive sentence.

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

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

Tolan G and Seymour M. Increasing the potential for diversion in the Irish criminal justice system: the role of the Garda Síochána adult cautioning scheme. *Ir J Appl Soc Stud*, 2014; 14(1), 60–71. Available at <http://arrow.dit.ie/ijass/vol14/iss1/7>

Abstract

“Established in 2006, the Garda Síochána Adult Caution Scheme provides a mechanism to divert adult offenders, aged 18 years and over, from the criminal justice system by way of a formal police caution in lieu of prosecution before the courts. Drawing on statistical data provided by the CSO, this paper explores the use of the Scheme over a five-year period from 2006–2010. It identifies the types of offences for which cautions are most commonly administered, the age and gender profile of offenders involved, variability in the application of the Scheme across the country, and the extent to which offenders come to the attention of AGS post-caution. Overall, the paper analyses the role of adult cautioning in the Irish context and provides some observations on the potential for increased diversion through expanding the remit of the Scheme in future years”.

T5.3 References

- An Garda Síochána (n.d.). Diversion Programme. Accessed on 27 October 2017 at <http://www.garda.ie/Controller.aspx?Page=15717&Lang=1&Mode=Display&Command=None>
- Buttimer J (2020, 29 June) Seanad Éireann Parliamentary Debates Offences against the State (Amendment) Act 1998 and Criminal Justice (Amendment) Act 2009: Motions, Vol 270 No 1. Available at <https://www.oireachtas.ie/en/debates/debate/seanad/2020-06-29/14/>
- Central Statistics Office (2015). Prison Recidivism 2009 Cohort. Cork. Available at <http://www.cso.ie/en/releasesandpublications/er/prir/prisonrecidivism2009cohort/>
- Central Statistics Office (2020). Crime and Justice: Statistics under Reservation. Accessed on 2020, 06 October at <https://www.cso.ie/en/statistics/crimeandjustice/>
- Connolly, J. (2006). Drugs and Crime in Ireland. HRB Overview Series 3. Health Research Board, Dublin. Available at <http://www.drugsandalcohol.ie/6045/>
- Conway, M. (2020, 29 June) Seanad Éireann Parliamentary Debate. Offences against the State (Amendment) Act 1998 and Criminal Justice (Amendment) Act 2009: Motions., Vol 270 No 1. Available at <https://www.oireachtas.ie/en/debates/debate/seanad/2020-06-29/14/>
- Courts Service (2019). The Drug Treatment Court. Courts Service. Accessed on 20/10/2020 at <https://courts.ie/drug-treatment-court>
- Courts Service (2020). Courts Service Annual Report 2019. Courts Service, Dublin. Available at <https://www.drugsandalcohol.ie/32433/>
- Courts service (n.d.). Drug Treatment Court Programme. Accessed on 27 October 2017 at <https://www.drugsandalcohol.ie/33256/>
- Department of Children and Youth Affairs (2020). Minister Zappone Extends Successful Bail Supervision Scheme. Department of Children and Youth Affairs, Dublin. Available at <https://www.gov.ie/en/press-release/c0fb7-minister-zappone-extends-successful-bail-supervision-scheme/>
- Department of Defence (2009, 24 April) Minister for Defence, Mr. Willie O’dea, Td, Revises the Compulsory Random Drug Testing Programme in the Defence Forces. Available at <http://www.defence.ie/WebSite.nsf/Document+ID/304637A2045EC251802575A2004BBE9E?openDocument>
- Department of Health (2017). Reducing Harm, Supporting Recovery. A Health-Led Response to Drug and Alcohol Use in Ireland 2017 - 2025. Department of Health, Dublin. Available at <http://www.drugsandalcohol.ie/27603/>
- Drugs Policy Unit Department of Health (2019). Reducing Harm, Supporting Recovery Progress 2018 and Planned Activity 2019. Department of Health, Dublin. Available at <https://www.drugsandalcohol.ie/30660/>
- Egan, A. (2020). Report of Proceedings: A Garda Youth Diversion Projects Annual Conference 2019. Department of Justice and Equality, Dublin. Available at <https://www.drugsandalcohol.ie/32545/>
- European Monitoring Centre for Drugs and Drug Addiction (2015). Alternatives to Punishment for Drug-Using Offenders. Publications Office of the European Union, Luxembourg. Available at <http://www.drugsandalcohol.ie/24320/>

Extern (n.d.). Bail Supervision Scheme (Bss). Accessed on 23 September 2019 at <https://www.extern.org/bail-supervision-scheme>

Fianna Fail, Fine Gael and Green Party (2020). Proposed Programme for Government. Fianna Fail, Fine Gael, and Green Party Dublin. Available at https://www.finegaele.ie/app/uploads/2020/06/ProgrammeforGovernment_Final_16.06.20-1.pdf

Fitzgerald, F. (2016, 22 June) Dail Eireann Debate. Written Answer 113 Legislative Programme. Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/DebatesWebPack.nsf/takes/dail2016060800054?opendocument&highlight=Frances%20Fitzgerald#WRD02650>

Fitzgerald, F. (2016, 29 April) Commencement of Spent Convictions Act and National Vetting Bureau Act. Available at <http://www.justice.ie/en/JELR/Pages/PR16000094>

Fitzgerald, F. (2017, 12 April) Dáil Éireann Debate Written Answer 76 Sentencing Policy, Vol. 947 No. 1. Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2017041200074?opendocument#WRD01500>

Flanagan, C. (2017, 5 July) Parliamentary Debates Dáil Éireann: Written Answer 142- Restorative Justice, Vol. 957 No. 1. Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/DebatesWebPack.nsf/takes/dail2017070500081?opendocument&highlight=%22Community%20Court%22#WRG03100>

Flanagan, C. (2020, 24 June) Dáil Éireann Parliamentary Debates Offences against the State (Amendment) Act 1998 and Criminal Justice (Amendment) Act 2009: Motions, Vol 994 No 2. Available at <https://www.oireachtas.ie/en/debates/debate/dail/2020-06-24/3/>

Health Research Board (2012). 2012 National Report (2011 Data) to the Emcdda by the Reitox National Focal Point. Ireland: New Developments, Trends and in-Depth Information on Selected Issues. Health Research Board, Dublin. Available at <http://www.drugsandalcohol.ie/18808/>

Health Research Board (2014). 2014 National Report (2013 Data) to the Emcdda by the Reitox National Focal Point. Ireland: New Developments, Trends. Health Research Board, Dublin. Available at <http://www.drugsandalcohol.ie/23170/>

Hogan, M. J. G. and Court of Appeal (2015). Bederev -V- Ireland & Ors. Courts Service, Dublin. Available at <http://www.drugsandalcohol.ie/24355/>

Implementation Oversight Group to the Minister for Justice and Equality (2019). Implementation of Penal Policy Review Group Recommendations. Seventh Report of the Implementation Oversight Group to the Minister for Justice and Equality. Department of Justice and Equality, Dublin. Available at <https://www.drugsandalcohol.ie/31111/>

Irish Prison Service (2020). Irish Prison Service Annual Report 2019. Irish Prison Service, Longford. Available at <https://www.drugsandalcohol.ie/32206/>

Irish Prison Service and Probation Service (2018). Irish Prison Service & Probation Service Joint Strategic Plan 2018 - 2020. Irish Prison Service & Probation Service, Ireland. Available at <https://www.drugsandalcohol.ie/29241/>

Irish Youth Justice Service (2005). Historical Background. Accessed on 27 October 2017 at <http://www.iyjs.ie/en/IYJS/Pages/WP08000009>

Irish Youth Justice Service (2019). Garda Youth Diversion Projects Operational Requirements. Available at http://www.iyjs.ie/en/IYJS/GYDP_Operational%20Requirements.pdf/Files/GYDP_Operational%20Requirements.pdf

Irish youth Justice Service (n.d.-a). Garda Youth Diversion Projects. Accessed on 23 September 2019 at <http://youthjustice.ie/en/iyjs/pages/gardadiversionprogramme>

Irish Youth Justice Service (n.d.-b). Background Note: Development of a New Youth Justice Strategy. . Accessed on 23 September 2019 at <http://www.iyjs.ie/en/IYJS/Background%20Note%20-%20New%20Youth%20Justice%20Strategy.pdf/Files/Background%20Note%20-%20New%20Youth%20Justice%20Strategy.pdf>

- Joint Committee on Justice Defence and Equality (2014). Report on Hearings in Relations to Community Courts. Houses of the Oireachtas, Dublin. Available at <http://www.drugsandalcohol.ie/22396/>
- Keane, D. (1997). Detention without Charge and the Criminal Justice (Drug Trafficking) Act 1996: Shifting the Focus of Irish Criminal Justice Away from Trial Court to Garda Station'. Irish Criminal Law Journal, 7, 1-17.
- Kehoe, P. (2017, 11 April) Parliamentary Debates Dáil Éireann: Written Answer 818- Air Corps, Vol. 946 No. 2. Available at <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2017041100109?opendocument&highlight=%22Drug%20testing%22>
- Kilcommins, S., O'Donnell, I., O'Sullivan, E. and Vaughan, B. (2004). Crime, Punishment and the Search for Order in Ireland. Institute of Public Administration, Dublin.
- Law Reform Commission (2011). Consultation Paper: Mandatory Sentences. Law Reform Commission, Dublin. Available at <http://www.drugsandalcohol.ie/16789/>
- Law Reform Commission (2013a). Fourth Programme of Law Reform. Law Reform Commission, Dublin. Available at <https://publications.lawreform.ie/Portal/External/en-GB/RecordView/Index/37396>
- Law Reform Commission (2013b). Report: Mandatory Sentences. LRC 108–2013. Law Reform Commission, Dublin. Available at <http://www.drugsandalcohol.ie/20242/>
- Law Reform Commission (2017). Issues Paper: Suspended Sentences. Law Reform Commission, Dublin. Available at <http://www.drugsandalcohol.ie/27872/>
- Law Reform Commission (2019). Fifth Programme of Law Reform. Law Reform Commission, Dublin. Available at <https://www.drugsandalcohol.ie/30971/>
- Law Reform Commission (2020). Suspended Sentences. Law Reform Commission, Dublin. Available at <https://www.drugsandalcohol.ie/33140/>
- Mackey, K. (2014). Analysis of Sentencing for Possession or Importation of Drugs for Sale or Supply. Irish Sentencing Information System, Dublin. Available at <http://www.drugsandalcohol.ie/21866/>
- McCutcheon J and Walsh D (1999). Seizure of Criminal Assets: An Overview. Irish Criminal Law Journal, 9, 127-132.
- National Crime Council (2007). Problem Solving Justice: The Case for Community Courts in Ireland. Stationery Office, Dublin. Available at <http://www.drugsandalcohol.ie/24889/>
- Naughton, C., Redmond, S. and Coonan, B. (2019). Evaluation of the Bail Supervision Scheme for Children (Pilot Scheme). Department of Children and Youth Affairs, Dublin. Available at <https://www.drugsandalcohol.ie/31491/>
- Nic Lochlainn, M. (2018, 27 June) Joint Committee on Transport, Tourism and Sport Debate: Railway Safety (Amendment) Bill 2018: Discussion. . Available at https://www.oireachtas.ie/en/debates/debate/joint_committee_on_transport_tourism_and_sport/2018-06-27/3/?highlight%5B0%5D=railway&highlight%5B1%5D=safety&highlight%5B2%5D=amendment&highlight%5B3%5D=bill
- Penal Policy Review Group (2016). 2nd Report of the Implementation Oversight Group to the Minister for Justice and Equality. pp. 28 Penal Policy Review Group Available at http://www.justice.ie/en/JELR/2nd_Report_of_the_Implementation_Oversight_Group_to_the_Minister_for_Justice_and_Equality.pdf/Files/2nd_Report_of_the_Implementation_Oversight_Group_to_the_Minister_for_Justice_and_Equality.pdf
- Penal Policy Review Group (2017). Fourth Report of the Implementation Oversight Group to the Minister for Justice and Equality. Penal Policy Review Group, Dublin. Available at http://www.justice.ie/en/JELR/4th_Report_of_the_Penal_Policy_Review_Implementation_Oversight_Group_to_the_Minister_for_Justice_and_Equality.pdf/Files/4th_Report_of_the_Penal_Policy_Review_Implementation_Oversight_Group_to_the_Minister_for_Justice_and_Equality.pdf
- Penal Policy Review Group (2018). Fifth Report of the Implementation Oversight Group to the Minister for Justice and Equality. pp. 34. Penal Policy Review Group, Dublin. Available at http://www.justice.ie/en/JELR/Fifth_Report_of_the_Implementation_Oversight_Group_to_the

[Minister for Justice and Equality - February 2018.pdf/Files/Fifth Report of the Implementation Oversight Group to the Minister for Justice and Equality - February 2018.pdf](#)

- Pike, B. (2008). Development of Ireland's Drug Strategy 2000-2007. HRB Overview Series 8. Health Research Board, Dublin. Available at www.drugsandalcohol.ie/12152/
- Policing Authority of Ireland (2020). Minutes of Meeting of the Policing Authority. Policing Authority of Ireland, Dublin. Available at <https://www.drugsandalcohol.ie/33141/>
- Probation Service (2020). Probation Service Annual Report 2019. Probation Service, Dublin. Available at <https://www.drugsandalcohol.ie/32585/>
- Ruane, L. (2019, 13 February) Seanad Éireann Parliamentary Debate. Criminal Justice (Rehabilitative Periods) Bill 2018: Second Stage. Available at <https://www.oireachtas.ie/en/debates/debate/seanad/2019-02-13/12/>
- Ryan A (1997). 'The Criminal Justice (Drug Trafficking) Act 1996: Decline and Fall of the Right to Silence'. *Irish Criminal Law Journal*, **7**, (1), 22-37.
- Sheehan, G. (2019). Minority Report of Working Group to Consider Alternative Approaches to the Possession of Drugs for Personal Use. . Department of Health and Department of Justice and Equality, Dublin. Available at <https://www.drugsandalcohol.ie/30887/>
- Smith, B. (2019, 18 December) Dáil Éireann Parliamentary Debate. Criminal Justice (Money Laundering and Terrorist Financing (Amendment) (Cross Border Crime Agency) Bill 2019, Vol 991, No 5. Available at <https://www.oireachtas.ie/en/debates/debate/dail/2019-12-18/23/>
- Smyth, B. P., Lyons, S. and Cullen, W. (2017). Decline in New Psychoactive Substance Use Disorders Following Legislation Targeting Headshops: Evidence from National Addiction Treatment Data. *Drug and Alcohol Review*, **36**, (5), 609-617. Available at <http://www.drugsandalcohol.ie/27172/>
- Smyth, B. P., James, P., Cullen, W. and Darker, C. D. (2015). "So Prohibition Can Work?" Changes in Use of Novel Psychoactive Substances among Adolescents Attending a Drug and Alcohol Treatment Service Following a Legislative Ban. *International Journal of Drug Policy*, **26**, (9), 887-889. Available at <http://www.drugsandalcohol.ie/24190/>
- Stanton, D. (2019, 22 January) Dáil Éireann Parliamentary Debate. Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Bill 2018: Second Stage. Available at <https://www.oireachtas.ie/en/debates/debate/dail/2019-01-22/30/>
- Strategic Review Group on Penal Policy (2014). Strategic Review of Penal Policy. Department of Justice and Equality, Dublin. Available at <http://www.drugsandalcohol.ie/22657/>
- The Probation Service (2015). Probation Services for Young People. Accessed on 23 September 2019 at <http://www.probation.ie/EN/PB/WebPages/WP16000038>
- Working group to consider alternative approaches to the possession of drugs for personal use (2019). Report of the Working Group to Consider Alternative Approaches to the Possession of Drugs for Personal Use. Department of Health and Department of Justice and Equality, Dublin. Available at <https://www.drugsandalcohol.ie/30887/>

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, and consequences of, and responses to, illicit drug use. It supplies the evidence base to support policy formation on drugs and addiction in both the EU 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 EMCDDA 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 (HRB). 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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