Working Group to Consider Alternative Approaches to the Possession of Drugs for Personal Use

Report to:

- Minister for Health, Simon Harris T.D. and Minister for Justice and Equality, Charles Flanagan T.D.

- Minister of State for Health Promotion and the National Drugs Strategy, Catherine Byrne T.D.
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Preface

Message from the Chair

The Minister for Health Promotion and the National Drugs Strategy, Catherine Byrne TD established a Working Group in November 2017 to consider alternative approaches to the possession of drugs for personal use. The group met on 19 occasions between December 2017 and March 2019.

I would like to especially thank Ms. Therese Molyneux, Assistant Principal, Dr. Sarah Waters, Assistant Principal and Mr. Colin Lavelle, Administrative Officer, for their great work in preparing this report and getting it over the line. I would also like to thank all the members of the Working Group for their participation in the deliberations of the Group.

This is a majority report.

Garrett Sheehan

Chairperson

Terms of Reference

The Department of Health and the Department of Justice and Equality were tasked with establishing a Working Group to consider the approaches taken in other jurisdictions to the possession of small quantities of drugs for personal use in light of the Report of the Joint Committee on Justice, Defence and Equality on a Harm Reducing and Rehabilitative approach to the possession of small amounts of illegal drugs to examine:

a) the current legislative regime that applies to simple possession offences in this jurisdiction and the rationale underpinning this approach, and any evidence of its effectiveness;

b) the approaches and experiences in other jurisdictions to dealing with simple possession offences;

c) the advantages and disadvantages, as well as the potential impact and outcomes of any alternative approaches to the current system for the individual, the family and society, as well as for the criminal justice system and the health system;

d) the identification of the scope of any legislative changes necessary to introduce alternative options to criminal sanctions for those offences;
e) a cost benefit analysis of alternative approaches to criminal sanctions for simple possession offences; and

f) make recommendations to the relevant Minister within twelve months.¹

¹ On 11 December 2018 the Chair requested an extension of three months
Executive Summary and Summary of Main Recommendations

1.1 Drugs policy in Ireland is aligned to the public health goals of improving health and reducing harms caused by drugs. Reducing Harm, Supporting Recovery, our national drugs strategy, aims to remove obstacles to rehabilitation and afford people the opportunity to recover from addiction. It promotes a more compassionate and humane approach with problematic substance use being treated as a health issue.

1.2 A growing number of governments, UN and EU agencies and professional bodies have called for a public health response to the possession of drugs for personal use. The Programme for a Partnership Government contains a firm commitment for Ireland to support a health-led rather than criminal justice approach to drugs use. The three UN drug control conventions, as well as the European Union Drugs Strategy 2013-2020 encourage states to introduce an alternative to conviction or punishment for drug using offenders. A new position statement on drug policy from the United Nations Chief Executives Board (CEB) chaired by the UN Secretary General and representing 31 UN agencies, calls on member states to “promote alternatives to conviction and punishment in appropriate cases, including the decriminalization of drug possession for personal use”.

1.3 The Oireachtas Joint Committee on Justice, Defence and Equality recommended the introduction of a harm-reducing and rehabilitative approach to the possession of a small amount of illegal drugs for personal use. They highlighted the need for more research to ensure that the adoption of any alternative approach would be appropriate in the Irish context. Therefore, research was commissioned on behalf of the Working Group in May 2018 to synthesise the evidence of approaches and experiences in other jurisdictions and to recommend models that may work in the Irish context.

1.4 The research report (Annex I) identified six approaches in the nine selected jurisdictions and explored the advantages, disadvantages, outcomes and process of each approach, and discussed evidence of their effectiveness. The researchers suggested that Ireland could adopt a number of the approaches, but they recommended a hybrid of two approaches: depenalisation of the most minor drug possession offences such as cannabis or for a first or second offence and decriminalisation with targeted diversion for higher-risk offenders.

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4 Council of the European Union. Council Conclusion: Promoting the Use of Alternatives to Coercive Sanctions for drug Using Offenders, March 2018, Brussels
7 Houses of the Oireachtas, Joint Committee on Justice, Defence and Equality: Report on a Harm Reducing and Rehabilitative approach to possession of small amounts of illegal drugs (2015)
8 Hughes, C., et al., ‘Review of approaches taken in Ireland and in other jurisdictions to simple possession drug offences’, p. 5
1.5 The researchers highlighted that:

Any alternative approach to dealing with simple drug possession comes with risks. The research in this area is complex, incomplete and not capable of providing definitive answers about what the outcome of any given approach will be in the Irish context. The current approach also entails risk, including that costs and burdens are placed on citizens (taxpayers and people who use drugs) that are not justified by the effects in reducing social and health harms.9

1.6 The Working Group conducted a wide-ranging public consultation (Annex II) to inform its deliberations and to hear the views of communities, service users, families, stakeholders and the general public. There were three strands to the consultation process, namely an online questionnaire, focus groups with people who have been prosecuted for the possession of drugs for personal use, and an open policy debate with relevant stakeholder organisations. There was overwhelming support for a change to the current approach to simple possession offences in Ireland across all three elements of the consultation. The vast majority of people were of the view that criminalising drug use does not prevent or reduce drug use, and they supported a more health-centred approach which would encourage people to seek treatment for addiction. The respondents to the online questionnaire should not be considered a representative sample of Irish society.

1.7 The Working Group noted difficulties with the application of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) definition10 of the term “decriminalisation” in the Irish legal context and the constitutional difficulties that might arise were Irish legislators to try and decriminalise drugs. In terms of the particular matter of decriminalisation in the Irish context i.e. the removal of the offence, the group considered a number of issues. This included whether there might be legal or constitutional issues with An Garda Síochána directing people to the health system when no criminal offence has been committed. The group also formed the view that within the Irish legal system it would not be possible to set up Dissuasion Committees or a new body with vast powers of civil sanction along the lines of those of the Portuguese model. In Portugal drug possession remains an offence under law though not leading to a criminal conviction for personal use because they have powers to apply civil sanctions.

1.8 The Group noted that there were significant differences between the codified legal system of Portugal and the legal system which operates in Ireland. Ireland, like other common-law jurisdictions maintains a clear divide between the criminal law (which is enforceable by agents of the State, though with limited provision for private prosecution). The civil law for the most part is invoked by private individuals who wish to secure redress for wrongs which they claim to have suffered.

9 Hughes, C., et al., ‘Review of approaches taken in Ireland and in other jurisdictions to simple possession drug offences’, p. 4
10 “Decriminalisation – the status of the offence is reclassified from a criminal offence to a non-criminal offence within a country’s legal framework. It is still an offence, it is still prohibited behaviour that will be stopped by police and punished but it is no longer considered criminal”. B Hughes EMCDDA 2018
1.9 The Working Group recognised that any alternative should address the following principles, whilst remaining cognisant of potential difficulties imposed by our legal system:

- a person should be afforded the opportunity to avoid a criminal conviction for the possession of drugs for their personal use;
- a person should be supported to avoid, reduce and recover from drug-related harm;
- a person with problematic drug use should be referred to appropriate treatment or other support.

1.10 The Working Group has developed recommended policy options based on these principles, consultations, discussions with experts and the evidence summarised above.

1.11 In proposing alternative approaches for dealing with the offence of simple possession the Working Group was cognisant that statutory arrangements are in place for young people under the Children Act, 2001.

**Recommended Policy Options**

**Option 1: Adult Caution**

The Adult Caution Scheme is a discretionary alternative to prosecution, whereby a person found in possession of drugs for personal use could be given a formal caution by An Garda Síochána, who could also provide the individual with a health and social services information leaflet.

**Option 2: Multiple Adult Cautions**

Subject to the agreement of the DPP, a person could be given the benefit of an Adult Caution by An Garda Síochána more than once. This could provide a discretionary alternative to prosecution and criminal conviction on more than one occasion. The individual would also be provided with a health and social services information leaflet whenever they are given an Adult Caution in respect of possession of drugs for personal use.

**Option 3: Diversion to Health Services**

This option is based on a public health approach to drug use. People found in possession of drugs for personal use would be supported to address the harms of their drug use. A person in possession of drugs for personal use would be diverted for a brief intervention and screening; where necessary high-risk drug users would be offered onward referral for treatment or other supports.
Other Recommendations

(i) The Working Group recommends in principle amending the penalty scheme in Section 27 of the Misuse of Drugs Act 1977 so that imprisonment is no longer an outcome for the possession of drugs for personal use, subject to a full examination of the legal implications and any unforeseen consequences.

(ii) The Working Group recommends a change to the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 so that all convictions for drug possession for personal use (Section 3 MDA) can be spent. In addition, the group recommends decreasing the seven year period to three years between the conviction and it becoming spent.

(iii) The Working Group considers it important that a dismissal or non-conviction under the Probation Act be recorded correctly and that this court outcome is clear when a person’s records are being checked.

(iv) The Working Group does not propose the introduction of threshold limits under current legislation. The Group recommends the retention of the statutory presumption to the effect that where the quantity of drugs involved renders it reasonable to assume that they were not for immediate personal use, they were possessed for the purpose of sale or supply.

(v) The Working Group recommends that there are pathways available at all levels of the criminal justice system to refer people to treatment following prosecution.

(vi) The Working Group recommends additional investment in services to support the policy option that is chosen.

(vii) The Working Group recommends a campaign to increase awareness of the treatments available and of the harms associated with drug use.

(viii) The Working Group recommends that any alternative approach introduced is monitored, has a data collection mechanism, an evaluation of the implementation and scope for appropriate modification.
The following table shows how the report addresses the specific Terms of Reference of the Working Group.

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<td>Examine the current legislative regime that applies to simple possession offences</td>
<td>- See Chapter 3</td>
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<td>and the rationale underpinning this approach, and any evidence of its effectiveness</td>
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<td>Examine the approaches and experiences in other jurisdictions to dealing with</td>
<td>- Research commissioned (Annex I)</td>
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<td>Examine the advantages and disadvantages, as well as the potential impact and</td>
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<td>outcomes of any alternative approaches to the current system for the individual,</td>
<td>- Meetings held with experts from countries/jurisdictions with alternative approaches</td>
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<td>the family and society, as well as for the criminal justice system and the health</td>
<td>- See Chapter 6</td>
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<td>system</td>
<td>- See Consultation Report (Annex II)</td>
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<td>Identify the scope of any legislative changes necessary to introduce alternative</td>
<td>- Discussions with legal experts</td>
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<td>options to criminal sanctions for those offences</td>
<td>- See Chapter 8</td>
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<td>Undertake a cost benefit analysis of alternative approaches to criminal sanctions</td>
<td>- See Chapter 9</td>
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<td>for simple possession offences; and</td>
<td>- See Costings Report (Annex III)</td>
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<td>Make recommendations to the relevant Minister within twelve months</td>
<td>- See recommended policy options 1-3</td>
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2 Introduction

2.1 Background to the Establishment of the Working Group

Report of the Joint Committee on Justice, Defence and Equality on a Harm Reducing and Rehabilitative approach to possession of small amounts of illegal drugs

2.1.1 The Oireachtas Joint Committee on Justice, Defence and Equality on 5 November 2015 launched its Report on a Harm Reducing and Rehabilitative approach to possession of small amounts of illegal drugs.\textsuperscript{11}

2.1.2 In June 2015, members of the Committee visited Portugal and discussed the approach to drug addiction adopted there since 2001. It was reported that the approach in Portugal, which is therapy based rather than punitive, has had a very positive result for the communities concerned. Following the visit and subsequent public hearings, the Committee concluded that a health-led approach may be more effective and more appropriate for those found in possession of a small amount of illegal drugs for personal use rather than a criminal sanction, as appropriate in an Irish context.

2.1.3 The Committee received in excess of 80 submissions from a wide range of organisations and individuals with a lot of expertise and knowledge of the issues involved. Public hearings took place on 14 October 2015 where a number of those who made submissions engaged with the Committee.\textsuperscript{12}

2.1.4 Based on the evidence presented to it, the Committee therefore recommended the introduction of a harm-reducing and rehabilitative approach whereby the possession of a small amount of illegal drugs for personal use, could be dealt with by way of a civil or administrative response rather than via the criminal justice route. The Committee also highlighted the need for more research to ensure that the adoption of any alternative approach would be appropriate in the Irish context.

2.1.5 The report made the following recommendations:

(i) The Committee strongly recommends the introduction of a harm reducing and rehabilitative approach, whereby the possession of a small amount of illegal drugs for personal use, could be dealt with by way of a civil/administrative response and rather than via the criminal justice route.

(ii) The Committee recommends that discretion for the application of this approach would remain with An Garda Síochána/Health Providers in respect of the way in which an individual in possession of small amounts of drugs for personal use might be treated.

\textsuperscript{11} Houses of the Oireachtas, Joint Committee on Justice, Defence and Equality: Report on a Harm Reducing and Rehabilitative approach to possession of small amounts of illegal drugs (2015)

\textsuperscript{12} Submission made to the Committee are available online at: https://www.oireachtas.ie/en/debates/debate/joint_committee_on_justice_defence_and_equality/2015-10-14/2/
The Committee recommends that any harm reducing and rehabilitation approach be applied on a case-by-case basis, with appropriately resourced services available to those affected, including resources for assessment (e.g. similar to the Dissuasion Committees used in Portugal) and the effective treatment of the individuals concerned.

The Committee draws attention to the success of ‘informal’ interaction with users when referred to the ‘Dissuasion Committees’ in Portugal and recommends that such an approach should be employed in Ireland if the recommendations in this report are to be adopted.

The Committee recommends that resources be invested in training and education on the effects of drugs and that appropriate treatment be made available to those who need to avail of same. The Committee feels that out-of-school ‘informal’ interaction by Youth Services could have a major role to play in this context.

The Committee recommends that research be undertaken to ensure that the adoption of any alternative approach is appropriate in an Irish context.

The Committee recommends that in addition to other measures, enactment of legislation in relation to Spent Convictions be prioritised.13

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Criminal Justice Strategic Committee Working Group on Alternatives to Prosecution (2016)

2.1.6 The Working Group on Alternatives to Prosecution (WGAP) was established by the Criminal Justice Strategic Committee (CJSC) to review alternatives to prosecution and make recommendations in regards to the introduction of measures to amend/complement/replace existing alternatives. The following recommendations provided the rationale for the CJSC to establish the WGAP:

(i) ...that the relevant agencies review the offences covered by the Adult Cautioning Scheme with a view to including a wider range of offences.14

(ii) ...convene a working group to consider extending the legislation governing the Adult Cautioning scheme to include possession of drugs and other suitable offences.15

(iii) ...convene a working group to consider extending the legislation governing the Adult Cautioning scheme to include conditional cautioning.16

(iv) ...convene a working group to consider extending the use of fixed charge penalty notices to include other minor crime...17

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13 Houses of the Oireachtas, Joint Committee on Justice, Defence and Equality: Report on a Harm Reducing and Rehabilitative approach to possession of small amounts of illegal drugs (2015), p.10
14 The report of the Strategic Review of Penal Policy (2014), Recommendation 5, p. 35
16 Ibid., Recommendation 11.10, p. 27
17 Ibid., Recommendation 11.12, p. 27
2.1.7 With regards to the extension of the Adult Cautioning Scheme to include the offence of possession of drugs for personal use, the WGAP determined that the inclusion of this offence for first time offenders would be “in the best interests of the criminal justice system, the offender and the wider public, as well as better according with Government policy generally”.\textsuperscript{18}

2.1.8 The WGAP was of the view that the application of the Adult Cautioning Scheme to the offence of personal possession should not differentiate between substances in the same way cannabis and other drugs are differentiated in the Misuse of Drugs Act, with this approach considered more equitable for a first time offence.

2.1.9 With regards to the extension of the scheme to include conditional cautioning, the WGAP determined that it would have to be developed on a statutory basis, and “a definitive view on whether to introduce a conditional cautioning scheme would be best attained through dedicated deliberation in an appropriate cross-sectoral forum”.\textsuperscript{19}

2.1.10 The WGAP determined that a broad range of representatives would comprise such a forum, having regard for the complexity of the matter and the specific “level of legal, financial and cross-sectoral analysis” required. It was suggested that “policy-makers and practitioners from the justice, health, education, local government and social protection sectors, along with stakeholders from academia and civil society (e.g. representatives of victim support groups and the business community)” could be represented on such a forum.\textsuperscript{20}

\textit{Controlled Drugs and Harm Reduction Bill (2017)}

2.1.11 On 31 May 2017 Senator Lynn Ruane introduced a Private Member’s Bill to the Seanad – The Controlled Drugs and Harm Reduction Bill 2017. This Bill provides for the amendment of the Misuse of Drugs Act 1977 by the insertion of a new Section 3 into the principal Act. This provides that a person with a controlled drug in their possession is not guilty of an offence providing the amount possessed is for personal use only and does not exceed the authorised amount as regulated by the Minister.

2.1.12 The Bill provides for the establishment of a Drug Dissuasion Service to case manage persons found in possession of controlled drugs and to divert people away from the courts by providing a system of harm-reduction measures including drug awareness, drug rehabilitation and community engagement programmes.

2.1.13 The Private Members Bill was considered to be lacking in a number of key areas. The stated purpose of the Bill is to provide for the “decriminalisation for possession of controlled drugs for personal use” stating in Section 3 that “a person who has a controlled drug in his possession shall not be guilty of an offence where the possession is for personal use only, and the quantity possessed does not exceed the maximum amount for personal use and

\textsuperscript{18} The report of the Working Group on Alternatives to Prosecution (2016), unpublished, p.7
\textsuperscript{19} Ibid., p. 14
\textsuperscript{20} Ibid., p. 4,14
possession in accordance with this Act”. The Misuse of Drugs Act is designed to prevent the abuse of certain drugs and to regulate the various professional activities associated with them. The Act imposes a prohibition on controlled drugs in their entirety and then provides certain provisions and positive obligations to enable certain persons to do certain things with those drugs. This is to ensure that certain controlled drugs are available for medical and scientific purposes.

2.1.14 The Bill commenced Second Stage in the Seanad on 31 May 2017. Minister of State Catherine Byrne indicated during the Second Stage debate that she has reservations with parts of the Bill. The Bill would mean that a person in possession of controlled drugs could not be prosecuted under the Misuse of Drugs legislation where the quantity is determined to be for personal use. It would become effectively legal to possess heroin, cocaine, cannabis, so-called ‘legal highs’ or any of the other drugs which were re-controlled by emergency legislation by the Oireachtas in 2015. This could lead to a situation akin to de facto legalisation. As stated in the Seanad debate on 31 May 2017, without the fundamental prohibition and offence of possession there can be no practical or legitimate mechanisms for controlling the import, manufacture, production, preparation or transportation of controlled drugs for the many legitimate and important medical, industrial and scientific uses. This includes the use by healthcare professionals or patients with a prescription.

2.1.15 The Second Stage debate in the Seanad was adjourned pending the outcome of the deliberations of this Working Group.

2.1.16 Senator Ruane addressed the Working Group on 24 April 2018; details of which are set out in section 7.2.2

Reducing Harm, Supporting Recovery (2017)

2.1.17 Internationally there is an emerging view that the application of criminal sanctions to certain drug users could be counter-productive.21 Criminal sanctions can also stigmatise the person concerned and can have far-reaching consequences, such as difficulties gaining employment and access to services, for example, housing, travel visas etc.22 The United Nations General Special Assembly on the World Drug Problem, which met in April 2016, called for the development of “alternative or additional measures with regard to conviction or punishment in cases of an appropriate nature, in accordance with the three international drug control conventions”23


2.1.18 The drug situation is constantly evolving as is the policy response at national and international level. The drafting of the current National Drugs Strategy was informed by the political will at the time as highlighted in A Programme for a Partnership Government, which committed to supporting a health-led rather than a criminal justice approach to drugs use. In addition, stakeholders, experts and the public were consulted for their views and experiences. This consultation further highlighted the changing attitudes towards people who use drugs, with calls for drug use to be treated first and foremost as a health issue.

2.1.19 Reducing Harm, Supporting Recovery: A health-led response to drug and alcohol use in Ireland 2017-2025 is Ireland’s third national drugs strategy. Ireland’s previous drugs strategies covered the period from 2001 to 2008 and 2009 to 2016 respectively. Both previous strategies were based on a balanced approach to the drug problem, focusing on the key pillars of supply reduction, prevention, treatment, rehabilitation and research. Substance misuse continues to be a significant challenge facing our country, and the nature and scale of the drug problem is constantly changing. As the drug situation changes, so too do the needs of those with drug problems.

2.1.20 This new strategy aims to provide an integrated public health response to substance misuse. It places a greater emphasis on health-led responses reflecting a human rights and equality perspective, while continuing to tackle the risks and harms to the wider community and society from the illegal drug trade and the use and misuse of substances. The vision for the strategy is:

A healthier and safer Ireland, where public health and safety is protected and the harms caused to individuals, families and communities by substance misuse are reduced and every person affected by substance use is empowered to improve their health and wellbeing and quality of life.

2.1.21 Many contributors to the strategy pointed to Portugal’s public health response and the recommendations from the Joint Oireachtas Committee. Therefore, a strategic action was included in the National Drugs Strategy to address this growing movement toward a person-centred approach to drug policy rooted in public health. This strategic action, 3.1.35, called for the establishment of a working group to “consider the approaches taken in other jurisdictions to the possession of small quantities of drugs for personal use with a view to making recommendations on policy options to the relevant Minister within 12 months”.

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26 Ibid., p. 8
2.2 **Terms of Reference**

2.2.1 The Department of Health and the Department of Justice and Equality was tasked with joint lead responsibility for the establishment of a Working Group, with the following Terms of Reference (TOR) to examine:

   a) the current legislative regime that applies to simple possession offences in this jurisdiction and the rationale underpinning this approach, and any evidence of its effectiveness;
   
   b) the approaches and experiences in other jurisdictions to dealing with simple possession offences;
   
   c) the advantages and disadvantages, as well as the potential impact and outcomes of any alternative approaches to the current system for the individual, the family and society, as well as for the criminal justice system and the health system;
   
   d) the identification of the scope of any legislative changes necessary to introduce alternative options to criminal sanctions for those offences;
   
   e) a cost benefit analysis of alternative approaches to criminal sanctions for simple possession offences; and
   
   f) make recommendations to the relevant Minister within twelve months.

2.3 **Membership**

2.3.1 In order to meet the obligations of producing comprehensive, impartial and objective recommendations within a tight time-frame, it was agreed that the Working Group would be a technical expert group with the skills and background necessary to oversee the research, consultation and deliberative phases of work. At the request of Minister of State Catherine Byrne, retired Court of Appeal Judge Mr Justice Garrett Sheehan agreed to act as a Chairperson of the Working Group. The members of the Group are listed at Appendix I.
2.4 Work Programme

2.4.1 To ensure the terms of reference were sufficiently addressed, the work plan for the WG consisted of three distinct but overlapping phases:

A. Research Phase:

(i) research the current legislative regime in this jurisdiction and evidence of its effectiveness;
(ii) research the approaches and experiences in other jurisdictions;
(iii) outline the advantages, disadvantages, impact and outcomes of any alternative approaches;
(iv) develop a report setting out possible options for responding to the offence of simple possession.

B. Consultation Phase:

(i) conduct a wide ranging and comprehensive consultation to engage with and hear the views of Government Departments and agencies, the public, service users, service providers, families, communities, representative groups and organisations, elected representatives;
(ii) prepare a report on the outcomes of the consultation.

C. Deliberation Phase:

(i) identify the scope of potential legislative impacts of the identified options and arising from the consultation process consolidate any required legislative changes;
(ii) conduct a cost-benefit analysis of alternative approaches;
(iii) deliberate on the reports from the research and consultation phases;
(iv) develop draft recommendations;
(v) Working Group to present recommendations to relevant Ministers.
3 The Current Legislative Regime, Rationale and Evidence of Effectiveness

3.1 The Irish Legal System

3.1.1 Ireland is a common-law jurisdiction governed by a written constitution (Bunreacht na hÉireann) which protects several fundamental rights and provides for the judicial review of legislation. The defining characteristic of a common-law jurisdiction is that, historically, much of its law will have resulted from judicial decision-making as opposed to legislation. While more and more areas of our administrative, social and commercial life are now governed by legislation, the common law remains a vibrant source of the rules by which we live. Most continental European countries are civil law jurisdictions, their essential characteristic being that their law is encapsulated in codes which are to be applied by the courts.

3.1.2 In keeping with its common-law tradition, Ireland maintains a clear distinction between its criminal and civil law. The law prohibits many kinds of wrongdoing and undesirable behaviour, some of which is criminal and some of which is treated as a civil wrong such as a tort or a breach of contract. The essence of a crime is that it is regarded as a wrong against the community as a whole and not just against a particular victim (when there is one). All crimes of any appreciable degree of gravity are so defined as to include both a material (or external) element and a mental element. This means that before a person can be convicted of a crime, he or she must have performed the prohibited act or omission and have done so with a particular state of mind (which may be intention, knowledge, recklessness or, very rarely, negligence). Every person charged with an offence is presumed innocent until proved guilty and the burden of proving an accused person’s guilt beyond a reasonable doubt rests with the prosecution.

3.1.3 The court in which a person is tried for an offence depends on the nature and gravity of the offence. Minor offences may be dealt with in the District Court, which is a court of summary jurisdiction and which has a general power to impose a sentence not exceeding 12 months for any one offence and not exceeding two years for a combination of offences. More commonly, it imposes non-custodial penalties such as fines or probation bonds. Virtually all serious offences are tried in the Circuit Court, where a defendant has the right to be tried by jury unless he or she pleads guilty. The Central Criminal Court, which is the High Court exercising criminal jurisdiction, has exclusive jurisdiction over murder and some other serious offences. The only formal limitation on the sentencing powers of the Circuit Court and the Central Criminal Court is the maximum sentence prescribed by statute for the offence of conviction. The Special Criminal Court is a non-jury court which, in effect, has jurisdiction to try any offence, but only in circumstances where it is determined that the ordinary courts are inadequate to secure the effective administration of justice, and the preservation of public peace and order. A person convicted in the District Court may appeal against conviction, sentence or both to the Circuit Court. A person convicted in the Circuit Court, Central Criminal Court or Special Criminal Court may appeal against conviction, sentence or both to the Court of Appeal.

3.1.4 During the past few decades in Ireland, as in many other countries, there has been increasing recourse to the criminal law in order to enforce regulation. This has led to a
significant growth in the number of so-called regulatory offences. The term “regulatory offence” has proved difficult to define. In many cases at least, responsibility for the investigation of such offences rests, not with the police, but with a specialist agency such as the Health and Safety Authority. Many regulatory agencies and other public bodies have limited prosecution powers although, in accordance with Article 30 of the Constitution, prosecutions for serious offences to be tried in the higher criminal courts must be taken in the name of the People by the Director of Public Prosecutions.

3.1.5 Some regulatory agencies have significant enforcement powers outside of the criminal justice system. The Central Bank, for example, has important regulatory powers and may impose very heavy financial penalties on institutions and individuals found to be in breach of relevant regulations. However, enforcement powers of this nature require, first of all, a specialist and well-resourced regulatory body that can properly investigate suspected breaches and determine the appropriate penalty, if any, to be imposed. Secondly, the measures adopted must be practically enforceable in the sense that the body or person against whom they are directed must be clearly identifiable and also have a vested interest in being compliant with the regulations involved. A regulatory regime of this nature, therefore, would scarcely be practical for dealing with minor offences or infractions committed by a potentially large number of individuals. Securing compliance in that kind of environment would be practically impossible.

3.1.6 The apparatus of the criminal justice system – police, courts, prisons and so forth – is available solely to deal with suspected or confirmed breaches of the criminal law. As already noted, Ireland, like other common-law jurisdictions maintains a clear divide between the criminal law (which is enforceable by agents of the State, though with limited provision for private prosecution) and the civil law which, for the most part, is left to be invoked by private individuals who wish to secure redress for wrongs which they claim to have suffered.


3.2.1 The Misuse of Drugs Act 1977 and the Regulations made thereunder control the cultivation, licensing, possession, administration, supply, record-keeping, prescription-writing, destruction and safe custody of substances controlled under the Act – either by being listed in the Schedule to the Act or declared controlled by Government order. These include substances which have legitimate and therapeutic uses but which are open to abuse, e.g. heroin, cocaine, benzodiazepines, and substances which have no recognised or known legitimate and therapeutic uses. The Act provides for criminal offences and penalties are set accordingly, including for possession for personal use and possession for the purpose of unauthorised supply. Penalties for conviction for personal use are listed at Appendix II.

3.2.2 The effect of declaring a substance controlled under the Act (either in the Schedule to the Act or by Government Order) is to make it an offence to possess that substance. However, the Minister for Health may then make orders and regulations to give effect to the Government Decision by placing the substances which have been declared controlled into schedules, in accordance with Ireland’s obligations under international conventions.
Different levels of control apply to substances in different schedules, based on the health risk, potential for misuse and validity of legitimate use. Section 4 allows the Minister to regulate which persons or groups of persons may possess a substance (e.g. pharmacists) and for which purposes. A breach of regulations made under Section 4 results in an offence of possession. The Minister may make an order under Section 3 of the Act exempting from the offence of possession certain substances where the potential for abuse is considered low. These are primarily medicines with small quantities of active ingredients. There are approximately 260 individual substances controlled under the Misuse of Drugs Acts. This does not include substances controlled by the generic paragraphs and does not account for isomers or salts of those drugs. The schedules for controlled substances are explained in Table 1 below:

<table>
<thead>
<tr>
<th>Schedules</th>
<th>Harmfulness</th>
<th>Degree of Control</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Substances presenting a very high risk of abuse, posing a particularly serious threat to public health which are of very little or no therapeutic value</td>
<td>Very strict; use is prohibited except for scientific or research purposes. It is prohibited to import, export, produce, supply or possess these substances, except when specifically licensed to do so.</td>
<td>Cannabis, Coca Leaf, Raw Opium</td>
</tr>
<tr>
<td>2 &amp; 3</td>
<td>Substances presenting a risk of abuse, posing a serious threat to public health which have therapeutic use.</td>
<td>Strict; import and export is by license only, with production, supply and possession restricted to license holders, listed health professionals and specified categories of persons.</td>
<td>Cocaine, Fentanyl, Diamorphine (Heroin)</td>
</tr>
<tr>
<td>4 &amp; 5</td>
<td>Substances with therapeutic value, but lesser risks associated with misuse.</td>
<td>These substances are exempted from many of the controls under the Misuse of Drugs legislation i.e. licenses are not required for import and export.</td>
<td>Diazepam, Zopiclone</td>
</tr>
</tbody>
</table>

Table 1: Explanation of controlled substances Schedules
Source: Department of Health

The Evolution of the Misuse of Drugs Legislation

3.2.3 The 1977 Act was drafted to update Ireland’s control of drugs in accordance with international thinking on the subject. The significant change in the approach with this legislation was that it sought to “preclude the misuse of certain dangerous or otherwise harmful drugs....” rather than just control their production and circulation.27

3.2.4 It is noteworthy that the aim of the 1977 Act was to prevent drug possession and supply and to provide for the treatment and rehabilitation of drug offenders. The Act provided for the mandatory preparation of medical and Probation and Welfare Service reports for drug users brought before the courts. The courts were also authorised to arrange for medical treatment as necessary. In addition, the Central Mental Hospital was designated as a treatment centre for drug-using offenders in 1980.

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3.2.5 Most of these treatment options were little used however, and with an increase in drug taking during the early 1980s, the 1984 amendment of the Misuse of Drugs Act lessened the provisions aimed at providing treatment and rehabilitation. Section 14 of the Act substituted the mandatory provision of medical reports for discretionary provision.28 The Central Mental Hospital never operated properly as a drug treatment centre and was de-designated a short time later.29

Offences

Possession, trafficking and conveying drugs into prison

3.2.6 Section 3 of the 1977 Act provides:

(1) .... A person shall not have a controlled drug in his possession.

(2) A person who has a controlled drug in his possession in contravention of subsection (1) shall be guilty of an offence.

3.2.7 This is a general provision which makes it a criminal offence to have unauthorised possession of a controlled drug, irrespective of the nature or quantity of the drug involved.

3.2.8 Section 3 of the Misuse of Drugs Act must be read in conjunction with Section 15 as the law does not create a precise or watertight distinction between possession of drugs for immediate personal use and possession for sale or supply. Possession for immediate personal use is not defined in any quantitative or monetary terms, e.g. weight in grams, value of drugs, dosage levels, or qualitative statements as thresholds; it is for the trial court to determine the purpose for which the drugs were possessed. There is a statutory presumption to the effect that, where the quantity of drugs involved renders it reasonable to assume that they were not for immediate personal use, they were possessed for the purpose of sale or supply. However, this presumption may be rebutted. An offence contrary to Section 15 i.e. possession for sale or supply, carries a maximum sentence of life imprisonment.

3.2.9 It is noteworthy that the Misuse of Drugs (Supervised Injecting Facilities) Act 2017 provides for an exemption of authorised users from the offence of possession of controlled drugs under certain conditions, when in in a designated facility (e.g. a Supervised Injecting Facility) and with the permission of the licence holder. Section 7 of the Act defines “authorised user” as a person who is permitted to be on the premises for the purpose of consuming drugs by injection. A person is an “authorised user” only while on the premises.

3.2.10 It is also noteworthy that the Criminal Justice (Psychoactive Substances) Act 2010 works in tandem with the Misuse of Drugs Legalisation but does not impose any criminal

prohibition on the possession of such a substance for personal because this is already provided for in the Misuse of Drugs Acts. The Act gives a very wide definition to “psychoactive substance” which means, very broadly speaking, a substance that has the capacity to have a mind-altering effect. The Act is aimed at prohibiting the sale, importation, advertising, etc. of the prohibited substances and orders continue to be made under the Misuse of Drugs legislation bringing New Psychoactive Substances (NPS) under control.

Search and arrest powers

3.2.11 Section 23 of the Misuse of drugs Act 1977 confers important powers upon members of the Gardaí to search and, if necessary, arrest a person suspected of being in possession of a controlled drug. The section does not include any qualification as to the nature or amount of the drug involved, which means that the power may be exercised even where it is suspected that a person is in possession of a small quantity of a drug for personal use.

3.2.12 A person who fails to comply with a requirement made of him or her under Section 23 (as amended) is guilty of a summary offence which is currently punishable with a maximum fine of €500.

Sentencing

3.2.13 The maximum penalties applicable to the various offences created by the Misuse of Drugs Act 1977 are set out in Section 27 of the Act which was substantially amended by Section 6 of the Misuse of Drugs Act 1984. The penalties for the more serious offences (such as possession for sale or supply) have already been outlined above. The distinction between possession for personal use and possession for other purposes is most clearly drawn in Section 27 as it makes a distinction in the first instance between cannabis and other drugs. Then, in relation to cannabis itself, it distinguishes between first, second and subsequent convictions.

Cannabis

3.2.14 Possession of cannabis or cannabis resin for personal use is punishable by a fine only following a first or second conviction and this applies irrespective of whether it follows a summary conviction (in the District Court) or a conviction on indictment. In the case of a third or subsequent cannabis offence, the maximum sentence following summary conviction is a fine, up to 12 months imprisonment or both. Following conviction on indictment it is a fine, up to three years’ imprisonment or both.

Other drugs

3.2.15 In any other case, possession of drugs contrary to Section 3 of the 1977 Act carries a maximum sentence of a fine, up to 12 months’ imprisonment or both following summary conviction, and a fine, up to seven years’ imprisonment or both following conviction on
indictment. This particular provision, unlike that relating to cannabis, does not specify that the drugs must have been for personal use. However, it is to be inferred that this was the intention given that Section 27(3) provides much heavier maximum sentences, up to life imprisonment, for the possession of drugs, of any kind, for sale or supply.

_Treatment orders_

3.2.16 Section 28 of the 1977 Act, as amended by the 1984 Act, permits a court to remand a person convicted of certain drug offences, including offences of personal possession contrary to Section 3, to allow for the preparation of medical and other reports. On receipt of those reports, a court may, instead of imposing sentence, permit the person to enter into a recognisance containing certain conditions requiring him or her to undergo medical treatment or some kind of supervision. Alternatively, the court may:

order the person to be detained in custody in a designated custodial treatment centre for a period not exceeding the maximum period of imprisonment which the court may impose in respect of the offence to which the conviction relates, or one year, whichever is the shorter.

3.2.17 Information from the Probation Service indicates that this Section 28 provision is not used by the courts.

### 3.3 Garda Síochána Act 2005

3.3.1 An Garda Síochána Act 2005 was enacted with the purpose to reform administrative and management structures and procedures, and improving the operational functionality of An Garda Síochána. A specific aspect of note that was newly introduced was Part 2, Section 8(4) that allows for a member of An Garda Síochána to charge and prosecute in the name of the Director of Public Prosecutions (DPP) under general or specific directions:

8. — (4) The Director of Public Prosecutions may give, vary or rescind directions concerning the institution and conduct of prosecutions by members of the Garda Síochána.

3.3.2 On 8 November 2011, the DPP signed General Direction no.3giving specific directions as per section 8 above, with 4.1(e) relating to drug offences under the Misuse of Drugs Act 1977:

4. (1) The Director of Public Prosecutions elects for summary disposal in the following category of cases without submission of a Garda file:

(e) Any offence under section 3 of the Misuse of Drugs Act, 1977, (for all controlled drugs).
An offence under section 15C of the Misuse of Drugs Act, 1977 (as inserted by section 83 of the Criminal Justice Act 2006) [supply of controlled drugs into prisons etc.], provided the accused is not employed by the State, where in the opinion of the Garda the market value of the drug does not exceed

(I) in the case of cannabis or cannabis resin an amount of €1,500

(II) in the case of diamorphine, LSD (lysergic acid diethylamide) or cocaine an amount of €500 and

(III) in relation to any other controlled drug an amount of €1,000.  

3.4 The Criminal Justice (Spent Convictions and Certain Disclosures) Act

3.4.1 The provisions of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 provides for certain convictions to become spent once 7 years has passed since the date of conviction bringing Ireland into line with most other EU Member States in providing that people convicted of relatively minor offences can eventually leave their past behind them and get on with their lives. This approach reflects the aim of assisting those who incur a conviction to rebuild their life, secure employment or training and make healthier choices.

3.4.2 Drugs offences are currently treated as other offences where a conviction results in a penalty of less than 12 months imprisonment. A person can have one conviction spent where the conviction resulted in a penalty of less than 12 months imprisonment. The Government previously decided against allowing more than 1 such conviction be spent because the Government (and the Oireachtas) considered it would not be proportionate to treat drugs offences in the same way as minor road traffic or public or minor public order offences.

3.4.3 The Act also included amendments to the National Vetting Bureau Act 2012 to provide that minor convictions will not be disclosed in Garda Vetting under that Act. However, because of the need to protect children or vulnerable persons, the non-disclosure provisions under that Act are more restrictive. It will still be the case that all offences against the person will be disclosed where persons are applying to work with children or vulnerable persons.

3.4.4 Regarding employment and travel prospects for individuals, the Irish spent convictions legislation cannot be used to prevent disclosure when you are required to disclose information about your criminal convictions to another state.

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30 Section 8 Garda Síochána Act 2005, General Direction No. 3 (DPP, 2011)
3.5 Effectiveness of the Current Approach

3.5.1 While there has been little research conducted on the effectiveness of criminalisation of personal possession in Ireland, there is evidence from Government Reports, from grey literature and from other countries that can help surmise whether the current approach is effective. In addition, we can draw on research conducted for other purposes, such as the impact of convictions or of incarceration.

3.5.2 One of the main aims of criminal law and sanctions is the deterrence effect.\(^{31}\) Deterrence can work both at the level of the general public and more specifically can deter an individual from re-offending. Whether a law is effective as a deterrent or not is more correlated with the probability of being arrested than the severity of the punishment.\(^{32}\) The probability of being caught for drug possession offences is very low (estimated at less than 1% for cannabis use\(^{33}\)), because of the private nature of drug use; most people will consume drugs in their own homes.

3.5.3 The fact that the prevalence of drug use has been rising constantly in Ireland since the early 1980s may be interpreted as evidence that the criminal justice response on its own has limited deterrence effect. On the other hand, some suggest that the current approach is deterring people from using drugs as 74% of adults over the age of 15 in Ireland have not used illegal drugs (based on prevalence data 2014/15\(^{34}\)). In a study of college students in Canada the law was cited as one of a number of deterrents for those respondents who did not take illegal drugs.\(^{35}\) Other deterrents included cultural and family expectations and health reasons.

3.5.4 Many studies comparing different countries find no evidence that criminalisation or decriminalisation affect drug taking or prevalence rates.\(^{36,37,38}\) Regarding the age of onset, however, the research is less conclusive; one study demonstrates that policy change does not affect the age of onset of cannabis use,\(^{39}\) while another study found that cannabis “decriminalisation” affected the uptake of cannabis among young people in the first five years following the policy change.\(^{40}\)

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\(^{34}\) Drug Use in Ireland and Northern Ireland Drugs Prevalence survey, 2014/15 (NACDA, 2016)


\(^{38}\) European Monitoring Centre for Drugs and Drug Addiction (2018), Cannabis legislation in Europe: an overview, Publications Office of the European Union, Luxembourg


3.6 Unintended Consequences of the Current Approach

3.6.1 Concerns have been expressed about the unintended consequences of the current legislation for drug possession, from within the Criminal Justice system and from the public and the Government. The Nally Report on the Public Prosecution System (1999) acknowledged an increase in numbers of cases being prosecuted before the courts and recommended the issuing of formal warnings instead of prosecution as a better method of “deflecting the offender from the path of crime”.\textsuperscript{41} In 2014, The Garda Inspectorate’s Crime Investigation report highlighted the concerns expressed by some of its members about “taking a young person to court for a small amount of cannabis”.\textsuperscript{42} The report acknowledged the devastating consequences that a court conviction for drugs can have.

3.6.2 The stigma associated with drug use and its criminalisation may lead employers to identify people who use drugs as criminals and thereby lead to reduced employment prospects. Research has shown that Irish employers routinely require disclosure of a criminal record and that the existence of such a record adversely affects the prospect of employment irrespective of the type of offence,\textsuperscript{43} the time that has passed since or even the relevance of the conviction to the position.\textsuperscript{44} Unemployment, in turn, can cause anxiety, financial difficulties and disaffection and these are risk factors for intensification or resumption of drug use,\textsuperscript{45} which has adverse effects on society. On the other hand, stable employment is associated with reduced recidivism.\textsuperscript{46}

3.6.3 Individuals from communities experiencing social and economic deprivation are disproportionately affected by drugs issues.\textsuperscript{47} In addition, their lower educational attainment and lack of job opportunities can exacerbate the effects of a criminal record.

3.6.4 The consequences of a criminal record can be especially devastating for young people who may use drugs because they are vulnerable and/or at a risk-seeking stage of their lives. The criminal record and associated stigma will follow them for years after they have changed their lives and ‘paid’ for their offence.

3.6.5 A criminal record may also be an obstacle when looking to rent a place to live or to travel. Visa requirements in many countries exclude people from entering who have previous convictions for drug use. In addition, for some educational courses drug related offences constitute an exclusion criterion.\textsuperscript{48}

\textsuperscript{41} Public Prosecution System Study Group (1999), Report; Recommendation 5.10.10
\textsuperscript{42} Garda Sióchána Inspectorate (2014), Crime Investigation; Recommendation 11.9
3.6.6 Other consequences of criminalising personal possession include increased prices for drugs which can lead to increases in crimes to pay for the addiction. There is also an argument that people will be less likely to seek treatment.
Alternatives to Conviction in Ireland

4.1 General

4.1.1 Some other countries, in continental Europe and elsewhere, have introduced alternative approaches to dealing with possession of drugs for personal use only. The terminology can sometimes be confusing. For instance, decriminalisation might literally be understood to mean that the conduct in question (drug possession in this instance) is no longer to be a criminal offence. Yet, the term “decriminalisation” is more often used in this context to describe various strategies whereby there would be less focus on prosecution and punishment and more on various diversionary or treatment strategies. However, where the latter approach is adopted, possession of a controlled drug still formally remains a criminal offence, but one that will rarely be prosecuted. The term “depenalisation” is also used, and typically means removing or at least discouraging the use of heavy penalties, such as imprisonment, for persons found in possession of controlled drugs for personal use only.

4.1.2 In the course of the Working Group’s consultations with expert, Mr. Brendan Hughes, European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), he provided the following definitions of relevant terminology relating to alternatives to prosecution:

(i) Decriminalisation – the status of the offence is reclassified from a criminal offence to a non-criminal offence within a country’s legal framework. It is still an offence, it is still prohibited behaviour that will be stopped by police and punished, but it is no longer considered criminal.

(ii) Depenalisation – where something that is a criminal offence that was usually punished is changed so that it is no longer punished, but remains a criminal offence. A case can be closed, suspended, considered minor, or may not be in the public interest to prosecute.

(iii) Diversion – redirecting from prosecution of an offence involving punishment to a rehabilitative response, e.g. treatment or counselling.

(iv) Legalisation – move from a prohibited behaviour, criminal or not, to a permitted behaviour. Regulation is a part of legalisation, and exists as special rules to regulate supply i.e. age limits for alcohol and tobacco.

4.1.3 In Ireland the range of existing alternatives to coercive sanctions with a treatment element available for dealing with simple possession offences remains limited, in comparison to other European countries. In the event of commencement of prosecution proceedings, there are a range of options available to the Court including; fines, custody, imposition of a Peace Bond/Probation Order or a suspended sentence (see Appendix III for schematic of current approach).

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4.2 Probation Act 1907

4.2.1 Where a person is before the District Court for a summary offence such as possession of drugs for an offence under Section 3 of the Misuse of Drugs Act 1977, the Judge has the option to apply the provisions of the Probation of Offenders Act 1907:

(i) **Section 1(1)(i)** allows for the matter to be dismissed without proceeding to conviction. This means that a person will not have a criminal conviction recorded against them.

(ii) **Section 1(1)(ii)** allows for the matter to be conditionally discharged and can include, among others, the condition that the person is supervised by the Probation Service. This option does not proceed to conviction unless there is a subsequent breach of the condition resulting in the matter being brought back before the Court and where the Judge may proceed to conviction.

4.3 Drug Treatment Court

4.3.1 The Drug Treatment Court (DTC) provides an alternative 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. Where an accused person is admitted to the DTC programme, further proceedings in respect of the charges before the court are "suspended" while the accused person participates in the various programmes within the DTC programme. Where an accused person satisfactorily completes the treatment programme, the charges before the court are struck out. If the treatment programme is not satisfactorily completed, the accused person is remanded back to the original court, which referred him/her to the DTC to have the charges dealt with. Details in relation to eligibility of persons for referral to the DTC are set out in Appendix IV.

4.3.2 The Group was informed that in 2017:

(i) 110 new participants were referred to the programme;
(ii) 10 participants graduated at the highest (gold) level, i.e. completed the programme successfully;
(iii) 59 people were discharged having not completed the programme (but may have benefited from their participation, i.e. back in contact with family, engaging with services);
(iv) 126 people were deemed unsuitable for entry to the programme.

4.3.3 It is acknowledged that action 3.1.34 of Reducing Harm, Supporting Recovery calls on the Department of Justice and Equality to “map the future direction and objectives of the Drug Treatment Court”.\(^{50}\)

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4.4 Juvenile Diversion Programme

4.4.1 The Juvenile Diversion Programme operates in accordance with Part 4 of the Children Act 2001, as amended, and under the general superintendence and control of the Garda Commissioner.

4.4.2 The aim of the Diversion Programme is to deal with young people who offend, by way of administering an informal caution or a formal caution (with Juvenile Liaison Officer (JLO) supervision), thus diverting the offender away from the courts and minimising the likelihood of further offending. The Diversion Programme embraces the principles of restorative justice and has high regard to the needs of the victims.

4.4.3 The Diversion Programme has proven to be successful in diverting young persons away from crime by offering guidance and support to them and their families.

4.4.4 In order to be admitted to the programme a child must:

- be over the age of criminal responsibility and under 18 years of age,
- accept responsibility for the offence(s) committed, and
- consent to being cautioned and supervised.

If the child is deemed suitable for admission to the programme then s/he is given either a formal (supervised) or an informal (unsupervised) caution. In certain circumstances the victim of the offence may be invited to attend the caution or the JLO may recommend that a family conference be held in relation to the child.

4.4.5 In general, informal cautions are, depending on the offence, a first caution. Although for relatively minor offences an informal caution may be appropriate for a further offence. Informal cautions are usually delivered in the young person’s home with the parent(s) present by the JLO who will not be in uniform so as to maintain discretion from a family’s point of view. An informal caution does not give rise to a period of supervision by the JLO.

4.4.6 Formal cautions are generally given for a repeat offence or a more serious offence and are usually delivered in the Garda Station by the JLO in uniform or a more senior officer, again depending on the nature of the offence. A formal caution is always linked to a period of supervision by the JLO. This may comprise one-to-one work with the JLO, a commitment to attend training or education or not to frequent certain places or mix with named peers. Supervision may also involve attendance at a Garda Youth Diversion Project.

4.4.7 A case is recorded as unsuitable if:

- the child does not accept responsibility for the behaviour
- it would not be in the interests of society to caution the child, or
- the child is offending persistently.

These matters are then returned to local Garda management who decide, following consultation with the DPP where appropriate, if a prosecution will be taken.
4.5 Adult Cautioning Scheme

4.5.1 The Adult Cautioning Scheme came into effect in 2006 as a discretionary alternative to prosecution for certain criminal offences, including, inter alia, offences contained in the Criminal Justice (Public Order) Act 1994, the Criminal Justice (Theft and Fraud Offences) Act 2001, the Intoxicating Liquor Act 2003, the Non-Fatal Offences Against the Person Act 1997 and the Criminal Damage Act 1991. A list of offences currently available for disposal under the Adult Cautioning Scheme is listed under Appendix V.

4.5.2 In considering issuing a caution, a member of An Garda Síochána has to consider the:

(i) public interest;
   a. the offence is of a kind appropriate for consideration of a caution, and
   b. the alleged offender is deemed to be a person suitable for consideration.

(ii) decision to caution;
   a. there must be prima facie evidence of the offender’s guilt;
   b. the offender must admit the offence;
   c. the offender must understand the significance of a caution;
   d. the offender must give an informed consent to being cautioned.

(iii) views of the victim.\(^{51}\)

4.5.3 The caution is administered by a District Officer or an Inspector in an acting capacity. Acceptance of the caution must be confirmed in writing. Unlike the Juvenile Diversion Programme, there are no supervision arrangements under the Adult Cautioning Scheme. Additionally, the decision to administer the caution cannot be conditional upon the satisfactory completion of a specific task, e.g. a payment of compensation to a victim.

4.5.4 It is only in exceptional circumstances that a second caution be administered, subject to the approval of the Office of the DPP (ODPP).

4.5.5 As referred to in Section 2.1 of the report, the WGAP recommended the following in respect of the offence of simple possession to be included under the ambit of the Adult Cautioning Scheme:

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

(ii) that the Garda authorities prepare (in consultation with the ODPP) and issue guidelines for officers on the application of the Scheme to simple possession offences;

(iii) that the Garda authorities agree with the Department of Health/HSE the content of a drug awareness/advisory leaflet, to include national

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and local contact points for support, which would be given to each recipient of a caution for simple possession;

(iv) that the Garda authorities issue a Directive to cease the practice of recording informal cautions in respect of named individuals on PULSE;

(v) that 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.\(^5\)

4.5.6 The WGAP determined that the recommendations provide a proportionate alternative to respond more effectively to simple possession cases involving first-time offenders while also introducing an advisory and welfare-oriented dimension in line with wider Government policy on drug use.

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5 Drugs Situation in Ireland

5.1 Prevalence Data

5.1.1 In Ireland, data in relation to the use of drugs has been gathered on an on-going basis since 2002/2003. The fourth and most recent prevalence study\(^{53}\) was commissioned by the National Advisory Committee on Drugs and Alcohol (NACDA) in Ireland and fieldwork was carried out between August 2014 and August 2015. Information was obtained on key illegal drugs, such as cannabis, ecstasy, cocaine and heroin.

5.1.2 Trend data from this survey over the past decade point to an increase in the rate of last year (an indicator of recent use) and last month (an indicator of current use) drug use, with the greatest increases in drug use amongst younger people. Lifetime use of illegal drugs is highest amongst those aged 25-34 (43.8%), while past year and past month use is highest amongst the 15-24 year age group (18.7% and 9.6% respectively). In common with other European countries, the use of cannabis is considerably higher than any other form of drug, with 6.5% of adults using this drug in the last year.\(^{54}\)

5.1.3 The following provides a summary of prevalence data for lifetime use of the most common drugs:

- (i) within the Republic of Ireland, 26.4% (or 1 in every 4) of respondents aged 15 years or over reported using an illegal drug in their lifetime in 2014/15;
- (ii) lifetime usage of cannabis (24%) is considerably higher than any other form of drug with almost 1 in 4 respondents aged 15 or over reporting trying it at least once in their life;
- (iii) the second most commonly used drug is ecstasy (7.8%) with one in 12 reporting using it at least once in their life;
- (iv) lifetime use of cocaine (including powder and crack) is 6.6%;
- (v) smaller numbers of people reported use of other illegal drugs; 3.5% of people reported having used amphetamines in their lifetime, and 0.7% have used heroin.\(^{55}\)

5.1.4 The following provides a summary of prevalence data for last month use of the most common drugs:

- (i) just 4% of respondents aged 15 or over used illegal drugs in the month prior to the survey;
- (ii) last month usage of cannabis among respondents aged 15 or over is considerably higher than any other illegal drug (at 3.7%);
- (iii) the second most commonly used illegal drug in the last month is ecstasy at 0.8%;
- (iv) recent use of cocaine (including powder and crack) is 0.4%.\(^{56}\)

\(^{53}\) *Drug Use in Ireland and Northern Ireland Drugs Prevalence survey, 2014/15* (NACDA, 2016)
\(^{54}\) Ibid., p. 8-9
\(^{55}\) Ibid., p. 6
\(^{56}\) Ibid., p.7
5.1.5 In relation to cannabis, respondents (aged 15 years or over) were asked to what extent they agreed that people should be permitted to take cannabis for recreational or medical reasons. Two-thirds of respondents disagreed (66.4%) with use of cannabis for recreational reasons, while 17.9% of respondents disagreed with the use of cannabis for medical reasons.\(^{57}\)

5.1.6 The following are other notable figures in relation to cannabis from the survey:

1. the median age of first use of cannabis has remained unchanged since 2002/03 (18 years);
2. those aged 15 to 24 are most likely to have used cannabis both in the past year and past month with prevalence rates of 16.2% and 9.2% respectively;
3. 1.5% of those aged 15 and over in the general population were classed as cannabis dependent;
4. among those who used cannabis in the last year, 19.7% fulfilled the criteria for cannabis dependence. The rate was higher for males (22.8%) than for females (11.8%) and higher for adults aged 15-34 (22.3%) than for older respondents (10.4%).\(^{58}\)

5.1.7 A study undertaken in 2014 indicates that the prevalence of problematic opiate use in Ireland has stabilised. There are an estimated 18,988 opiate users in Ireland and more than half (60%) of those are in the 35-64 age group. There was a significant increase in the age of opiate users between 2011 and 2014, suggesting a definite ageing cohort. While the overall prevalence is stabilising, although 71% of the estimated number of opiate users lived in Dublin, the spread of opiate use across the country is apparent. There was a significant decrease in opiate use among the 15-24 age group from 1,631 in 2011 to 1,092 in 2014.\(^{59}\)

5.2 Drug Treatment Data

5.2.1 The National Drugs Treatment Reporting system (NDTRS) is an epidemiological database of treated problem drug and alcohol cases in Ireland. It records episodes of drug and alcohol treatment during the calendar year (note, it records only those entering treatment in the calendar year and it records episodes, not people).

5.2.2 The NDTRS reported that the number of treated problem drug use (excluding alcohol) cases in 2016 was 9,227, compared to 8806 in 2010. Other findings include:

1. the proportion of new cases decreased from 42.5% in 2010 to 38.2% in 2016.

\(^{57}\) Drug Use in Ireland and Northern Ireland Drugs Prevalence survey: Cannabis Results, 2014/15 (NACDA, 2017)

\(^{58}\) Ibid

(ii) the primary problem drug was opiates (mainly heroin) for 58% of cases in 2010 and this remained the case in 2016 albeit with a lower percentage, 47% of cases in 2016.

(iii) the number of cases where cannabis was reported as the main problem drug rose from 23% in 2010 to 26% in 2016

(iv) seven in every ten cases were male and the median age of cases was 30.\(^{60}\)

5.3 Profile of People Who Use Drugs

5.3.1 The 2014/15 NACDA prevalence survey reported that approximately a quarter of the population aged 15 and above have tried illegal drugs at some stage.\(^{61}\) In relation to cannabis use, lifetime rates are highest in Socio-Economic Group B (Soc2000 Classification) which includes middle management, senior civil servants, managers and owners of own business, at 28.7%. The lowest prevalence is among Group F, farmers, at 9.6%. On the other hand, last month use is highest among Group D (semi-skilled and unskilled manual workers, trainees and apprentices), and cannabis abuse is highest among Group E (those dependent on the state long-term).

5.3.2 It is not possible to determine the profile of opiate users from a general population survey, as just 0.2% of the population used these substances over the past year.\(^{62}\) However, a 2017 study estimating problem opiate use in Ireland suggest that the majority of those using opiates are male (70%) and in the 35-64 age-group.\(^{63}\) Treatment data from 2016 shows that 66% of those in treatment for opiate use were unemployed and that 10% were homeless.\(^{64}\)

5.4 National Drug-Related Deaths Index (NDRDI)

5.4.1 Data from the National Drug-Related Deaths Index (NDRDI), a national surveillance database which records drug and alcohol related deaths (such as those due to accidental and intentional overdose) and deaths among drug users (such as those due to Hepatitis C and HIV), shows that overdose deaths in Ireland have stabilised after an upward trend between 2004 and 2008. The average number of overdose (poisoning) deaths from drugs and alcohol was 354 in 2016 (the latest data available).

5.4.2 Males have accounted for the majority of deaths since 2004; 69% of all overdose deaths in 2016 were male. The median age of those who died in 2016 was 42 years. Opiates

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\(^{62}\) Ibid, p.7


\(^{64}\) Health Research Board; NDTRS data
are the main drug group implicated in overdose deaths, although almost two-thirds involve more than one drug (polydrug use). The percentage of deaths due to polydrug poisonings rose from 44% in 2004 to 62% in 2016.

5.4.3 It is important to note that not all overdose deaths were caused by illicit drug use; prescription drugs (including diazepam, methadone and pregabalin) were implicated in 73% of those deaths (usually with another drug) and alcohol was implicated in over a third of deaths at 37%. Additionally, alcohol on its own was responsible for 16% of overdose deaths.  

5.5 Drug Market

5.5.1 The illicit drugs market in Ireland has changed somewhat in recent years. In tandem with these changes, organised crime has also evolved to meet the demands of this new market. The emergence of a new range of psychoactive substances in recent years has altered the dynamic of drug misuse among young people in terms of how they source drugs in open and closed markets. The online availability of drugs via the open internet and ‘darknet’ represents the modern era of drug dealing, which brings with it significant challenges for law enforcement globally.

5.5.2 The illicit drug market in Ireland is more diverse than ever before in terms of pharmaceutical crime, technological advances and the new generation of substances of misuse. That said, organised crime in Ireland continues to profit most from the traditionally known drugs and many features of the criminal enterprise in terms of the importation and distribution of these drugs remain the same.

5.5.3 In 2017, €71.8 million worth of controlled drugs seizures were reported (Garda only), compared to €29.7 in 2016 and €46.7 million in 2015. In the seizures referred to for the previous years, Cannabis (mostly in the form of Cannabis herb or plants) continues to be the most commonly seized, followed by significant seizures of opioids, cocaine and ecstasy/MDMA. An EU Commission-funded research project coordinated by Transcrime, published in 2015 estimated that the revenues generated by illicit drug markets in Ireland amounted to €806m. 

67 An Garda Síochána Annual Report 2016, p. 56
68 An Garda Síochána Annual Report 2015, p. 87
69 Reported figures fluctuate dependant on significant seizures that occur in a given year. These figures are somewhat indicative of overall drug prevalence but no specific studies exist which indicate what proportion of the overall drug market these figures represent which is the comparator law enforcement agencies often refer to as the amount seized versus the amount actually consumed.
5.5.4 Illicit drug markets are attractive to organised crime gangs because of the high profit margins and the illegal flow of cash. There is a strong link between organised crime and the drug trade in Ireland; also observed with most other countries. The global nature of the drug trade and drugs market means that Irish Organised Crime Gangs (OCG) work at an international level to import controlled drugs. A number of recent major seizures indicate that Ireland acts as a hub for the onward transportation of drugs.

5.5.5 To tackle the supply of illicit drugs into Ireland, a multi-agency co-operative approach is utilised nationally incorporating An Garda Síochána, the Revenue Commissioners, the Health Products Regulatory Authority (HPRA) and the Defence Forces (Navy). A key element of tackling illicit drug markets is International co-operation via partnership with other Law Enforcement Agencies, e.g. Police Service of Northern Ireland, the National Crime Agency (UK), Europol, Interpol and the Maritime Analysis and Operations Centre – Narcotics (MAOC-N).

5.5.6 Associated harms of the illicit drug market in Ireland are levels of violence amongst OCGs and the concerns related to drug-related intimidation. This issue is of great concern to communities nationwide, and “requires a collaborative effort, across a range of agencies and sectors of society”.71

5.6 Drug-Related Offences

5.6.1 Table 2 outlines the total number and type of illicit drug offences in Ireland from 2008 to 2017.72 This data is from the Central Statistics Office, under reservation, therefore it is subject to change. The table shows that from 2008 to 2017 there has been an average of 17,804 recorded controlled drug offences per year. Possession of drugs for personal use offences accounts for between 71% and 77% of all controlled drug offences in any one year.

5.6.2 The number of recorded incidents of possession of drugs for personal use peaked in 2008 (at 18,077). This figure was nearly three times higher than that recorded in 2003. Between 2008 and 2015 the number for simple possession cases decreased by a total 40% for the period, from 18,077 to 10,931 in 2015. Since 2015, the recorded incidents of simple possession of drugs increased slightly year on year.73

72 Table from https://www.cso.ie/px/pxirestat/Statire/SelectVarVal/saveselections.asp (18 January 2019). Note that these are incidences and not offenders.
73 The figure for 2017 of 16,800 for controlled drug offences and 12,173 for possession of drugs for personal use differ from the figure used in Chapter 9 (c.f. paragraph 9.2.2 and Table 7) and the Costings Report (Annexe III) due to Chapter 9 and the Costings Report being based on figures obtained from An Garda Síochána at an earlier date.
5.6.3 Not all of the incidents (presented in Table 2) resulted in the person being charged for a Section 3 Misuse of Drugs Act offence and not all proceeded to court. In the three-year period, 2015-2017, there were 7,360 court outcomes that led to a conviction for unlawful possession of drugs contrary to Section 3 Misuse of Drugs Act (that were not linked to other non-Section 3 offences). This equates to 5,633 individuals in the three years and most had only one outcome.\(^{74}\) High level analysis shows that the number of Section 3 offences not linked to any other offence in a single year (e.g. 2017) resulted in an average of 2,453 court outcomes from 2,337 incidents by 1,878 individuals.\(^{75}\)

5.6.4 There are a number of options available to the courts when a person is found guilty of an offence for personal possession, including a fine, striking the case out, applying the provisions of the Probation Act or imposing a custodial sentence (prison is not a sanction for a first or second offence for possession of cannabis). Data from the Courts Service show that 1,123 people were dismissed under the Probation Act for a Section 3 Misuse of Drugs Act offence in 2017 (resulting in no conviction). Based on data provided to them, Hughes and colleagues estimated that 980 people on average every year receive a criminal conviction for a Section 3 Misuse of Drugs Act offence and rarely will those criminal convictions result in a custodial sentence.\(^{76}\) While there were 73 people in prison in 2017 for a Section 3 offence the circumstances of each case is not known.

5.6.5 In 2017, there were 6,037 committals to prison in Ireland, of which, 371 (6%) were for a controlled drug offence. As of 30 November 2017, there were 2,990 prisoners in custody, of which, 347 (11.6%) were for a controlled drug offence.\(^{77}\) As table 3 shows, 73 people were imprisoned in 2017 for personal possession solely, reduced from 365 people in 2015.

<table>
<thead>
<tr>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>As at 31 July 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>365</td>
<td>287</td>
<td>73</td>
<td>27</td>
</tr>
</tbody>
</table>

Table 3: Persons committed to prison solely for possession of drugs for personal use

Source: Department of Justice & Equality

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\(^{75}\) Averages were calculated using the three year period 2015-2017

\(^{76}\) Ibid., p. 10

5.6.6 The strategic review of penal policy published in 2014 has, at its core, custodial sentencing as a last resort.\textsuperscript{78} However it is not possible to state specifically what has caused the downward trend in people imprisoned for possession for personal as no research has been done on this trend. It is likely that the introduction of the Fines (Payment and Recovery) Act 2016 has contributed to this decrease.

5.7 Public Expenditure on Drugs

5.7.1 Broadly speaking, drug-related public expenditure is described as “labelled” or “unlabelled”. Labelled expenditure is identified as drug-related expenditure in government budgets. Often, though most drug-related expenditure is not identified as such, hence unlabelled, and must be estimated. Each year Ireland reports its labelled and unlabelled drug-related public expenditure to the EMCDDA (see table 4).

<table>
<thead>
<tr>
<th>Year</th>
<th>Labelled Expenditure (€m)</th>
<th>Unlabelled Expenditure (€m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>267.792</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>252.229</td>
<td></td>
</tr>
<tr>
<td>2012</td>
<td>241.019</td>
<td></td>
</tr>
<tr>
<td>2013</td>
<td>237.147</td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td>232.528</td>
<td></td>
</tr>
<tr>
<td>2015</td>
<td>232.666</td>
<td></td>
</tr>
<tr>
<td>2016</td>
<td>244.272</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>240.96</td>
<td></td>
</tr>
</tbody>
</table>

*Table 4: Total estimated drug-related public expenditure for Ireland (labelled and unlabelled expenditure)*
*Source: Health Research Board*

5.7.2 Total expenditure is categorised under the Classification of the Functions of Government (COFOG)\textsuperscript{79} system. Table 5 shows the estimated expenditure for 2017 in relation to its category (see Appendix VI for explanation of subcategory). Based on this categorisation, the expenditure on treatment services is estimated to be €129.75m in 2017.

<table>
<thead>
<tr>
<th>Sub-category (COFOG)</th>
<th>Total (€m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>03.1 Police services</td>
<td>65.68</td>
</tr>
<tr>
<td>03.3 Law courts</td>
<td>0.09</td>
</tr>
<tr>
<td>03.4 Prisons</td>
<td>4.20</td>
</tr>
<tr>
<td>07.2 Outpatient services</td>
<td>27.79</td>
</tr>
<tr>
<td>07.4 Public health services</td>
<td>97.76</td>
</tr>
<tr>
<td>07.5 R&amp;D Health</td>
<td>2.52</td>
</tr>
<tr>
<td>07.6 Health (not elsewhere classified)</td>
<td>5.34</td>
</tr>
<tr>
<td>08.1 Recreational and sporting services</td>
<td>20.04</td>
</tr>
<tr>
<td>09.5 Education not definable by level</td>
<td>0.76</td>
</tr>
<tr>
<td>10.5 Unemployment</td>
<td>17.39</td>
</tr>
<tr>
<td>10.7 Social exclusion n.e.c.</td>
<td>0.59</td>
</tr>
</tbody>
</table>

*Table 5: Drug-related expenditure for 2017 by sub-category (COFOG)*\textsuperscript{80}

\textsuperscript{78} Strategic Review of Penal Policy, Final Report (2014)
\textsuperscript{80} Further detail on the categories is available in Appendix VI
5.7.3 It should be noted that the figure of €65.68 million for police services relates to operational and investigation expenditure by An Garda Síochána and Revenue (Customs Service) primarily to tackle the issues outlined above in section 5.5 regarding drug markets and OCGs involved in the sale/supply/importation of illicit drugs as well as possession offences.

5.8 Treatment Services Available

5.8.1 The range of services provided is aligned to prevalence trends and demand for particular services. Treatment initiatives have expanded in recent times to make them more available, for example, “community-based drug projects have contributed towards expanding the network of services by delivering an integrated holistic service on the ground in their communities on behalf of statutory agencies”. The HSE has continued to expand the range and provision of services particularly outside the Dublin region over the last number of years and by November 2018 there were 80 clinics nationwide.

5.8.2 Drugs.ie, managed by the National Social Inclusion Office, is Ireland’s national drug information and support website and provides a comprehensive range of information and supports related to substance use. The website is being continually updated and provides an A-Z of different types of drugs and their effects, a wide range of support resources, including an interactive drug self-assessment and brief intervention resource (DUDIT) as well as several harm reduction campaign resources.

5.8.3 Additionally, Drugs.ie hosts the National Directory of Drug and Alcohol Services, which allows the user to find a broad range of drug treatment services and specialist drug programmes in Ireland based on the type of service and their location. Services listed include:

(i) Information
(ii) Support (Online, helpline, drop-in, harm reduction, support groups)
(iii) Family Support
(iv) Awareness, Prevention, Education and Training
(v) Counselling and Psychotherapy
(vi) Needle and Syringe exchanges
(vii) Medical Supports
(viii) Opioid Substitution Treatment
(ix) Stabilisation Programmes
(x) Detoxification Programmes
(xi) Rehabilitation programmes
(xii) CE Drug Rehabilitation Scheme

82 National Directory of Drugs and Alcohol Services, http://www.services.drugs.ie/
5.8.4 The HSE also operates a free confidential Drugs and Alcohol Helpline (1800 459 459) that can be utilised by the public via an active listening helpline and email support service offering non-directive support, information, guidance and referral to anyone with a question or concern related to drug or alcohol use. The service is accessible nationwide Monday to Friday, from 9.30am to 5.30pm.
6 Examination of Alternative Approaches

The Oireachtas Joint Committee on Justice, Defence and Equality that recommended the introduction of a harm-reducing and rehabilitative approach to the possession of a small amount of illegal drugs for personal use highlighted the need for more research to ensure that the adoption of any alternative approach would be appropriate in the Irish context. Research was therefore commissioned on behalf of the Working Group in May 2018.

6.1 Research Commissioned

6.1.1 The review of approaches taken in Ireland and in other jurisdictions to simple possession drug offences (Annex I) was conducted on behalf of the Working Group. The researchers commissioned, in accordance with procurement rules, were Professor Alex Stevens and Dr Rebecca Cassidy from the University of Kent, UK; and Dr Caitlin Hughes and Shann Hulme from the University of New South Wales, Australia.

6.1.2 As per the requirements in the request for tender, the report synthesises and maps the evidence and undertakes a rapid realist review of the legislative approach taken to the possession of small quantities of drugs for personal use in Ireland compared with other jurisdictions, outlining a number of possible options that could work in an Irish context, viz a viz:

A. The current legislative regime that applies to simple possession offences in Ireland and the rationale underpinning this approach, and any evidence of its effectiveness.
B. The approaches and experiences in nine other jurisdictions to dealing with simple possession offences.
C. The advantages and disadvantages, as well as the potential impact and outcomes of any alternative approaches to the current Irish system for the individual, the family and society, as well as for the CJS and the health system.

6.1.3 More broadly, the aims of the review were:

1. To describe the current legislative regime for or policy approach to dealing with simple possession offences and its rationale in the jurisdictions selected.
2. To describe the legal or societal remedies for dealing with simple possession offences that applies in these jurisdictions.
3. To describe the experiences of these jurisdictions in using legal or societal remedies for dealing with simple possession offences.

84 Ibid; p. 5
4. To describe or synthesise the effectiveness (outcomes and impact) of legal or societal remedies for dealing with the offence of simple possession in these jurisdictions on the individual, the family and society, the CJS and the health system.

5. Using the research and information available in the review, describe policy options to deal with simple possession drug offences available to the Irish government and the advantages and disadvantages of each.85

6.1.4 The report adopted a rapid realist review process to identify approaches taken in Ireland and other jurisdictions to simple possession drug offences, using a literature analysis and a qualitative comparative analysis to identify alternative approach options that would be possible in the Irish context. In total, a range of alternative approaches from the following nine jurisdictions were identified for analysis in regards to the context, mechanism and outcome(s):

(i) England and Wales;
(ii) Czech Republic;
(iii) Denmark;
(iv) Netherlands;
(v) Germany;
(vi) Portugal;
(vii) Jamaica;
(viii) Australia;
(ix) USA.

6.2 Approaches and Experiences in Other Jurisdictions

62.1 Qualitative comparative analysis was used to derive six empirically-based, theoretically informed approaches for dealing with simple possession offences: 86

(i) Model 1: Depenalisation
The aim is to avoid criminalising young people and save police time to focus on more serious criminal activity. Implicit in this approach is the belief that people found in possession of drugs do not warrant any sanction. This is a “doing nothing” or “doing little” approach.

(ii) Model 2: Police Diversion (de facto)
The goal of this approach is to redirect people who use drugs away from the traditional criminal justice response and into other services that may be more beneficial. This model also points to the fact that police are one of the primary gatekeepers who initiate contact with

86 Ibid.
people who possess drugs for personal use and can adopt early intervention initiatives by means of referring people to services that they may not otherwise access. Diversion programmes can also retain the deterrent threat of prosecution.

(iii) Model 3: Police Diversion (de jure)
The goal of the Police Diversion (de jure) is similar to that of Police Diversion (de facto) with the key difference being that police are required to offer referral to appropriate services to all in the target group, meaning that the model adopts a legislated approach.

(iv) Model 4: Decriminalisation with no sanctions
The logic of this model is that drug possession should not be a crime and that the best response is complete removal of the offence from the law. This approach is legislated, with the aim of reducing stigma, humanising the person and overcoming any issues that may arise from a discretionary model.

(v) Model 5: Decriminalisation with civil or administrative sanctions
This approach is similar to Model 4, except that it is acknowledged that drug possession should not be ignored. This model makes use of low level sanctions, such as fines or other civil sanctions.

(vi) Model 6: Decriminalisation with targeted diversion to health/social services
The aim of this approach is to ensure that people are not criminalised for simple possession alone, while recognising that certain patterns of drug use can be harmful. It recognises that most people will use drugs in a non-problematic way, but a minority of people will have problematic use. As such, Government ought to use the point of detection as a means by which to screen and identify high-risk offenders and address their treatment and other needs.

6.2.2 Table 6 below shows the six models and examples of jurisdictions where they are practiced.
<table>
<thead>
<tr>
<th>Type</th>
<th>Legal basis</th>
<th>Pathways to education / therapy / social services</th>
<th>Administrative civil sanctions</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Depenalisation</td>
<td><em>De facto</em></td>
<td>No</td>
<td>No</td>
<td>Netherlands Gedoogbeleid ‘tolerance policy’ (cannabis only), US police ‘deprioritisation’, UK cannabis and khat warnings, Denmark warnings</td>
</tr>
<tr>
<td>Police diversion (de facto)</td>
<td><em>De facto</em></td>
<td>Yes</td>
<td>No</td>
<td>Police diversion schemes in six Australian states, Netherlands diversion (hard drugs only), English police diversion schemes in Durham, West Midlands and Avon, US LEAD program, Baltimore pre-booking scheme</td>
</tr>
<tr>
<td>Police diversion (de jure)</td>
<td><em>De jure</em></td>
<td>Yes</td>
<td>No</td>
<td>South Australian Police Drug Diversion Initiative and Queensland Police Drug Diversion Program (police mandated by law to offer diversion to treatment)</td>
</tr>
<tr>
<td>Decriminalisation with no sanctions attached</td>
<td><em>De jure</em></td>
<td>No</td>
<td>No</td>
<td>Germany (by virtue of Constitutional ruling) and Vermont USA (since 2018)</td>
</tr>
<tr>
<td>Decriminalisation with civil or administrative sanctions</td>
<td><em>De jure</em></td>
<td>No</td>
<td>Yes</td>
<td>Czech Republic, Jamaica, Cannabis Expiation Notice schemes in three Australian states (ACT, SA, NT), 11-16 US states (e.g. Ohio, Mississippi, Massachusetts, Rhode Island)</td>
</tr>
<tr>
<td>Decriminalisation with targeted diversion to health / social services</td>
<td><em>De jure</em></td>
<td>Yes</td>
<td>Yes</td>
<td>Portugal and several US states (Maryland, Connecticut &amp; Nebraska)</td>
</tr>
</tbody>
</table>

Table 6: Alternate approaches for dealing with simple possession drug offences


### 6.3 Effectiveness of the Alternative Approaches

#### 6.3.1 The researchers synthesised and described the effectiveness of the various alternatives, in terms of their impact and outcomes. The researchers did highlight that the research is complex and often incomplete, and therefore it is difficult to presume a definite outcome in the Irish context. Nevertheless, the evidence of the effectiveness of each approach is summarised below:

(i) **Model 1: Depenalisation**

Impacts of this model on drug use seem to be variable with increases in use and no change in use being observed in different jurisdictions.
There is evidence that this approach can reduce demands on police, courts and prisons, although it can lead to net-widening. This approach may increase voluntary access to drug treatment and harm reduction services.

(ii) Model 2: Police Diversion (de facto)
Most programmes studied by the researchers led to more people accessing treatment and other services. However, the researchers noted that the therapeutic benefits of this approach are less if the referral is voluntary. This approach was also shown to lead to reductions in drug-related harms and increased knowledge and skills acquisition. Evidence shows a clear reduction in recidivism; some jurisdictions observed reductions of around 58%. Because this is a discretionary model, it may lead to unequal application.

(iii) Model 3: Police Diversion (de jure)
There are few examples of this approach, and therefore the evidence is limited. The evidence does show very high treatment referrals and evidence of reductions in drug-related harm. In addition, those who complied with their diversions were significantly less likely to reoffend. Because this approach is non-discretionary, it can improve access for all.

(iv) Model 4: Decriminalisation with no sanctions
The evidence of this approach is mainly from one jurisdiction, Germany. The research suggests that there may be reductions in drug-related harm and costs to the CJS from this approach. Access to services is not directly affected by this model.

(v) Model 5: Decriminalisation with civil or administrative sanctions
This model has been shown to lead to a reduced burden on the CJS and takes less police time. There are social benefits associated, such as greater employment prospects and housing stability. By reducing stigma, this approach can facilitate provision of harm reduction and treatment services. There is inconclusive evidence around drug use; one jurisdiction saw significant declines in prevalence, while others observed no change or increases. There may also be net-widening with this approach.

(vi) Model 6: Decriminalisation with targeted diversion to health/social services
This approach has shown lower rates of regular and of problematic drug use. There were also significant reductions in drug-related harms, including deaths and infectious diseases in one jurisdiction. This model can lead to significant reductions in the burden the CJS, in terms of arrests and imprisonments. The evidence shows increased
access to drug treatment services, especially for people who would not otherwise access those services.

6.4 Recommendations in the Irish Context

6.4.1 When considering the approach/approaches that could be implemented in Ireland, the researchers suggested that any alternative comes with risks. Because the research in this area is complex and sometimes incomplete, and the context in each jurisdiction is very different, it is not possible to give a definitive answer as to the possible outcome(s) of introducing alternative approaches. However, they also emphasised that the current approach places significant costs and burdens on the citizen that are not offset by any reduction in health or social harms.

6.4.2 Based on the research provided, a number of the options highlighted above could be implemented in Ireland, each of which could offer advantages to the current approach. The researchers, however, suggested that consideration could be given to a hybrid approach given Ireland’s relatively high levels of cannabis and heroin use, for example combining “depenalisation of the most minor drug possession offences and decriminalisation with targeted diversion for those offenders who are more likely to need it”\textsuperscript{87}. They postulate that this hybrid approach would reduce costs to criminal justice system, would not lead to increases in drug use and would provide pathways to treatment and other services for people who need it, without overburdening the health system with people who do not need treatment.

6.4.3 The Working Group noted that there was not a lot of evidence about the approaches mentioned above and their impact on organised crime. The possible link between changing drug policies and increased organised criminal activity was raised within the group as a concern. The researchers were not tasked with considering this impact in their study, but they did discuss the lack of direct evidence with the group.

\textsuperscript{87} Hughes, C., Stevens, A., Hulme, S. & Cassidy, R. (2018). \textit{Review of approaches taken in Ireland and in other jurisdictions to simple possession drug offences: A report for the Irish Department of Justice and Equality and the Department of Health.} UNSW Australia and University of Kent. p. 4
7 Consultations Undertaken by the Working Group

7.1 Public Consultation Process

7.1.1 To inform their deliberations, a wide-ranging and comprehensive public consultation was undertaken by the Department of Health on behalf of the Working Group to engage with the public, service users (including people who use drugs and may avail of services in the future), families, communities, representative groups and organisations, elected representatives and other interested parties. There were three strands to the consultation process, namely an online questionnaire, focus groups with people who have been prosecuted for the possession of drugs for personal use, and an open policy debate with relevant stakeholder organisations.

Online Questionnaire

7.1.2 The online questionnaire was open from 31 May - 13 July 2018 inclusive, and was promoted widely through national and social media, receiving substantial attention across media channels and in public discourse. All interested parties were invited to make a submission online, and therefore the responses received should not be considered a representative sample of Irish society. There were a total of 22,149 responses to the questionnaire recorded, of which over one thousand provided no response to any question, resulting in a dataset of 20,813 responses to be included in analysis.

7.1.3 The overall finding was that the vast majority of respondents would support the removal of criminal penalties for the offence of simple possession, which is contained within Section 3 of the Misuse of Drugs Act. Nearly 90% of respondents indicated that they would be in favour of removing these criminal penalties. Eighty eight per cent of respondents did not agree with the current approach where people found in possession of illegal drugs for personal use can be prosecuted before the courts and, if convicted, receive a criminal conviction. A further 6% were not sure if they agreed with current approach and only 6% agreed with the current approach.

7.1.4 In examining people’s views of the current approach, it was found that:

(i) 97% agreed that this approach can affect a person’s future chances of getting a job;
(ii) 96% agreed that it can affect a person’s chances of travelling to certain countries;
(iii) Only 9% agreed that the current approach prevents or reduces drug use.

7.1.5 If an alternative approach which removed criminal penalties were to be introduced:

(i) 94% agreed that it would save time and resources for the Gardaí and Courts;
81% agreed that it would encourage people to seek treatment for drug addiction.

7.1.6 17,710 respondents declared their previous experience with drugs. Of these, 45% had used drugs on only a few occasions; 37% had used illegal drugs on many occasions and 18% had never used illegal drugs. It is noteworthy that seventy two per cent of those respondents who had never used illegal drugs before were in favour of removing criminal penalties.

7.1.7 Although there were some differences observed by gender and previous exposure to illegal drugs, this strong support for the removal of criminal penalties was evident across all groupings.

7.1.8 The findings illustrated that respondents thought that different drugs warranted a different response. This was reflected in the proportion of respondents who responded that no action should be taken when a person is found in possession of a particular drug for personal use:

(i) 56% for cannabis;
(ii) 23% for Ecstasy/MDMA;
(iii) 13% for cocaine;
(iv) 5% for heroin.

7.1.9 The range of actions considered appropriate tended to involve a higher level of intervention as they moved through the drugs from cannabis to heroin. For example referral to a drug treatment service was considered appropriate by:

(i) 3% for cannabis;
(ii) 8% for Ecstasy/MDMA;
(iii) 16% for cocaine;
(iv) 32% for heroin.

7.1.10 The final part of the online questionnaire was an open-ended question that invited participants to provide “any other feedback” that they might like to add - 5,353 did so. Responses covered a wide range of issues, including:

(i) the form and structure of the questionnaire;
(ii) the public consultation process itself;
(iii) issues related to drug use in general and the people who use them;
(iv) views and experiences related to the possession of drugs for personal use.

7.1.11 The range and content of these submissions reflect the complex nature of drug use and the diverse views on how best to address the associated issues. Responses illustrated views that criminalising people who use drugs causes harm to the individual, their families and their communities. Criminalising for personal possession was associated with stigmatising and marginalising people who were in need of help and support not punishment.
Decriminalisation, legalisation and regulation were identified as alternative approaches. Where respondents did not want personal possession decriminalised, this tended to be associated with a concern that it would make the drug situation in Ireland worse.

Focus Groups

7.1.12 Two focus groups were held to consult further with people who had been prosecuted for the possession of illegal drugs for personal use. These allowed for qualitative information to be gathered regarding the experiences of people who had been affected by the current approach, including the context surrounding their arrest and the impact that the prosecution had on their lives. Participants for the first Focus group were recruited with the assistance of the Ana Liffey Drug Project, Merchants Quay Ireland and the Union for Improved Services, Communication and Education (UISCE), all of which are Non-Governmental organisations (NGOs) that work with people that use illegal drugs. Participants for the second focus group were identified through submissions received through the online questionnaire. In total, fifteen people participated in these focus group discussions.

7.1.13 There was a strong consensus among those who had been prosecuted for simple possession offences that the current approach should be changed. It was revealed that the current approach had a negative impact on their psychological wellbeing, their families, and their long-term life chances. There was a perception that not everyone is treated equally under the current approach and social class was perceived to be a factor in the likelihood of being found in possession and prosecuted. Decriminalisation was seen as a positive alternative, with respondents drawing on the experiences of other jurisdictions. However, some believed that the approach adopted should not differ substantially from how alcohol, tobacco and medicines are treated and that all drugs should be legalised and regulated. There was consensus that the response to drugs should always be based on increasing awareness and health interventions and that criminal penalties have little impact on lessening the pervasiveness of drugs through society. The overall message was that people experiencing problems with their drug use who had not committed any crime other than being in possession of an illegal drug needed support, not punishment.

Open Policy Debate

7.1.14 The third and final strand of the consultation process was an Open Policy Debate. The purpose was to explore how an alternative health-led approach could operate in practice within the Irish context. Seventeen representatives from stakeholder organisations and individuals participated in roundtable discussions that examined possible alternative responses to the possession of illegal drugs for personal use.

88 List of organisation in Consultation Report (Annex II)
7.1.15 The majority participants were of the view that the decision on an appropriate referral should depend on the circumstances of the individual concerned and should not be determined by the specific substance which they were found to possess. Gardaí should remain the first point of intervention, after which the individual would be referred for an assessment where they can be referred onward to an appropriate treatment when required. This assessment should be made by a trained health professional or interdisciplinary panel and should occur as close to their local community as possible. Although treatment should always remain an option, it should never be coerced. Some representatives were of the view that subsequent civil or administrative penalties may be appropriate if people do not comply with the referral or advice that they receive. A minority of participants were in favour of retaining criminal penalties for people who are repeatedly found to be in possession of illegal drugs and who refuse to comply with the referral or recommendations.

Conclusions from Public Consultation

7.1.16 In summary, throughout the different strands of consultation that fed into this process, there was strong support for a change in the approach to simple possession offences in Ireland. Although there was some variation in how participants thought a decriminalised approach should be implemented, there was overwhelming support for removing criminal penalties. The vast majority of people who participated in the consultation process were of the view that criminalising drug use does not prevent or reduce drug use, and they supported a more health-centred approach which would encourage people to seek treatment for addiction. Those participating in the online questionnaire were of the view that different drugs required different approaches: they thought that the appropriate response to possession of cannabis was no action, whereas a referral to drug treatment was appropriate for possession of heroin. The participants of both the focus groups and the open policy debate thought that the response should be determined by the circumstances of the individual and not by the substance.

7.2 Presentations to the Working Group

Presentation by Mr. Brendan Hughes, Principal Scientific Analyst for legislation within the Public Health Unit, European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) (20 March 2018)

7.2.1 The EMCDDA is a centralised narcotic agency of the EU tasked with monitoring legal, policy, scientific and statistical narcotic activity by means of collating objective, reliable and comparable information from EU Member States. Mr. Hughes provided an overview of the various changes in legislation among EU member states in terms of the reduction, or in certain cases the increase, in penalties for drug possession for personal use. The definitions of decriminalisation and the methods employed to provide alternatives to punishments vary widely between the EU countries. In addition, there is limited information available in relation the success of these policy changes in practice as the data is not always adequately
collected in Member States. However, Mr Hughes’ research points to no clear impact of penalty changes on cannabis use. There are numerous factors, e.g. user demand, cultivation, social, economic, available data, interpretation of data etc. that determine the success of any change within any country. He did highlight that countries should first identify the reason for change (whether it be to help individuals, to influence society’s views or to take pressure from state structures) and then implement the most appropriate policy change to address that reason.

*Presentation by Senator Lynn Ruane and Niall Neligan BL on the Private Members Bill entitled the Controlled Drugs and Harm Reduction Bill 2017 (24 April 2018)*

7.2.2 Senator Ruane and Mr. Neligan discussed the Controlled Drugs and Harm Reduction Bill 2017, its purpose and the background to its introduction. The proposed legislative change in the Bill is to remove the offence of possession for personal use under Section 3 of the Misuse of Drugs Act, provided that the quantity possessed does not exceed a maximum amount to be prescribed by the Minister for Health. Supplying drugs would continue to be a criminal offence. Possession of drugs within the prescribed limit would instead be dealt with by way of referral to a drug dissuasion service. Senator Ruane emphasised that the purpose of the Bill is threefold; to mitigate the consequences of criminal conviction, to remove stigma and to identify people with addiction issues. The group highlighted issues with the compatibility of the Bill within the existing legal framework and how removing the offence from the Misuse of Drugs Act would result in *de facto* legalisation. The presenters acknowledged that this is not the intention of the Bill and that they are keen for an alternative that would address the health needs of those using drugs that can work within the existing legislative regime.

*Presentation by Emer Darcy and Louise Dwyer on the work of the Drug Treatment Court (DTC) (22 May 2018)*

7.2.3 Ms Darcy and Ms Dwyer updated the Working Group on the function and operations of the DTC. It is a District Court that provides supervised treatment, education and rehabilitation for offenders with problem drug use. To be eligible the person must have committed a non-violent crime and be dependent on drugs. Participants move through bronze, silver and gold phases of the programme and the ultimate aim is to become drug free and desist from reoffending. They presented the advantages to this programme as: providing a holistic approach to treatment, regular multi-agency team meetings to discuss progress of participants, low levels of re-offending while on the programme. They did highlight issues such as the lack of an overall budget for the programme and the evaluation criteria currently being used are very narrow. In addition, the DTC is only operational in Dublin at present.
7.2.4 Captain Shellhammer discussed the experiences in Colorado where in 2000 they legalised medical marijuana and then in 2012 they allowed the legal sale of marijuana. Throughout his presentation he expressed particular concern with the effects that legal marijuana was having on the youth in Colorado and with an increase in criminal activity. He also discussed a positive initiative that is in place in one jurisdiction where mental health and addiction counsellors are attached to police stations and they can assess and refer people for health interventions. He suggested that Ireland implement a similar health intervention and warned against legalising marijuana.

The following is a summary of key points and assertions as presented to the group, based on Captain Shellhammer’s experience in Colorado:

(i) Captain Shellhammer asserted that the black market has grown approximately three times as big as a result of legislative changes in Colorado and is considered to be a billion dollar industry;

(ii) as regards the cost benefit of changes, he believes the revenue created through taxation has not been sufficient to address the problems created by legalisation, including the criminal element of the black market, and an increase of 35% in emergency department admissions related to marijuana;

(iii) in Captain Shellhammer’s opinion, legislative changes have had an impact on the transient nature of people through Colorado. The homeless population continues to rise with the age profile down from 47-53 years of age in 2000 to the current age range of 23-25 years; the increased level of homelessness has contributed to an increase in crime rates. In addition, there has been an increase in suicide rates in Colorado. The fact that the economy is good and unemployment in Colorado is at 0% is used to counter criticism of any potential connection between drug policy and its effect on homelessness and suicide rates;

(iv) driving under the influence of drugs (DUID). He asserted that:

a. since Colorado legalized recreational marijuana, the four year average for marijuana-related traffic deaths increased 66 per cent between 2013 and 2016 as compared to the four-year average prior to legalization (2009-2012);

b. during the period 2013 and 2016, all traffic deaths increased 16 per cent;

c. there has also been an increase in poly-drug use, including alcohol, among DUID stats in Colorado;

(v) he noted that the prevalence rate of children’s/youth’s marijuana use has increased significantly among various indicators (slides 27 and 28). There has also been an increase in poly drug use and THC levels, with grow house techniques significantly increasing the THC percentage;

(vi) in terms of increased THC and prevalence being linked to mental health issues, Captain Shellhammer had no statistical comparison, as there is separate data on
mental health. He believes that self-medicating and not treating the underlying psychosis are contributing factors. There is no study in relation to the potential impacts of 30-40% THC levels in marijuana;

(vii) he believes that training of law enforcement officers in dealing with brief interventions is a major input, with additional health resources also available to patrol officers;

(viii) in Larimer County, SummitStone Health Partners are contracted by health services to assist frontline agencies with interventions. There are mental health and addiction counsellors attached to police stations that attend a scene and do an evaluation of the individual and divert him/her to an appropriate treatment service, with a caseworker assigned to track progress over the following days/weeks/months. This process frees up human resources, time and money in frontline law enforcement and health emergency agencies. The consequences for individuals not engaging with the assigned treatment depends on the circumstances and the progress being made by them. The Police can intervene again if the individual’s engagement is considered to be insufficient;

(ix) prison sentences for first time possession offences of other drugs do not occur unless another offence, such as sale/supply or causing harm, is involved. In instances where an individual is caught multiple times for possession only offences, the likelihood is that probation or other conditional sanctions would be issued rather than a term of imprisonment;

(x) in summarising, Captain Shellhammer stated the following in regards to what Ireland should do or what he wishes that Colorado did differently:
  a. if he went back in time to 2004 knowing the outcomes, he wouldn’t have given in on some of the changes in drug policy;
  b. from a health perspective, strict regulation access to medicinal marijuana is required for only those who really need it;
  c. the use of mental health teams attached to police stations and training of frontline law enforcement and health officials in interventions are positive initiatives from Colorado that Ireland could adopt.

Presentation by Nicola Corrigan, National Social Inclusion Office, HSE on the SAOR Screening and Brief Intervention programme (25 September 2018)

7.2.5 Ms Corrigan updated the group on the SAOR Screening and Brief Intervention programme. A brief intervention is a short, structured and helpful conversation about alcohol or drugs and SAOR provides the structure to have this conversation. Ms Corrigan provided evidence of the effectiveness of brief interventions and of the training programme provided by the HSE to a very broad cohort of frontline staff. It was noted that the Probation Service have recently incorporated the principles of the HSE SAOR model into their intervention approach. She discussed the evolution of the SAOR programme. SAOR II has a stronger emphasis on drugs, with the intervention and screening proofing a useful resource to direct people who do not think they have a problem or require an intervention to appropriate services. The group discussed whether the SAOR model could be used to provide assessment and a brief intervention for people found in possession of drugs.
7.3 Presentations Regarding the Portuguese Approach

7.3.1 In light of the heavy emphasis placed on the Report of the Oireachtas Joint Committee on Justice, Defence and Equality on the system in Portugal, the Working Group engaged extensively with agencies in Portugal inviting Dr João Goulão, Director, General Directorate for Intervention on Addictive Behaviours and Dependencies (SICAD), Portugal and Mr. Artur Vaz, Director, National Unit to Combat Trafficking in Narcotic Drugs, Judiciary Police, Portugal to address them so that a good understanding of the practices and processes relating to the operation of their model could be established.

On 19 February 2018, Dr Goulão attended the third meeting of the Working Group. His presentation has been summarised below:

7.3.2 Following the democratic revolution and end of colonial wars in the mid-1970s, there was an increase in the range and volume of drugs entering Portugal resulting in rising rates of addiction. By the 1980s, drug use, dependency and addiction had risen markedly across all segments of Portuguese society and a growth in intravenous heroin consumption had resulted in rising rates of HIV infection, fatal overdose, public nuisance and petty crime.

7.3.3 In the late 1990s, the Portuguese government established a commission of nine experts from health, law enforcement and academic fields that was tasked with developing strategic proposals to combat the drug problem while keeping within the ethos of the United Nations. The group visited a number of countries in order to examine their responses to drugs, and drawing upon their collective experience and knowledge, made a number of recommendations that were published within their 1998 report.

7.3.4 The commission concluded that criminal sanctions against drug users were ineffective, and proposed that a health-based approach be adopted to include a legislative change so that the use and possession of drugs for personal use be decriminalised / depenalised. They also noted that universal interventions such as mass media campaigns aimed at preventing drug use were ineffective and instead proposed concentrating resources on targeted initiatives, such as employment programmes aimed at social re-integration.

7.3.5 In the 1990s, Portuguese prisons were at full capacity and there had been no systematic way to determine whether somebody who was arrested for the possession of drugs should be prosecuted or not. In exploring the possibility of decriminalising / depenalising the possession of drugs for personal use, a Professor in Criminal Law advised the commission that UN treaties would require some form of sanction, but that it would not necessarily need to be a criminal sanction, and could instead be an administrative sanction.

7.3.6 In 2000, the Bill to decriminalise / depenalise the use and possession of drugs for personal use was passed, thereby determining that people found to be in possession of the threshold of 10 days or less supply of a drug would be subject to an administrative sanction rather than a criminal one. The weighing by police of the substance detected removed the

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89 Hughes et al. describe Portugal as using decriminalisation with targeted diversion to health/social services and diversion to health/social services.
potential for differential treatment of drug users by police, as there were objective criteria to establish whether the person should be subject to further proceedings within the criminal justice system. If a person is found to possess less than 10 days’ supply, they are given 72 hours to report to a local administrative body for drug addiction.

7.3.7 To operationalise the new system, the Ministry of Health established within each district an administrative body called a ‘dissuasion committee’ that was responsible for drug addiction. These would administer diagnostic tools that could assess the risks and related needs of the drug-using person in order to minimise the impact of drug use in their life, such as social work, psychiatric or psychological help. Most people were not addicted to drugs at the time of these interventions, but in cases where in-patient treatment is necessary, there are 1600 rehabilitation beds, which include 160 detoxification places available around the country in certified therapeutic centres. Most of these therapeutic centres are run by regulated non-governmental organizations (NGO) that are licensed to provide treatment, but the state maintains three therapeutic centres that are used for training purposes and as models of best practice. The State will pay up to 80% of the treatment costs, with the remaining 20% being paid for by the patient, their family, or the social welfare system. These treatment services have now reached a point where they have the capacity for treating addictions to a wide range of substances and activities, such as alcohol, gambling, online gaming etc.

7.3.8 Most of the people who use drugs that have an intervention are not addicted and that the administrative interceptions can address the social and environmental factors that contributed to their drug use often meaning that they do not become dependent. This allows for the persons trajectory towards more problematic drug use to be interrupted, and the administrative sanctions to perform as a preventative tool.

7.3.9 Since 2001, approximately 100,000 people have come before dissuasion committees, of which about 10,000 were assessed as addicted. Of these, approximately 80% accepted the treatment offered. Those who refuse treatment are not subject to any further sanction provided they do not come before the dissuasion committee within the next 6 months. In determining what groups should be targeted the centres meet with local police to discuss what opportunities for intervention are upcoming, such as music festivals, and the likely types of people and substances that they will include.

7.3.10 Regarding the impact of Portugal’s legislative changes, decriminalisation / depenalisation of the use and possession of drugs for personal use, and the health-based interventions that are administered reduced the stigma associated with people who use drugs as the general public now understands drug dependence as a chronic and sometimes relapsing disease. There had also been a decrease in drug-related deaths and HIV infections. However, in relation to other initiatives, such as employment schemes for those in recovery, growth in unemployment rates resulting from the global economic crisis had resulted in growing resentment of those who were able to avail of employment opportunities as a result of their administrative sanctions. In addition, many small businesses closed, resulting in the redundancy of many former drug users that were in recovery. Many of these people relapsed in their drug use and this is currently presenting Portugal with new challenges.
7.3.11 It is not clear that decriminalisation alone can explain the decline in the number of people addicted to heroin reducing from 100,000 in 2001 to 25,000 in 2015. While some mention was made of increased employment opportunities for this group of people, it emerged that the placement of people in these programmes as a result of an intervention by the Dissuasion Committees was relatively low.

On 22 May 2018, Mr. Vaz addressed the sixth meeting of the Working Group by video conference. This discussion has been summarised below:

7.3.12 After initial scepticism among the majority of police officers when the model was introduced to Portugal in 2001, it is now viewed as the right approach to take allowing law enforcement agencies and prosecutors redirect their resources to prioritise the fight against drugs trafficking.

7.3.13 Drug trafficking in Portugal comprises of two different drug trafficking markets, one with Portugal being the final destination for some drugs, e.g. hashish, heroin, cocaine, NPS, the other Portugal being a transit market of drugs such as hashish from Morocco and cocaine from South America to other European countries.

7.3.14 In Portugal, the possession of drugs for personal use is still illegal. However, the offence is not a criminal offence but considered a misdemeanour and a penalty/sanction can still be applied. Following an interception from a Police Officer, under the Portuguese penal procedure, the individual can be taken to a police station for a period of up to 6 hours to have their identity checked. Once the officer creates a report of the interception, the individual has a mandatory obligation to report to a drug dissuasion committee on referral from the Police Officer. There is no limit on the number of referrals. For an individual to be charged with trafficking (supply) there must be evidence of this.

7.3.15 With regards to testing substances, a field test is sufficient to proceed to court. Additionally, a forensic lab analysis would test purity, or a drug dissuasion committee can request tests.

7.3.16 Mr. Vaz provided the following additional information on the structure and impact of organised crime on the drug trade, the impact of the legislation on law enforcement, and other social issues that influence drug related crime in Portugal:

(i) the market is normally controlled by internal organised crime groups, and there are normally no murders associated with drugs trafficking, although some other violent crimes can occur but are very unusual. Mr. Vaz attributed the lack of violence between competing drug suppliers in Portugal to the Portuguese temperament;

(ii) as regards drug related intimidation, while there are some problems with violence, it is not very usual;

(iii) Portugal no longer has public order crimes directly associated with consumption of drugs. The situation is different to the 1980’s and
1990’s when prevalence rates of heroin were higher and there were associated crimes. With decreased levels of prevalence there is now less problematic drug users with no problem of public order;

(iv) in terms of the homeless population in Portugal, this social issue is primarily concentrated in Lisbon and Oporto;

(v) the impact on law enforcement officer’s ability to collect information is sometimes affected, but also facilitated, by the introduction of decriminalisation / depenalisation.

7.4 **Written Submissions Received**

7.4.1 Voluntary submissions were received and acknowledged by the Group, including from:

- Simon Community
- Pavee Point
- National Family Support Network
- UISCE
- Councillor Mannix Flynn
- Irish Council for Civil Liberties
- Tallaght Drugs & Alcohol Task Force
- CityWide Drugs Crisis Campaign
- Ana Liffey Drugs Project - Not Criminals Report
8. Policy Approaches Considered

8.1 Rationale

8.1.1 The National Drugs Strategy is a health led and person centred response to the drug and alcohol use in Ireland. It highlighted the following problems related to personal drug use:

Many people who use drugs problematically come into contact with the criminal justice system and acquire criminal convictions, either directly or indirectly related to their drug use. Criminal convictions can represent a serious impediment for people seeking to move on from drug misuse and involvement in crime, particularly in the areas of access to employment, housing and travel.\(^{90}\)

With this in mind, and taking all the views expressed, the Working Group considered that there are concurrent principles that should be addressed with any alternative approach to the current regime:

(i) a person should be afforded the opportunity to avoid a criminal conviction for the possession of drugs for their personal use;
(ii) a person should be supported to avoid, reduce and recover from drug-related harm;
(iii) a person with problematic drug use should be referred to appropriate treatment or other support.

8.2 Range of Approaches

Adult Caution

8.2.1 The rationale of the Adult Cautioning Scheme is that it is an alternative to the prosecution of certain persons. The issuing of the caution is discretionary with detailed guidelines agreed between the DPP and the Garda Commissioner governing its application on a case-by-case basis in order to divert people away from prosecution in criminal courts. How the Adult Cautioning Scheme operates is set out in section 4.5.

8.2.2 Gardaí who come into contact with people who possess drugs can play a role in fostering early intervention, whereby in the course of issuing a caution, they could provide harm reduction information and information on health and social services to the person in possession of drugs which that person may not otherwise have been aware of.

8.2.3 The issuing of an Adult Cautioning provides a proportionate alternative to respond more effectively to simple possession cases involving first-time offenders. It benefits the criminal justice system and the individual involved, in terms of the advisory referral to services in keeping with Government policy on drug use.

8.2.4 The extension of the Adult Cautioning Scheme to include the offence of simple possession of drugs for personal use is currently under consideration by the relevant authorities.

*The issuing of a second or subsequent caution*

8.2.5 Within the ambit of the Adult Caution Scheme it is only in exceptional circumstances that a second caution can be administered, subject to the approval of the DPP. However, there may be grounds for the use of a second caution for a Section 3 offence where the circumstances surrounding an individual’s personal drug use suggests that the public interest does not require a prosecution.

8.2.6 The second caution would be considered on a case-by-case basis by the Gardaí and the Office of the DPP. The idea behind the administration of a second caution is to extend the possibilities of desistance and a further opportunity to avail of any necessary services.

8.2.7 To extend the possibility of further cautions beyond this would require an extensive revision of the guidelines underpinning the Adult Cautioning Scheme. Were such an approach to be adopted it would make sense to review whether or not other minor offences could also be considered. Any extension of the scheme would require the consideration and agreement of both the DPP and the Garda Commissioner.

*Conditional Cautioning*

8.2.8 Conditional Cautioning involves the imposition of conditions on a person or persons which would allow them to avoid a prosecution. The introduction of such a scheme would require legislation. In order for this to be effective such a scheme would need a multi-agency approach, which would carry resource implications. The Working Group on Alternatives to Prosecution has already made recommendations in respect of the development of a conditional cautions scheme.⁹¹

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⁹¹ See section 2.1.9 and 2.1.10
Fixed Charge Penalty Notices

8.2.9 The fixed charge penalty notice (FCPN) system was introduced under the provisions of the Road Traffic Act 2002. Over the years, the system has been extended to incorporate other minor offences as an alternative to prosecution in court.

8.2.10 Alleged offenders are given the option of voluntarily paying a specified fixed penalty to avoid legal proceedings being taken against them. The objective is to reduce the cost of penalising offenders in cases which are less serious in nature, where the facts are often not disputed and where fairly standard fines are imposed on conviction.

8.2.11 Prosecution and fine collection costs are minimised when most cases are settled without recourse to court proceedings. The Fixed Charge Processing System (FCPS) is part of a national computerised system, designed to enable Gardaí process offences under Road Traffic and Public Order Acts that are subject of a fixed charge.

8.2.12 Section 184 of the Criminal Justice Act, 2006 provides for the application of a FCPN to some minor public order offences, namely Sections 4 and 5 of the Public Order Act (intoxication in a public place and disorderly conduct in a public place).

8.2.13 Making an offence under Section 3 of the Misuse of Drugs Act available for disposal under the FCPN regime would extend the number of occasions a person could avoid a criminal conviction for personal drug use. It must be noted that drug possession would still remain a criminal offence; however a FCPN could be issued as an alternative to prosecution. By including Section 3 offences in this scheme it would be important to provide some level of services information or pathway to a health intervention.

8.2.14 By paying a FCPN a person is admitting that an offence took place. If the person does not agree that an offence has been committed, or considers that there were mitigating circumstances they may opt to have the case tried in court. Where the fixed penalty is not paid, the case may be pursued through the Courts.

8.2.15 Issues have arisen with the non-payment of FCPNs where drivers claim in court that they did not receive the notice. The third payment option which was introduced in the Road Traffic Act 2018 is designed to get over this by sending the summons to attend court by registered post and including an option to pay the fine at that stage.

8.2.16 An obstacle to applying the FCPN to Section 3 offences is that the Gardaí may encounter difficulty in identifying the individual in question and an address to which the notice can be issued. This problem has been encountered in relation to the public order offences included in the scheme. It may necessitate some people being brought to a Garda station to establish their identity.
Decriminalisation following the Portuguese approach

8.2.17 From the outset, and having regard to the views of the report of the Joint Committee on Justice, Defence and Equality on a Harm Reducing and Rehabilitative approach to possession of small amounts of illegal drugs, the Working Group sought to develop an understanding of the “decriminalisation” approach adopted in Portugal and the background to the introduction of the legislative changes made there. The details in this regard are set out in the commissioned research report at Annex I and in section 7.3 of this report.

8.2.18 The Working Group gave considerable time over the course of its meetings to examining how a similar approach could be adopted in Ireland considering the Irish context and how it compares with the situation that prevailed in Portugal in 2001. In this regard, difficulties were identified with the application of the EMCDDA explanation of the term “decriminalisation” in the Irish legal context. The Working Group took note of the meaning and effect of this term within the Irish legal system as compared with that in most other EU Member States where codified civil law systems are the norm. The details in this regard are set out in section 3.1 of this report.

8.2.19 The concept of a criminal offence with an administrative or civil sanction is not compatible with the Irish legal system. For an offence to be decriminalised in Ireland, it would need to be removed from the Statute Book by amending Section 3 of the Misuse of Drugs Act so that possessing an identified quantity of some or all controlled drugs for personal use would no longer be an offence.

8.2.20 There are a number of difficulties with removing the offence. Section 23 of the Misuse of Drugs Act may only be invoked where a member of An Garda Síochána “with reasonable cause suspects that a person is in possession in contravention of this Act of a controlled drug.” Gardaí would therefore no longer have the power to stop and search a person for possession of drugs for their personal use if it is no longer an offence under the Misuse of Drugs Acts. If possession for personal use was no longer to be an offence, consideration would need to be given as to whether or not threshold limits would be necessary to differentiate between possession of drugs for personal use and possession for sale and supply.

8.2.21 Within the Irish context organised crime gangs could utilise the limits set for personal possession to facilitate a supply chain just below these thresholds. The Working Group understands that people involved in the sale and supply of drugs already carry minimum amounts of drugs in order to avoid criminal prosecution for sale or supply at present in Ireland.

8.2.22 Removal of the offence could lead to de facto legalisation, and there may be unintended and undesirable consequences.

8.2.23 The Working Group considered whether the Gardaí powers to stop and search based on public health considerations could be preserved if possession for personal use was decriminalised, and formed the view that this could give rise to constitutional and legal difficulties.
Public Health Response

8.2.24 The national drug strategy provides an integrated public health approach to the misuse of drugs and alcohol. A public health approach aims to prevent and address health problems that may arise from drug use. A public health perspective seeks to improve and protect the health of populations and communities by reducing the harm linked to substance use while also facilitating treatment and rehabilitation.

8.2.25 The current public health approach focuses on developing a coordinated, comprehensive effort to create safer, healthier communities by supporting people to avoid, reduce and recover from drug-related harm. This is achieved by effectively recognising when a person has or is at risk of problematic substance use and signposting them to appropriate support and treatment.

8.2.26 The SAOR model is a public health tool widely used throughout the health service to enable staff to carry out a Screening and Brief Intervention and possible onward referral for problem substance use. A Brief Intervention is a short, structured conversation about a person’s drug and/or alcohol use. SAOR provides the structure to have that conversation and to address the complexity of substance use presentations, including poly substance use. Brief Intervention has been shown to be effective for drug use in a variety of healthcare settings (Madras et al., 2008). The HSE have trained over 5,000 frontline employees in the SAOR model since 2014 in Ireland.

8.2.27 Under this approach, a person in possession of drugs for personal use would engage with the health service by attending the SAOR Screening and Brief Intervention. Any onward referral by the SAOR professional to treatment or other supports would be voluntary.

8.2.28 Similar health diversion approaches in other jurisdictions have been shown to be effective; more offenders accessed treatment, there was a reduction in recidivism and those being diverted were a distinct group who otherwise were not accessing the health system.  

8.3 Policy Options Considered

Policy Option 1: Adult Caution

8.3.1 This proposed approach recognises a recommendation has been made by the WGAP to include the offence of possession of drugs for personal use in the Adult Cautioning Scheme thereby providing an alternative to prosecution, and is under consideration by the relevant authorities.

8.3.2 With this approach fewer people would be prosecuted for a first offence for possession of drugs for their personal use. With the addition of a health and social services information

leaflet to be given to each person who receives a caution more people would receive information on the harms of drug use and advice about what services are available to them. People who use drugs problematically may access treatment on foot of the advice given.

8.3.3 While there are no legislative implications for this approach, guidelines for the Gardaí would need to be drawn up by the DPP. A relevant health and social services information leaflet would also need to be developed by the HSE for use by the Gardaí.

8.3.4 The Working Group can recommend this approach as appropriate in the Irish context.

*Policy Option 2: Multiple Adult Cautions*

8.3.5 With this approach, a person could avail of the benefit of the discretionary Adult Caution a number of times. They would receive the health and social services information leaflet each time. The idea behind this approach is to provide the individual with a further opportunity to avail of any necessary services. There would be no criminal sanctions applied for the repeat offences.

8.3.6 The Working Group considers that two Adult Cautions could be given before the exceptional circumstances criteria are applied for a possible third caution. However, the group is conscious of the barriers to this approach that arise in relation to the number of times diversions might be permissible without undermining the intention of the legislation as passed by the Oireachtas. The group notes that the administration of an Adult Caution under the Scheme would remain discretionary on a case-by-case basis. Any such proposal or recommendation for the scheme would require the consideration and agreement of both the DPP and the Garda Commissioner as well as examination of the matters set out in section 8.2.7 above.

8.3.7 The Working Group can recommend this approach as appropriate in the Irish context.

*Policy Option 3 – Diversion to Health Services*

8.3.8 This policy option is based on the public health approach discussed in section 8.2.28. People found in possession of drugs for personal use would be supported to address the harms of their drug use.

8.3.9 With this approach, individuals in possession of drugs for personal use could be offered a diversion for a brief intervention and screening, while high-risk drug users would be offered onward referral for treatment or other supports for their substance-use disorder.93

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93 Much like model 6 Decriminalisation with targeted diversion to health/social services identified in the research report, see section 6.2.1
8.3.10 This diversion to health services would involve the following steps:

Step 1 Gardaí who is satisfied that a person is in possession of drugs for personal use would offer that person a diversion to an appropriate service within their local Community Health Organisation (CHO).

Step 2 The person would arrange an appointment for themselves to attend a SAOR Screening and Brief Intervention.

Step 3 The person would attend the SAOR Screening and Brief Intervention with a trained healthcare professional, such as a counsellor.

Step 4 If a person is identified as having or at risk of problematic use, they would be offered the appropriate treatment or support. Their attendance at the appropriate treatment/support would be voluntary.

Step 5 Other referrals may also be identified and facilitated, such as to social services (e.g. homelessness) or harm reduction programmes.

Step 6 The person’s attendance at the brief intervention would be confirmed to AGS (with the person’s consent).

Diagram 1: Schematic of Diversion to Health Services approach

8.3.11 A Brief Intervention is a short, structured conversation about a person’s drug and/or alcohol use. SAOR provides the structure to have that conversation and to address the complexity of substance use presentations, including poly substance use. Brief Intervention
has been shown to be effective for drug use in a variety of healthcare.94 The HSE have trained over 5,000 frontline employees in the SAOR model in Ireland since 2014.

8.3.12 Designated SAOR trained counsellors would be recruited for each CHO to carry out the brief interventions and the onward referrals. Access issues would be considered and may necessitate a mobile option. In addition, senior counsellors would provide clinical supervision for the programme.

8.3.13 During the SAOR intervention a person may be identified as having or at risk of problematic use or addiction. There is a range of treatment or other social supports that they may need to achieve their personal recovery goal. The HSE works within a 4 tier continuum of care model to enable people to receive the support they need as close to home as possible and operate a case-management approach to people who present to the services. Among the range of treatment services available are counselling, community detoxification, opioid-substitution treatment, rehabilitation, inpatient detoxification and stabilisation and referral to mental health services, as required.

8.3.14 There are many other social services such as housing, employment or mental health supports that may be required to improve a person’s chances of recovery. Under this proposal, the pathways to access these services will have to be identified and strengthened.

8.3.15 Attendance at the SAOR brief intervention would be mandatory. Therefore, a communication and information sharing structure between the CHOs and AGS would be required. A person attending for a SAOR intervention would confirm their agreement that their attendance can be notified to the local Garda management for this purpose. A person who refuses to attend or subsequently doesn’t attend the SAOR intervention within the designated period without a good reason, would be liable to prosecution for possession of drugs for personal use.

8.3.16 A new system of diversion and associated guidelines would be required to enable Gardai to divert people to the local CHO. Operational procedures would need to be defined around eligibility criteria, how a person would make an appointment for their brief intervention and the number of times that a person could be diverted to the health services. A minimum of 3 times is suggested because substance misuse is often a recurring condition and each person’s recovery journey is different.

8.3.17 This proposal assumes that personal possession remains a criminal offence to counter the problems highlighted in section 8.2.21. Gardai would remain the first point of contact however people would be diverted out of the criminal justice system to a public health intervention as a way of identifying their health and social needs and to reduce the harm caused by drugs.

8.3.18 This policy change would require new legislation. Determining the precise legal requirements, for example a conditional caution scheme, to support this proposed approach would require further detailed consideration.

8.3.19 The advantages of this proposal are that it may reduce the harms associated with drug use, increase access to treatment, promote rehabilitation and reduce likelihood of reoffending. In addition, it may reduce the harms associated with criminal convictions and reduce demands on Gardaí and on the courts.

8.3.20 The Working Group can recommend this policy option as appropriate in the Irish context.

Policy Option 4: Fixed Charge Penalty Notices

8.3.21 The application of a fixed charge penalty means that a sanction could be applied which would not lead to a criminal conviction.

8.3.22 For each offence of possession of drugs for personal use, a Garda could issue a FCPN and provide a health and social services information leaflet instead of prosecuting the person for the possession offence. This would require legislative changes to enable the possession offence to be included in a fixed charge penalty scheme.

8.3.23 A real barrier to this approach could be the evidence required for the prosecution of a Section 3 offence if it eventually ended up in court for the non-payment of the fine. Unlike a public order or Road Traffic Act offence the basis of a Section 3 offence would be the possession of a controlled substance which would require certification as such by Forensic Science Ireland.

8.3.24 Another issue is that of proportionality; people on low incomes, people who are homeless and people with problematic drug use and chaotic lives may still enter the criminal justice system for their personal drug use if they can’t pay the fine. This could mitigate against them benefiting from the approach. The figures for 2016 show an average payment rate for public order offences of just over 50%. Non-payment of the fine within the specified time will result in a summons initiating proceedings for the original offence.

8.3.25 The Working Group would not recommend this approach as appropriate in the Irish context because of the difficulties set out above may render it impractical and disproportionate in its implementation.
Policy Option 5 – Decriminalisation with targeted referral to services

8.3.26 This proposal takes the approach that drug use should be dealt with outside of the criminal justice system and that there should be options for health or social services for those who need it. As stated in 8.2.20 this approach would require legislative change to remove the offence of personal possession. This may lead to de facto legalisation however, given that there would no longer be a criminal offence of possession for personal use. Consideration would also need to be given as to the necessary threshold limits that would be required to give Gardaí the ability to distinguish between possession and supply.

8.3.27 Decriminalisation in the Irish context may create a vacuum in terms of a mechanism for identifying and diverting those persons who might benefit from a health intervention. If the Gardaí do not have powers to stop and search a person suspected of being in possession of drugs solely for personal use, then another mechanism may need to be established to identify those who might have a health need relating to their drug use.

8.3.28 To incorporate a health led aspect to this approach it may be possible to develop legislation to give the Gardaí specific power to search people suspected of being in possession of a controlled substance for personal use, check the amount and then divert people below the threshold amount on to a health based intervention. Such a measure would be facilitated by the introduction of threshold limits. Although, this may still prove to be unconstitutional, since the purpose of giving the Gardaí this power is in the national interest and especially to promote health, it may stand up to judicial scrutiny.

8.3.29 Comparing this decriminalisation option with the Portuguese decriminalised system throws up potential difficulties with this approach in Ireland. In Portugal, following citation of the person found with drugs by the police, the Dissuasion Committee determines on the basis of the evidence brought before it whether or not the person is a drug trafficker. If so the Committee refers that person to the Courts. The law states that the Dissuasion Committee should consider a number of criteria in determining what action to take with a person who uses drugs. These criteria include: the type of drug used; whether use is in public or private; if the person is a problematic user, whether use is occasional or habitual and the personal and economic/financial circumstances of the person.

8.3.30 The Dissuasion Committees in Portugal by law have powers to impose a broad range of sanction such as fines, bans on visiting certain places or travelling abroad or cessing of allowances from public bodies. So, while the person in possession of drugs there may not be criminalised as such, that person may have heavy sanctions imposed. The Dissuasion Committee has explicit power to suspend sanctions conditional on voluntary entry into treatment. Within the Irish legal system it is unlikely that the powers to impose such wide ranging sanctions can be held in Ireland outside of the Courts.

8.3.31 In light of the significant difficulties with a decriminalisation approach in Ireland, the Working Group concluded that the best way to mirror the Portuguese model is to retain Section 3 as an offence so that Gardaí have the power to stop and search and the ability to

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divert people to appropriate services. Therefore, the Working Group would not recommend this approach as appropriate in the Irish context.96

Policy Option 6: Hybrid Approach

8.3.32 The researchers (see Annex I) suggested that consideration could be given to a mixed approach that could work for Ireland. They suggested a blend of depenalisation for cannabis or for a first or second offence and a decriminalisation approach with targeted diversion to health/social services for other drugs or additional offences.

8.3.33 Having accepted that under Ireland’s legal system decriminalisation involves the removal of the offence the Working Group could not consider this approach as appropriate in the Irish context.

Net widening

8.3.34 The Working Group noted that each of the policy options above could lead to significant net-widening. This is where more people are brought into the criminal justice or health system because of a new clear pathway for dealing with the offence of personal possession. The necessary supports and resources would need to be put in place to meeting the extra demand on services that net widening would cause.

96 One member of the Working Group wanted this approach to be recommended
9 Costings of Alternative Approaches to Personal Drug Possession

9.1 Overview of Costings Associated with the Current Approach

9.1.1 The terms of reference provided to the Group includes a cost benefit analysis (CBA). However, a full CBA was not completed due to the limited availability of data and specific details. Using the material available, the Irish Government Economic and Evaluation Service (IGEES) unit in the Department of Justice and Equality undertook a costings exercise and compiled costings based on high-level estimates and scenario based assumptions with data input from various sources. The full report is included at Annex III.

9.1.2 The reported estimates are high-level and formulated on assumptions that best describe the current approach and the alternative approaches recommended in chapter 8. This was done by disaggregating available data relevant to the offence of possession for personal use from within the criminal justice system and the health system where applicable.

9.1.3 In addition to the current approach the alternative approaches costed were:

(i) Option 1: Adult Caution
Subject to agreement between the DPP and AGS, a discretionary alternative to prosecution involving a formal caution given by a District Officer (Superintendent) or an Acting District Officer (Inspector) who will also provide the individual with health and social services information leaflet.

(ii) Option 2: Multiple Adult Cautions
Subject to agreement between the DPP and AGS, a discretionary alternative to prosecution given on more than one occasion involving a formal caution given by a District Officer (Superintendent) or an Acting District Officer (Inspector) who will also provide the individual with health and social services information leaflet.

(iii) Option 3: Diversion to Health Services
An alternative to prosecution involving a mandatory referral by An Garda Síochána for a SAOR brief intervention and screening with a health professional during which there can be onward referral to treatment services or other supports for people with or at risk of problematic drug use. Minimum of three mandatory referrals costed.

9.2 Analysis of Costs of Current System

9.2.1 The costs to the criminal justice system due to possession of drugs for personal use are broadly distributed across An Garda Síochána, the Irish Probation Service and the Irish Prison Service. Significant costs are also incurred by interventions under the Garda Youth Diversion Projects (GYDP) and the Drug Treatment Court (DTC).
9.2.2 In 2017, there were 16,850 controlled drug offences recorded across the State – almost three-quarters of these related to possession for personal use. It is estimated that youth referrals to the Juvenile Diversion Programme account for almost 7.6% of personal use offences or around 960 juveniles in 2017. Furthermore, around 80 offenders were active in the DTC in 2017. There were 112 referrals, accounting for approximately 330 offences based on the typical three offences required for consideration. That means the total number of offences set to pass through the criminal justice system was 12,589. However, the proportion of incidents that went on to prosecution was on average 20% for each of the years 2015 to 2017, with an estimated 2,231 ending up in the District Court in 2017 when other offences are excluded. The number of incidents detected by the Gardaí involving a S3 MDA offence for the three year period 2015 to 2017 are in Table 7 below. Not all these incidents resulted in the person being charged for a S3 MDA offence and not all went forward to Court.

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>11,149</td>
<td>11,740</td>
<td>12,589</td>
</tr>
</tbody>
</table>

Table 7: Recorded Personal Possession Offences used for costings

9.2.3 Combining the costs across the various intervention programmes, An Garda Síochána, the District Court, the Probation Service and the Irish Prison Service, produces a total cost of personal possession to the criminal justice system of around €7m.

9.2.4 Personal possession represents around 5.87% of all crimes and about 0.28% of the total budget for the Justice Vote. It is expected that personal possession takes a smaller share of the budget than of all crime, so this estimate appears reasonable. Table 8 below provides a summary of the costs to the criminal justice system, with the probation service accounting for almost half of the total.

97 CSO, Recorded Crime Offences Under Reservation (Number) by Type of Offence and Year.
98 Number referred to the Diversion Programme is based on youth referrals as a share of all drug offences over a three-year period to obtain an average of 7.6%. The estimates are informed by figures from the CSO and the Irish Youth Justice Service.
99 Drug Treatment Court – the figure of 80 is based on active participants across the gold, silver and bronze stages of treatment and includes existing participants at the time. Not all referrals are accepted into the DTC.
100 Source: An Garda Síochána (August 2018)
101 Based on data provided by the Garda Analysis Service relating to Section 3 offences under the Misuse of Drugs Act 1977.
102 This figure strips out cases in which personal possession incidents are linked to other non-personal possession offences.
103 The figures are based on data provided by the Garda Analysis Service on 13/06/2018 (IAS_2018_535) and 28/06/2018 (IAS_2018_594). References to drug types have been compiled by way of keyword searches and are estimates only.
104 Expenditure for the Justice Vote was €2.54bn in 2017, covering An Garda Síochána; Courts Service; Prisons; Department of Justice and Equality; Irish Human Rights and Equality Commission; Policing Authority; Valuation Office and the Property Registration Authority – Available at [http://www.justice.ie/en/JELR/Pages/SP16000287](http://www.justice.ie/en/JELR/Pages/SP16000287).
| Individual and total cost (€ m) of personal possession interventions to the Justice* sector |
|---------------------------------|---|
| GYDP                            | 1.15 |
| DTC                             | 1.24 |
| Gardaí                          | 1.17 |
| District Court                  | 0.19 |
| Probation Service               | 3.06 |
| Prison Service                  | 0.19 |
| **Total**                       | **7.00** |

Table 8 Estimated cost of personal possession interventions

Source: IGESS Unit, DOJE

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

9.2.5 Health costs are not included in this analysis of the costs of the current approach although there is substantial interaction (e.g. supported referrals) between the justice sector and the health sector.

9.3 Scenario Analysis

9.3.1 The next section describes the estimated economic cost of the three recommended scenarios considered appropriate in the Irish context by the Working Group. Once again, it is important to highlight that these estimates are limited by the availability of relevant data and are high-level estimates. It is assumed that the 20% prosecution rate for 2015-2017 remains constant. For comparison purposes, it is assumed that the number of possession charges remains the same as 2017 at 12,589 which gives us the estimated number of people arrested for personal possession in a year.

9.3.2 The estimated Garda, Sergeant and Inspector hours are based on type of penalty. Drawing on UK Institute of Social and Economic Research data on hours spent by the police on various types of penalty, the estimates suggest that about sixteen hours are spent on an arrest leading to court, while ten hours are estimated to be spent on an arrest leading to a caution. Applying this to An Garda Síochána structures amounts to around twelve hours of Garda time and four hours for a sergeant for an arrest leading to court and 8 hours of Garda time and two hours for a sergeant in the case of an arrest leading to a caution. Using average Garda, Sergeant and Inspector pay across years one to eight of the relevant payscales, it was possible to estimate an hourly rate for each type of officer. The unit cost of an action was then calculated by multiplying the estimated number of hours required for that action by the respective hourly rates. The total administrative cost to the Gardaí was estimated by multiplying the unit cost for each type of action by the total number of offences.

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105 Data sourced from Garda Pulse data in August 2018 and used throughout as the baseline number of offences in 2017.
107 Ibid.
108 Inspector’s average pay was calculated across years one to seven.
9.3.3 This scenario examines the costs of the inclusion of all personal possession drug offences in the Adult Cautioning Scheme. The addition of an Adult Caution would add costs to the Gardaí similar to the ‘Arrest leading to caution’ with the addition of six inspector hours as in Ireland an adult caution requires the input of a Garda Inspector. Assuming all individuals are administered with a caution and accounting for hours in terms of an Inspector, Sergeant and Garda, this generates a cost of €4.29m. This would replace the €1.17 million in costs to the Gardaí in the current system and therefore lead to an additional €3.13m in costs to the Gardaí. In Ireland the caution is administered by a District Officer (Superintendent) or an Inspector in an acting capacity.

| Estimated Cost of Adult Cautions to An Garda Síochána for Personal Possession €m |
|-----------------------------------------------|-----|
| Adult Caution Scheme (ACS)*                    | €4.29 |
| Change in Garda costs**                        | +€3.13 |

Table 9: Estimated costs of Policy Option 1
Source: IGEES Unit, DOJE
*Assuming all offences are given an ACS and this is administered by Gardaí
**Additional Garda costs when compared with the estimated Garda costs for current policy approach

Multiple Adult Cautions

9.3.4 This intervention would act similar to the above adult caution option except with further adult cautions for recidivism. In this scenario a person would get a second adult caution for personal possession for a second offence and an additional adult caution for a third offence (in exceptional circumstances). Under the assumption that an adult caution would be applied to all offences with 10% reoffending a second time and a subsequent 10% reoffending on a third occasion, this scenario would cost an additional €5.15m replacing the €1.17 million in costs to the Gardaí in the current system. Therefore in contrast to the current approach this scenario adds an additional €3.99m.

| Estimated Cost of Multiple Adult Caution to An Garda Síochána for Personal Possession €m |
|-------------------------------|-----|
| Adult Caution Scheme (ACS)*   | €5.15 |
| Change in Garda costs**       | +€3.99 |

Table 10: Estimated costs of Policy Option 2
Source: IGEES Unit, DOJE
*Assuming all offences are given an ACS which is administered by Gardaí with addition ACS based on recidivism
**Additional Garda costs when compared with the estimated Garda costs for current policy approach

109 Adult Cautioning Scheme https://www.garda.ie/en/About-Us/Publications/Policy-Documents/Adult-Cautioning-Scheme.pdf
**Diversion to Health Services**

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

- Costs to Gardaí associated with diversion to health services, including recording attendance and follow up on non-attendance
- Costs to Health Services associated with the SAOR brief intervention, and any onward referral to treatment

9.3.6 Firstly to estimate the costs to the Gardaí would require a cost taken for a Garda to be on patrol and administer a diversion to a health intervention. This is estimated as similar to the ‘Arrest leading to caution’ in section 9.3.2 above, however in this case, inspector hours have been excluded which would lead to an estimated cost of €2.24 million.

9.3.7 To estimate the costs associated with the diversion to a health intervention, we assume that the number of possession charges remains the same as 2017. Therefore 12,589 SAOR brief interventions would be delivered. There are nine Community Health Organisations (CHOs) with associated addiction clinics and services around the country. It is proposed that the HSE would employ a fulltime Counsellor in each of the CHO groups to deliver the SAOR interventions and to communicate attendance with the Gardaí. In addition, clinical supervision of the programme will be provided by two Senior Counsellors. The cost of employing these staff to provide SAOR interventions (including overheads and PRSI) is estimated at almost €780,000.

9.3.8 In order to estimate the cost of treatment requires a number of assumptions. Based on Portuguese research, it is assumed that 10% of those who attend for a brief intervention will have problematic drug use and will require treatment. The current average treatment cost across all drug types is estimated to be €3,249 per treatment, which represents an average of high cost and low cost treatments. Assuming 10% of those arrested for personal possession will have problematic drug use leaves an estimate of 1,259 people requiring treatment. In total this leaves a cost of treatment at an estimated €4.09 million.
### Estimated Cost of Health Diversion €m

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost (€m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gardaí Referral Cost*</td>
<td>€2.24</td>
</tr>
<tr>
<td>SAOR Brief Intervention **</td>
<td>€0.78</td>
</tr>
<tr>
<td>Costs of Treatment **</td>
<td>€4.09</td>
</tr>
<tr>
<td>Health Costs</td>
<td>€4.87</td>
</tr>
<tr>
<td>Total Costs</td>
<td>€7.11</td>
</tr>
<tr>
<td>Change in costs***</td>
<td>+€5.95</td>
</tr>
</tbody>
</table>

*Source: IGEES DOJE Estimates based on HSE costs*

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

**Provided by HSE**

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

#### 9.3.9

Combining all of the health associated costs (SAOR brief intervention and treatment) together leaves an estimated health cost of €4.87 million. Adding this cost to the estimated cost to the Gardaí gives a total of €7.11 million.

#### 9.3.10

Table 12 beneath summarises the costs included across the different sectors, the additional costs involved and the percentage change when compared with the costs included in the current approach.

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Gardaí Costs</th>
<th>Health Costs</th>
<th>Total Costs of Intervention</th>
<th>Current Justice Costs</th>
<th>Additional Costs</th>
<th>% change***</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult Caution</td>
<td>4.29</td>
<td>4.29</td>
<td>7.00</td>
<td>3.13*</td>
<td></td>
<td>45%</td>
</tr>
<tr>
<td>Multiple Adult Cautions</td>
<td>5.15</td>
<td>5.15</td>
<td>7.00</td>
<td>3.99*</td>
<td></td>
<td>57%</td>
</tr>
<tr>
<td>Diversion to Health Services</td>
<td>2.24</td>
<td>4.87</td>
<td>7.11</td>
<td>7.00</td>
<td>5.95**</td>
<td>85%</td>
</tr>
</tbody>
</table>

*Additional Gardaí costs compared to the current approach*

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

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

#### 9.3.11

The findings are very high-level estimates and based on a limited availability of data. There is a clear indication of additional costs to An Garda Síochána within the justice sector and additional costs in the health sector depending on the selected approach. It should be recalled that the current approach included no health costs. The transfer of costs within the agencies would not lead to a reduction in workload or staffing which suggests no clear savings. Although all three models would lead to a reduction in numbers of people prosecuted and imprisoned for personal possession, this costings estimate did include any reduction in these costs.
10 Recommendations

10.1 Policy Options

10.1.1 The Working Group acknowledges that the Legislature may decide to continue with the current approach. However, in line with its mandate, the Working Group has considered a number of alternatives to the current approach, outlined in section 8.

10.1.2 Based on the deliberations of the group, including consideration of the presentations made to the group, the cost benefit analysis, the commissioned research and the discussions of the alternatives in section 8, the Working Group can recommend the following three options to the Legislature for their consideration:

Option 1: Adult Caution

- The Adult Cautioning Scheme is a discretionary alternative to prosecution, whereby a person found in possession of drugs for personal use could be given a formal caution by An Garda Síochána, who could also provide the individual with a health and social services information leaflet.

Option 2: Multiple Adult Cautions

- Subject to the agreement of the DPP, a person could be given the benefit of an Adult Caution by An Garda Síochána more than once. This could provide a discretionary alternative to prosecution and criminal conviction on more than one occasion.
- The individual would also be provided with a health and social services information leaflet whenever they are given an Adult Caution in respect of possession of drugs for personal use.

Option 3: Diversion to Health Services

- This option is based on a public health approach to drug use.
- A person in possession of drugs for personal use would be offered a diversion for a SAOR brief intervention and screening.
- A person with or at risk of problematic drug use would then be offered the appropriate onward referral for treatment or other supports.

10.1.3 Table 13 below compares the three policy options across a number of categories.
<table>
<thead>
<tr>
<th><strong>Option 1</strong></th>
<th><strong>Option 2</strong></th>
<th><strong>Option 3</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Adult Caution</strong></td>
<td><strong>Multiple Adult Cautions</strong></td>
<td><strong>Referral to Health Services</strong></td>
</tr>
<tr>
<td>Alternative to Criminal Conviction</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>For first offence</td>
<td>For first two offences</td>
<td>For a defined number of offences</td>
</tr>
<tr>
<td>Health and social services information leaflet</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Health screening and intervention</td>
<td>No</td>
<td>But advice will be provided on health and social services available</td>
</tr>
<tr>
<td>But advice will be provided on health and social services available</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Additional costs</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Garda intervention with Adult Caution</td>
<td>Garda intervention with Adult Caution</td>
<td>Additional treatment episodes within the health system, as appropriate</td>
</tr>
<tr>
<td>Legislative change required</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Enable Gardaí to divert to health services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operational Guidelines Required</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Would need agreement between DPP and the Garda Commissioner and operational guidelines for Gardaí</td>
<td>Would need agreement between DPP and the Garda Commissioner and operational guidelines for Gardaí</td>
<td>Would need guidelines around eligibility criteria, method of diversion and information sharing methodology</td>
</tr>
</tbody>
</table>

Table 13: Comparison of the three recommended policy options

10.1.4 The Working Group proposes the above policy options on the basis that it considers them to address the concerns of Government and the public to varying degrees, and believes that they could work in the Irish context.

10.2 Other Recommendations

10.2.1 Imprisonment is the ultimate sanction currently available to the courts for those convicted of possession of illegal drugs. As outlined in section 3 there has been a large
decrease in the number of people being committed to prison for this offence; from 365 in 2015 to 73 in 2017. However, there are many harms associated with imprisonment such as stigmatising groups, breaking down family and social networks and disenfranchising entire areas of city centres.\textsuperscript{110} In addition, it has been shown that incarcerating young males and thereby exposing them to that environment can make it less likely that they will grow out of their criminal behaviour at the usual pace.\textsuperscript{111} The Working Group recommends in principle amending the penalty scheme in Section 27 of the Misuse of Drugs Act 1977 so that imprisonment is no longer an outcome for the possession of drugs for personal use subject to a full examination of the legal implications and any unforeseen consequences.

10.2.2 Under the provisions of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, a person can only have one drug conviction spent. However, with other types of convictions, such as minor public order offences, more than one conviction can be spent. The group believes that this runs counter to aim of supporting people to recover from their addiction. Therefore, the Working Group recommends a change to the Act so that all convictions for drug possession for personal use (Section 3 MDA) can be spent. In addition, the group recommends decreasing the seven year period to three years between the conviction and it becoming spent.

10.2.3 Under the Probation of Offenders Act 1907, two options are available to the judiciary when sentencing:

- Dismissal under the Probation of Offenders Act
- A Probation Order

As the name suggests, a dismissal is not a recorded conviction. A Probation Order puts an offender under the supervision of a Probation Officer for a period of up to three years. The Working Group considers it important that a dismissal or non-conviction under the Probation Act be recorded correctly and that this court outcome is clear when a person’s records are being checked.

10.2.4 As the Working Group is considering possession of drugs for personal use only, it can be helpful to distinguish between what is meant by personal use versus that for sale or supply. Some countries have introduced threshold limits to help the authorities make this distinction, so that a person found in possession of a quantity of drugs greater than the limit are prosecuted under a more serious offence such as supply. There are many variations in how thresholds are set; weight of drugs, value of drugs, number of doses or weight of active ingredient in the drug. There is much debate about the harms that can be caused by setting threshold limits that are too restrictive or by encouraging small level suppliers to only possess an amount of drugs for sale below the threshold so as to avoid the full rigours of the law. Currently in Ireland, the Misuse of Drugs Act does not determine whether a person is in possession of drugs for personal use or for supply. It requires that account is taken of the context and of other factors to determine intent. In the context of the three options it recommends, the Working Group does not propose the introduction of threshold limits under

\textsuperscript{110} O’Sullivan, E. & O’Donnell, I. (2003). Imprisonment and the Crime Rate in Ireland. \textit{The Economic and Social Review}, 43 (1); 33-64

current legislation. The Group recommends the retention of the statutory presumption to the effect that where the quantity of drugs involved renders it reasonable to assume that they were not for immediate personal use, they were possessed for the purpose of sale or supply.

10.2.5 Problem substance use is a chronic, often recurring condition. As a result, recovery is often seen as a journey and rehabilitation as a process that supports and encourages the individual at each stage along the pathway to recovery. The Working Group is keen that every opportunity should be made to support people on their recovery journey even if they are in the criminal justice system for an offence connected to their drug use. Therefore, the Working Group recommends that there are pathways available at all levels of the criminal justice system to refer people to treatment following prosecution.

10.2.6 Any change to the current approach for personal possession is likely to lead to greater demand for treatment and to put more pressure on policing services (so-called “net-widening”). Some of the proposed policy options will lead to greater treatment demand than others. In light of this, the Working Group recommends additional investment in services to support the policy option that is chosen.

10.2.7 A public health approach aims to prevent and address health problems that may arise from drug use. The national drugs strategy focuses on a coordinated, comprehensive effort involving all sectors to create safer, healthier communities by supporting people to avoid, reduce and recover from drug-related harm. The Working Group is aware of the growing harms associated with cannabis use because of increased THC (Tetrahydrocannabinol) levels. It is important that all sectors work together to inform the public about the harms associated with cannabis and all other illicit drug use. The Working Group recommends a campaign to increase awareness of the treatments available and of the harms associated with drug use.

10.2.8 Based on international experience and presentations to the Group regarding the risk of unintended consequences in introducing alternative approaches, and to ensure an effectively governed structure is put in place for an alternative measure to successfully operate, the Working Group recommend that any alternative approach introduced is monitored, has a data collection mechanism, an evaluation of the implementation and scope for appropriate modification.
Addenda

The addenda that follow were not discussed by the working group and represent the views of their authors.

Other members of the working group may not necessarily endorse any or all of the comments contained therein.
Addendum I

Statement by Padraic Taylor (ODPP)

I should explain the general context in which I make my comments. I am a lawyer in the Office of the Director of Public Prosecutions. The Director is independent of Government and the legislature, and her role is to prosecute such criminal offences as are set out in legislation. It is a matter of policy therefore for the Government and the legislature to decide what behaviours should be criminalised or decriminalised and to decide on any legislative responses to criminal behaviour.

I wish to comment specifically on recommendations 10.2.1 and 10.2.2. Where convictions result it is a matter for the courts to impose the applicable penalties appropriately. It is therefore not a matter for the Director or for me as one of her lawyers to recommend the removal of certain penalty options from criminal legislation. For that reason it would not be appropriate for me to endorse those recommendations.

Recommendation 10.2.1 concerns the penalty scheme under the Misuse of Drugs Acts for possession of drugs for personal use. I note the group's recommendation at paragraph 10.2.1 is said to be made subject to a full examination of the legal implications and any unforeseen consequences of such amendment. I wonder therefore about this recommendation being made by the group prior to any such examination being carried out.

I think it is worth noting some of the legal implications and unforeseen consequences that might flow from the removal of a custodial penalty for Section 3 possession. One immediate legal implication of removing the penalty of imprisonment is that community service orders would no longer be available as an alternative to a custodial sentence. Nor would suspended sentences be open to the sentencing judge, thus removing a potential deterrent from re-offending while the suspended sentence was hanging over the offender. Unforeseen consequences could include a range of scenarios where suspects are detected in possession of small amounts of drugs, but the public interest might require a penalty of imprisonment as an option. This could include, for example, suspects involved in drug dealing who carry small amounts of drugs or individual 'deals' as a matter of practice to avoid more serious penalties. Removing imprisonment as an option for such offenders or for recidivist repeat offenders, who are making no efforts to rehabilitate themselves, could remove the deterrent effect which is an essential element of all criminal penalties.

In relation to paragraph 10.2.2 concerning spent convictions, I would simply point out that for similar reasons as set out above, the question of whether and how many convictions can be spent is a policy matter and one ultimately for the legislature.
Addendum II

Preferred Recommendations of Tom O’Malley

(1) The possession of drugs for personal use should remain a criminal offence, as it currently is under the Misuse of Drugs Act 1977 as amended. I take this view mainly because of the volume of criminal activity, including some horrendously serious crimes against the person, occasionally committed by offenders to finance their drug addiction. This is not to suggest that all drug users engage in crime (apart from the possession itself) and it is possible that the majority do not. However, the problem is sufficiently serious that it is sound policy to continue to outlaw the possession of controlled drugs and to ensure that those who possess such drugs, whether for personal use or sale or supply, can be dealt with by the criminal justice system.

(2) Having said that, I accept that a conviction for a drug offence can, in many instances, have serious consequences for the person convicted. The formal penalty may be lenient (such as a fine) but having a criminal record for such an offence can have far more lasting consequences.

(3) While the possession of a controlled drug for personal use should remain an offence, a suite of measures should be in place to promote desistance and to remove the adverse consequences of a conviction for those found in possession of drugs for personal unless there evidence of serious recidivist offending. These measures would include:

(a) diversion from prosecution for both juvenile and adult offenders, through the use of cautioning schemes, especially, though not necessarily exclusively, for first offenders;
(b) measures that would encourage those caught in possession of drugs to seek appropriate treatment and counselling if they have addiction problems;
(c) courts should be encouraged to adopt measures such as a dismissal or discharge under the Probation of Offenders Act 1907 when dealing with persons charged of possessing drugs for personal use (acknowledging that the courts already apply such measures in many cases);
(d) the sentencing regime that now applies to possession of cannabis for personal use under s. 27 of the Misuse of Drugs Act 1977 (as amended) should apply to all controlled drugs.
(e) the government should be encouraged to establish dedicated treatment facilities for persons who are convicted of drug and drug-related offences. Committal to such a facility be used as an independent sentencing option where there is clinical evidence that an offender was likely to benefit from such a measure.

(4) I agree with all the recommendations at 10.2.2 to 10.2.8 above

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Addendum III

Observations of An Garda Síochána

The report of the working group established to consider alternatives approaches to the possession of drugs for personal use has been considered by An Garda Síochána.

An Garda Síochána welcomes the implementation of the National Drugs Strategy, titled "Reducing Harm Supporting Recovery, A Health Led Response to Drug & Alcohol Use in Ireland 2017-2025". The support from other entities in dealing with users of controlled substances, who possess such substances only for their own use and are not otherwise engaged in the drug trade is a significant support to An Garda Síochána in tackling the illicit drug trade.

An Garda Síochána supports the objective of this Working Group in identifying any alternative approach, which would involve a person being afforded the opportunity to avoid a criminal conviction for drugs for their personal use, provided reasonable efforts are made to tackle their drug use related problem, including:

(i) Support to avoid, reduce and recover from drug related harm;

(ii) Problematic drug use being referred to appropriate treatment(s) and/or other support(s).

However, initiatives of this nature must include strong controls and monitoring of compliance with programmes. The continued behaviour of habitual drug users cannot be allowed to impact on the quality of life of the rest of society unchecked. Where habitual drug use is impacting on the local community, An Garda Síochána must be in a position to take appropriate action.

An Garda Síochána strongly cautions against adopting policies which would result in the inability of An Garda Síochána to tackle anti-social behaviour arising as a result of drug use. The most appropriate place to deal with such matters remains the Criminal Justice System where the Courts can divert individuals to appropriate supports and monitor compliance through the probation service or other appropriate body.

As you will be aware a review of the Adult Caution Scheme has been under taken under the auspices of the Criminal Justice Strategic Committee (CJSC). It is understood that the matter of adult cautions in respect of possession of drugs for personal use is being considered by this group.

An Garda Síochána does not recommend the introduction of a system which would allow for multiple adult cautions. Such a policy will exacerbate criminal problems as the drugs market
would most likely prosper on the basis that Gardaí will no longer have affective tools to deal with offences under the provisions of Section 3 of the Misuse of Drugs Act, 1977.

Furthermore, illicit drug users may exploit that they are permitted to carry and possess drugs for personal use. Drug dealers and their couriers may adapt their behaviour to carry small quantities of drugs in the knowledge that they are permitted to possess a quantity for drugs for personal use. Experience in other jurisdictions has shown where the drugs market encourages growth it increases activities of organised crime gangs (OCG) and the risk of vicious territorial disputes.

There is little reflection of the impact of the drugs market on organised crime in Ireland, while reference is made to the attraction of the drugs market to organised crime due to the high profit margins, the report does not take full cognisance of this linkage. Further examination is required to establish the risk from organised crime should the report recommendations be adopted.

Having carefully considered the recommendations An Garda Síochána cannot recommend acceptance of the recommendation at 10.2.1 - amending the penalty scheme in section 27 of the Misuse of Drugs Act 1977 so that imprisonment is no longer an outcome for the possession of drugs for personal use.

The recommendation made at 10.2.1, if implemented, has the potential to encourage use of controlled substances and is not consistent with implementation of policies in the interest of the welfare of society in general and individuals who have become addicted to controlled substances, in particular. A full examination of the legal implications and any unforeseen consequences of implementation of a policy of this nature should be undertaken, in advance of making such changes.

An Garda Síochána also has reservations with regard to endorsing the recommendation made at 10.2.2, which suggests a change to the Misuse of Drugs Act so that all convictions for drug possession for personal use (Section 3 MDA) can be spent.

An Garda Síochána supports the Working Group’s proposal to make the additional recommendations set out at 10.2.3, 10.2.4, 10.2.5, 10.2.6, 10.2.7 and 10.2.8 in its draft final report which are clearly designed to tackle issues associated with personal drug use and to discourage use of such substances.

It is clear that any alternative to the existing approach to illicit drug possession, will have an impact on An Garda Síochána, both from an operational and resource perspective. The procedural or legal impediments to any alternative approach to the issues involved, has not been fully explored by the Working Group.
For the reasons as outlined above, An Garda Síochána is not in a position to recommend full adoption of the final report of the working group established to consider alternative approaches to the possession of drugs for personal use in its current format.
Appendix I

Membership of the Working Group

Mr Justice Garrett Sheehan  Chairperson
Michael Kelly  Department of Justice and Equality
Therese Molyneux  Department of Justice and Equality
Jim Walsh  Department of Health - Drugs Policy Unit
Dr Sarah Waters  Department of Health - Drugs Policy Unit
Eugene Lennon  Department of Health - Controlled Drugs Unit
Mary Dowling  Department of Health - Controlled Drugs Unit
Det. Supt. Brian Woods  An Garda Síochána
Dr Eamon Keenan  HSE
David Kenny  Probation Service
Stephen Winders  Person with lived experience of using drugs
John Devoy  Person with lived experience of using drugs
Dr Jean Long  Health Research Board
Padraic Taylor  Office of the Director of Public Prosecutions
Tom O'Malley  Barrister and Senior Lecturer, NUI Galway
Colin Lavelle  Secretariat to the Working Group
Jane-Ann O'Connell  Secretariat to the Working Group

1 Michael Kelly was a member of the group for 12 months. Una Dixon replaced Michael Kelly of Department of Justice and Equality from meeting seventeen.
2 Jane-Ann O'Connor deputised for Department of Health - Drugs Policy Unit at the first and second meeting
3 Randall Plunkett replaced Eugene Lennon of Department of Health - Controlled Drugs Unit from meeting five
4 Conor Brennan replaced Mary Dowling of Department of Health - Controlled Drugs Unit from meeting six
## Appendices II

### Penalties on Conviction for personal use

<table>
<thead>
<tr>
<th>Misuse of Drugs Act 1977 to 2016:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penalties on Conviction for personal use</td>
</tr>
</tbody>
</table>

Section 27: Penalties on conviction are set out as in the table below, **but subject to:**

Section 28: the Court power to request a report on the person convicted of the offence and, instead of imposing a penalty under section 27, arrange for the medical treatment or for the care of the person.

<table>
<thead>
<tr>
<th>Cannabis</th>
<th>In any other case</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>In the case of a first offence,</strong></td>
<td>on summary conviction, to a fine not exceeding £300, or</td>
</tr>
<tr>
<td>• on summary conviction, to a fine not exceeding £300, or</td>
<td>• on conviction on indictment, to a fine not exceeding £500,</td>
</tr>
<tr>
<td>• on conviction on indictment, to a fine not exceeding £500,</td>
<td></td>
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<tr>
<td><strong>In the case of a second offence,</strong></td>
<td>on summary conviction, to a fine not exceeding £400, or</td>
</tr>
<tr>
<td>• on summary conviction, to a fine not exceeding £400, or</td>
<td>• on conviction on indictment, to a fine of such amount as the court considers</td>
</tr>
<tr>
<td>• on conviction on indictment, to a fine not exceeding £1,000,</td>
<td>appropriate or, at the discretion of the court, to imprisonment for a term not</td>
</tr>
<tr>
<td><strong>In the case of a third or subsequent offence,</strong></td>
<td>exceeding seven years, or to both the fine and the imprisonment.</td>
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<tr>
<td>• on summary conviction, to a fine not exceeding £1,000 or, at the</td>
<td></td>
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<tr>
<td>discretion of the court, to imprisonment for a term not exceeding</td>
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<tr>
<td>twelve months, or to both the fine and the imprisonment, or</td>
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</tr>
<tr>
<td>• on conviction on indictment, to a fine of such amount as the court</td>
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<tr>
<td>considers appropriate or, at the discretion of the court, to imprisonment</td>
<td></td>
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<tr>
<td>for a term not exceeding three years, or to both the fine and the</td>
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<tr>
<td>imprisonment;</td>
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Appendix III
Appendix IV

Eligibility for the Drug Treatment Court

The Court is open to receive participants who meet the following criteria:

I. Be 18 years or older
II. Have pleaded guilty or been found guilty and facts heard in the District Court of a non-violent criminal offence
III. Be liable to be sentenced to a term of imprisonment if convicted
IV. Road Traffic cases will not be accepted in the DTC
V. Be dependent on the use of prohibited drugs and/or prescribed drugs
VI. Be resident in the Dublin area
VII. A participant should have no outstanding Circuit Court matters.
VIII. Previous history of violent offending may be a bar to participation.
IX. Participants will be remanded to Green Street Court House any Wednesday at 2pm
Appendix V

Offences currently available for disposal under the Adult Caution Scheme

Criminal Justice (Public Order) Act, 1994
Section 4: Intoxication in a public place
Section 5: Disorderly Conduct in a public place
Section 6: Threatening, abusive or insulting behaviour in a public place
Section 8: Failure to comply with direction of a member of An Garda Síochána
Section 9: Wilful Obstruction
Section 11: Entering building etc. with intent to commit an offence
Section 22: Surrender and seizure of intoxicating liquor

Intoxicating Liquor Act, 2003
Section 6: Offences by a drunken person
Section 8: Disorderly conduct

Intoxicating Liquor Act, 1927
Section 17: Persons on licensed premises during prohibited hours

Licensing Act, 1872
Section 12: Public Drunkenness

Non-Fatal Offences Against the Person Act, 1997
Section 2: Assault (assaults on a member of An Garda Síochána shall be forwarded to the Director of Public Prosecutions)

Criminal Justice (Theft and Fraud Offences) Act, 2001
Section 4: Theft (where the value of the property concerned is less than €1,000)
Section 8: Making off without payment (where the value of the payment is less than €1,000)
Section 17: Handling stolen property (where the value of the property concerned is less than €1,000)
Section 18: Possession of stolen property (where the value of the property concerned is less than €1,000)

Criminal Damage Act, 1991
Section 2: Damaging Property (where the value of the property damaged is less than €1,000)
Section 3: Threat to damage property

Dublin Police Act, 1842
Section 14 (12): Nuisances in Public thoroughfares (applies to Dublin Metropolitan (Court) District Only)

Summary Jurisdiction (Ireland) Amendment Act, 1871
Section 8: Offensive or riotous conduct in a theatre or other place of public amusement (applies to Dublin Metropolitan (Court) District only)
Appendix VI

Classification of the Functions of Government (COFOG) 1999

The Classification of the Functions of Government (COFOG) was developed by the Organization for Economic Cooperation and Development and published by the United Nations Statistical Division. It can be applied to government expense and the net acquisition of non-financial assets. COFOG has three levels of detail: Divisions, Groups, and Classes. The Divisions could be seen as the broad objectives of government, while the Groups and Classes detail the means by which these broad objectives are achieved. The initials “CS” or “IS” follow the title of each Class in parentheses to indicate whether the services produced by general government units and included in this Class are collective or individual services.

01 - General public services
01.1 - Executive and legislative organs, financial and fiscal affairs, external affairs
01.2 - Foreign economic aid
01.3 - General services
01.4 - Basic research
01.5 - R&D General public services
01.6 - General public services n.e.c.
01.7 - Public debt transactions
01.8 - Transfers of a general character between different levels of government

02 - Defence
02.1 - Military defence
02.2 - Civil defence
02.3 - Foreign military aid
02.4 - R&D Defence
02.5 - Defence n.e.c.

03 - Public order and safety
03.1 - Police services
03.2 - Fire-protection services
03.3 - Law courts
03.4 - Prisons
03.5 - R&D Public order and safety
03.6 - Public order and safety n.e.c.

04 - Economic affairs
04.1 - General economic, commercial and labour affairs
04.2 - Agriculture, forestry, fishing and hunting
04.3 - Fuel and energy
04.4 - Mining, manufacturing and construction
04.5 - Transport
04.6 - Communication
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<tr>
<th>Industry Group</th>
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<tr>
<td>Waste water management</td>
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<tr>
<td>Pollution abatement</td>
<td>05.3</td>
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<tr>
<td>Protection of biodiversity and landscape</td>
<td>05.4</td>
<td></td>
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<tr>
<td>R&amp;D Environmental protection</td>
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<td>Housing and community amenities</td>
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<td>Water supply</td>
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</table>
10 - Social protection
10.1 - Sickness and disability
10.2 - Old age
10.3 - Survivors
10.4 - Family and children
10.5 - Unemployment
10.6 - Housing
10.7 - Social exclusion n.e.c.
10.8 - R&D Social protection
10.9 - Social protection n.e.c.
Review of approaches taken in Ireland and in other jurisdictions to simple possession drug offences

Dr Caitlin Hughes¹, Professor Alex Stevens²,
Shann Hulme¹ and Dr Rebecca Cassidy²

¹ National Drug and Alcohol Research Centre, UNSW Australia
² University of Kent

A report for the Irish Department of Justice & Equality and the Department of Health (and the working group on this issue)

September 2018
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We would like to acknowledge the contributions of our country experts for cross-checking and identifying other relevant literature:

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- Vendula Belackova, Czech Republic

All conclusions and recommendations as well as any errors are those of the research team.

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## Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACPO</td>
<td>Association of Chief Police Officers</td>
</tr>
<tr>
<td>AIDS</td>
<td>Acquired immunodeficiency syndrome</td>
</tr>
<tr>
<td>AOD</td>
<td>alcohol and other drug</td>
</tr>
<tr>
<td>CDT</td>
<td>Commission for the Dissuasion of Drug Addiction</td>
</tr>
<tr>
<td>CJS</td>
<td>criminal justice system</td>
</tr>
<tr>
<td>EMCDDA</td>
<td>European Monitoring Centre for Drugs and Drug Addiction</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
</tr>
<tr>
<td>IDDI</td>
<td>Illicit Drug Diversion Imitative</td>
</tr>
<tr>
<td>IV</td>
<td>intravenous</td>
</tr>
<tr>
<td>LCWS</td>
<td>Lambeth Cannabis Warning Scheme</td>
</tr>
<tr>
<td>MDA</td>
<td>Misuse of Drugs Act</td>
</tr>
<tr>
<td>NGO</td>
<td>non-government organisation</td>
</tr>
<tr>
<td>NPCC</td>
<td>National Police Chiefs Council</td>
</tr>
<tr>
<td>OMCG</td>
<td>outlaw motorcycle gang</td>
</tr>
<tr>
<td>PWUD</td>
<td>people who use drugs</td>
</tr>
<tr>
<td>QCA</td>
<td>qualitative comparative analysis</td>
</tr>
<tr>
<td>RRR</td>
<td>rapid realist review</td>
</tr>
<tr>
<td>THC</td>
<td>tetrahydrocannabinol</td>
</tr>
<tr>
<td>TQ</td>
<td>threshold quantities</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>USA</td>
<td>United States of America</td>
</tr>
</tbody>
</table>
Executive summary

This report reviewed approaches taken in Ireland and nine other jurisdictions to simple possession drug offences with the aim of identifying alternative approach options that would be possible in the Irish context and the advantages and disadvantages of each.

Approach

A rapid realist review was conducted of the international evidence on alternatives to simple possession following the RAMESES protocol (Realist And Meta-narrative Evidence Syntheses: Evolving Standards) (Wong, Greenhalgh, Westhorp, Buckingham, & Pawson, 2013). Nine nations with alternative approaches were selected based on their mix of reform types and relevance to the Irish situation: Australia, Czech Republic, Denmark, England and Wales, Germany, Jamaica, the Netherlands, Portugal and the United States of America (USA). This gave rise to 15 different approaches: between one and three per country.

A coding schedule was devised that covered the context, mechanisms and outcomes of the approaches (intended and unintended) on the individual, the family and society, the criminal justice system (CJS) and the health system. A total of 6198 records were initially identified and 158 were included for extraction. The number of documents ranged from three in Jamaica (the country with the most recent reform) to 45 in the USA.

Two forms of analysis were conducted. First, literature on the context, mechanisms and outcomes of the reforms was synthesised for each country. Secondly, qualitative comparative analysis was used to produce an empirically based, theoretically informed typology of alternative approaches to deal with simple possession offences, extrapolating across countries. Advantages and disadvantages were then synthesised for each policy option.

The Irish context

Ireland has a common law, constitutional legal system, without a well-developed system of civil, administrative law. Under current law Misuse of Drugs Act 1977 possession for personal use of cannabis is punishable by up to one-year imprisonment for a summary conviction or three years imprisonment for conviction on indictment. Possession for personal use of other illicit drugs is punishable by up to one-year and seven-years imprisonment, for a summary or indictable offence respectively.

The existing use of alternatives is more limited than in many other European Union (EU) countries (Kruithof et al., 2016). Only one formal alternative for drug-related offenders is currently used: the Drug Treatment Court in Dublin, which is mainly targeted at serious drug-related offenders. The potential benefits of using alternatives to arrest in Ireland for minor drug offenders have been discussed for several years (e.g. Griffiths et al., 2016), including in the 2017 National Drug Strategy.

Drug-related harms are significant issues in Ireland, including reported overdoses and infections and concerns about violent and organised crime. Of particular concern:

- Ireland has the second highest rate of ‘problematic opiate users’ in the EU.
- Rates of HIV infection among people who inject drugs are also relatively high by European standards and has seen a further outbreak of new infections in 2015.
- There was an increase in Ireland from 2005 to 2015 in current and recent use of cannabis and ecstasy, particularly among young people aged 15 to 34.

Recent trends in criminal justice responses also show:

- Between 2015 and 2017 there were an average of 11,626 incidents of recorded possession for personal use in any one year.
- The total number of recorded possession incidents for personal use has increased.
Alternate approaches for dealing with simple possession drug offences

Qualitative comparative analysis was used to derive six different approaches for dealing with simple possession drug offences. The set of options took into account core differences in:

1. The legal basis: *de jure* = in law or *de facto* = in guidelines.
2. Whether or not the approach employs pathways to education/treatment/social services
3. Whether the approach utilises administrative or civil sanctions

The key features of each are summarised below alongside applicable examples across the nine nations.

### Alternate approaches for dealing with simple possession drug offences

<table>
<thead>
<tr>
<th>Type</th>
<th>Legal basis</th>
<th>Pathways to education / therapy / social services</th>
<th>Administrative / civil sanctions</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Depenalisation</td>
<td><em>De facto</em></td>
<td>No</td>
<td>No</td>
<td>Netherlands Gedoogbeleid ‘tolerance policy’ (cannabis only), US police ‘deprioritisation’, UK cannabis and khat warnings, Denmark warnings</td>
</tr>
<tr>
<td>Police diversion (de facto)</td>
<td><em>De facto</em></td>
<td>Yes</td>
<td>No</td>
<td>Police diversion schemes in most Australian states, Netherlands diversion (hard drugs only), English police diversion schemes in Durham, West Midlands and Avon, US LEAD programme, Baltimore pre-booking scheme</td>
</tr>
<tr>
<td>Police diversion (de jure)</td>
<td><em>De jure</em></td>
<td>Yes</td>
<td>No</td>
<td>South Australian Police Drug Diversion Initiative and Queensland Police Drug Diversion Program (police mandated by law to offer diversion to treatment)</td>
</tr>
<tr>
<td>Decriminalisation with no sanctions attached</td>
<td><em>De jure</em></td>
<td>No</td>
<td>No</td>
<td>Germany (by virtue of Constitutional ruling) and Vermont USA (since 2018)</td>
</tr>
<tr>
<td>Decriminalisation with civil or administrative sanctions</td>
<td><em>De jure</em></td>
<td>No</td>
<td>Yes</td>
<td>Czech Republic, Jamaica, Cannabis Expiation Notice schemes in three Australian states (ACT, SA, NT), many US states (e.g. Ohio, Mississippi, Massachusetts, Rhode Island)</td>
</tr>
<tr>
<td>Decriminalisation with targeted diversion to health / social services</td>
<td><em>De jure</em></td>
<td>Yes</td>
<td>Yes</td>
<td>Portugal and several US states (Maryland, Connecticut &amp; Nebraska)</td>
</tr>
</tbody>
</table>

Programme theories for each approach and the advantages and disadvantages differ in significant ways. Two approaches are outlined below. For full details see chapter five.
Depenalisation: Programme theory and advantages and disadvantages for Ireland

The first approach – depenalisation – has been used in many parts of the world, including Denmark, the Netherlands, England and Wales and the USA. Under depenalisation the goal is to avoid criminalising young people and to save police time to focus on more serious criminal activity. This is based on the belief that traditional policing approaches are ineffective and that police could better allocate resources to more serious crime (be that drug trafficking or other offences). Implicit in this approach is also the belief that people detected for drug possession do not warrant criminal sanctions, nor any other form of social intervention. That is “doing nothing” or “doing little” is the best approach for any people found in possession of drugs.

The programme theory says that if police switch to minimal intervention for people who possess drugs for personal use (e.g. issue warnings instead of arrests), police, prosecutors and courts will have more time to focus on other activities (e.g. serious crime) and there will be fewer people who use drugs who are arrested or convicted for possession alone. In turn this will save the CJS money, lead to more effective resource allocation, and improve the ability of people who use drugs to obtain employment, and to travel without the collateral consequences from criminal justice interventions. Evidence suggests this may also increase some access to drug treatment and harm reduction services, albeit via voluntary means.

An advantage of this approach is that there are few required inputs to implement a model of depenalisation other than new police or prosecutorial guidelines. Particularly in the Irish context it would not necessitate changes in laws or new civil or administrative sanctions for this offence. There is also little risk of over-burdening other systems such as treatment. However, analysis of depenalisation approaches in England and Wales, Denmark and USA suggest that this may not be supported by police and it may lead to net-widening, whereby more people receive some form of intervention, and thus increase the burden on the CJS. It may also lead differential implementation on the ground (justice by geography). Evidence suggests voluntary uptake of drug treatment or harm reduction services may in some cases be minimal and hence that it may be difficult using this model to reduce drug-related harms associated with problematic opiate use. This therefore may be an option which the Irish government may consider applying only to some drugs (e.g. cannabis), or only to first or second time offences.

Decriminalisation with targeted diversion to health/social services: Programme theory and advantages and disadvantages for Ireland

The second approach – decriminalisation with targeted diversion to health / social services – has been employed in Portugal and several US states (Maryland, Connecticut & Nebraska). Under this model the goal is to ensure that people are not criminalised for simple possession alone, while recognising that certain patterns of drug use can be harmful and a symptom of broader health or social problems. As such, governments ought to use the point of detection as a means by which to screen and identify high-risk offenders and address their treatment and other needs. A number of new inputs are required for this approach to work including new laws (civil or administrative) and referral pathways and the ‘purchase’ of additional supports (e.g. for treatment or employment/training).

However, the evidence base on model types in Portugal and several US states (Maryland, Connecticut and Nebraska) indicates that such an approach should increase offender access to alcohol and other drug (AOD) treatment and other services (if and when required), albeit mainly for high-risk offenders, while low risk offenders receive faster, cheaper, less intensive, non-criminal response (e.g. suspended sanctions, civil penalties etc). This should avoid collateral consequences of convictions for people who possess drugs for personal use (e.g. on employment), reduce costs to the CJS high-frequency use, criminality and infections. It may also increase social reintegration (through direct or indirect means), especially if combined with investment in public health and social support.

Several factors have been found to affect the ability to deliver these goals: a) level and quality of treatment and other services, b) design of referral pathways, c) design of eligibility criteria, and d) overarching legal framework. Best practice models ought to consider what type of support is needed: treatment, social supports (e.g. employment assistance) or a mixture, as well as ensure high efficacy of service provision. Some referral mechanisms are more resource intensive (e.g. Portugal which
established 18 dissuasion committees across the country, as opposed to simple police referrals in Maryland). Some legislative frameworks are also less effective as they limit ‘reach’ over the potential pool of offenders. Of note, Nebraska only partially removed criminal penalties, which led to many people continuing to receive criminal sanction. If proceeding with this option ‘full’ removal of criminal penalties is thus recommended as it will maximise impact.

In short there are a variety of options that could be taken: each of which could offer advantages for the Irish context. Given the known shape of the drug problem in Ireland (including relatively high levels of both cannabis and heroin use, with an interrelationship between unemployment and problematic drug use), one final proffered model is a mixed approach (combing two different options, as is done in some parts of the world – see Table 22). The Irish government could, for example, reduce the burden of criminalisation on people who use drugs by applying both depenalisation of the most minor drug possession offences and decriminalisation with targeted diversion for those offenders who are more likely to need it. On the basis of the available evidence, this would not pose a very high risk of increasing drug use (and so may have little effect on serious organised crime or drug driving), would reduce costs in the CJS, and would provide additional pathways into treatment or other social supports for people who need it (while not over-burdening the system with people who do not need it).

Any alternative approach to dealing with simple drug possession comes with risks. The research in this area is complex, incomplete and not capable of providing definitive answers about what the outcome of any given approach will be in the Irish context. The current approach also entails risk, including that costs and burdens are placed on citizens (taxpayers and people who use drugs) that are not justified by the effects in reducing social and health harms.

We hope this report will help to inform discussion in Ireland on how the best balance of risks and burdens can be achieved.
Chapter one: Introduction

This report reviews approaches taken in Ireland and other jurisdictions to simple possession drug offences with the aim of outlining alternative approach options that would be possible in the Irish context. The review was conducted for the Irish Department of Justice & Equality and the Department of Health (and the working group on this issue) over the period May to September 2018.

More specifically, the review covers:

A. The current legislative regime that applies to simple possession offences in Ireland and the rationale underpinning this approach, and any evidence of its effectiveness.

B. The approaches and experiences in nine other jurisdictions to dealing with simple possession offences.

C. The advantages and disadvantages, as well as the potential impact and outcomes of any alternative approaches to the current Irish system for the individual, the family and society, as well as for the CJS and the health system.

The broad aims of the review were:

1. To describe the current legislative regime for or policy approach to dealing with simple possession offences and its rationale in the jurisdictions selected.

2. To describe the legal or societal remedies for dealing with simple possession offences that applies in these jurisdictions.

3. To describe the experiences of these jurisdictions in using legal or societal remedies for dealing with simple possession offences.

4. To describe or synthesise the effectiveness (outcomes and impact) of legal or societal remedies for dealing with the offence of simple possession in these jurisdictions on the individual, the family and society, the CJS and the health system.

5. Using the research and information available in the review, describe policy options to deal with simple possession drug offences available to the Irish government and the advantages and disadvantages of each.

The approach taken to this review was a rapid realist review (RRR). Such an approach differs to a traditional narrative or systematic review, in that policy makers and experts are used to define the research questions and streamline the review, in the aim of informing policy makers of answers to questions that are most directly relevant to the policy problem they are trying to solve. A core focus is placed on unpacking the relationship between context, mechanisms and outcomes to illuminate in whether, why and how specific mechanisms will produce intended policy outcomes (for further details see chapter three).

Chapter two outlines the Irish context. Chapter three outlines the methods for the rapid realist review. Chapters four outlines the approaches and experiences in nine other jurisdictions: including the context of reform, mechanisms and outcomes (intended and unintended). Chapter five extrapolates policy learnings across the reforms and puts forward six difference policy options that could be implemented in Ireland.
Chapter two: Irish context, existing alternatives and implications for new alternatives

The aim of this chapter is to lay out the background to the current Irish approach for dealing with simple possession offences, discuss related issues and harms, describe existing alternative means of dealing with offences, and to draw implications for the consideration of new alternatives that arise from the specific features of the Irish context. This section is based on a narrative review of available literature, including peer-reviewed journal articles, books, government reports and other ‘grey’ literature. This includes the 2016 expert review of the Irish national drug strategy (Griffiths, Strang, & Singleton, 2016) and a 2016 report of the working group on alternatives to prosecution. The review of the Irish National Drug Strategy noted a consensus among the consulted experts that a wider range of alternatives for dealing with simple possession offences should be considered. The possibility of Ireland adopting the Portuguese model of decriminalisation has frequently been mentioned, including in a 2016 report of the Joint Committee on Justice, Defence and Equality and in the National Drug Strategy of 2017 (Department of Health, 2017).

Legal context
It is commonly asserted that countries can be classified as having either common law or penal code approach to defining criminal offences (although this distinction is often blurred in actual cases). Ireland falls into the former group, although moves have been made towards codification, with a draft criminal code published in 2013 (CLCAC, 2013). Some countries, such as Portugal, also have a comprehensive civil code or administrative law. Ireland does not, although there are some legal bases for the use of administrative penalties (e.g. the Central Bank Act 1942(CBI, 2018))

Irish law is founded on the Constitution of Ireland, which came into force in 1939 following a national plebiscite in 1937. Ireland is also a signatory to the European Convention on Human Rights (which was given further effect by the European Convention on Human Rights Act 2003) and to the three UN drug conventions of 1961, 1971 and 1988.

Ireland’s criminal law is still based on a mixture of statutory and common law precedents, some of which date back to the period before the Irish Free State, when Ireland was subject to English criminal law (O’Donnell, 2005).

Current law on simple possession of drugs
Current Irish law on drug offences is based on the Misuse of Drugs Act 1977 and the Misuse of Drugs Act 1984, as amended by the Criminal Justice Act 1994, the Criminal Justice (Drug Trafficking) Act 1996, the Licensing (Combating Drug Abuse) Act 1997, the Criminal Justice (Illicit Traffic by Sea) Act 2003 and the Criminal Justice (Psychoactive Substances) Act 2010 (LRC, 2016). According to the report to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA, 2018) the two most important Irish drug laws are the Misuse of Drugs Acts 1977 and 1984 (MDA). These criminalise drug possession, cultivation, importation and supply, but not use per se. The laws also distinguish between possession (for personal use) and possession for sale or supply.

The Misuse of Drugs Regulations 1988 (SI 328 of 1988) are also relevant to the criminalisation of drug possession, as they specify the circumstances under which it is not a criminal offence to possess one of the substances that are controlled under the Misuse of Drugs Acts (e.g. under medical prescription, or for clinical research)

From here on, ‘simple possession’ offences will be taken to mean offences that involve merely the possession for personal use of substances that are controlled by the Misuse of Drugs Acts in circumstances that are not exempted from prosecution by the Misuse of Drugs Regulations. Simple possession does not include possession with the intention to sell or supply. The offence of possession
is based on Section 3 of the Misuse of Drugs Act 1977 \(^1\) (S3 MDA). It should be noted that the Criminal Justice (Psychoactive Substances) Act 2010 does not create an offence of possession of the substances it covers. Possession of new psychoactive substances (NPS) for personal use is a criminal offence where the substance is designated a controlled substance for the purposes of the Misuse of Drugs Acts 1977 to 2016.

The penalties laid out by Irish law for drug possession offences depend on drug type (whether it involves cannabis or another controlled substance) and in which court the case is tried. The 2018 Irish report to the EMCDDA described the applicable penalties as follows:

> Possession of cannabis or cannabis resin for personal use is punishable by a fine on first or second conviction; however, third and subsequent offences are punishable by up to one year in prison for a summary conviction and up to three years for conviction on indictment. Possession in any other case is punishable by up to one year in prison and/or a fine on summary conviction and up to seven years’ imprisonment for conviction on indictment. However, the Criminal Justice (Community Service) Act 2011 requires courts to consider imposing a community service order instead of a prison sentence in all cases where up to 12 months’ imprisonment might have been deemed appropriate. (EMCDDA, 2018)

In contrast, the maximum penalty for offences involving drug supply is life imprisonment, and a minimum 10-year sentence is also available for supply offences involving more than €13,000-worth of drugs.

Ireland does not have a system of sentencing guidelines that advises judges on what the most appropriate sentences is for the severity of an offence, or the level of culpability of the offender (O’Malley, 2013). This may help explain – in addition to the complexities of assessing market values as a basis for sentencing – why Irish experts gave widely differing responses to questions in a European survey on the sentences given for typical drug trafficking offences (EMCDDA, 2017).

An important consequence of being arrested or convicted of simple possession of drugs is that the person receives a criminal record that may have to be disclosed under certain circumstances (e.g. in applying for work, or in applying for visas to travel to other countries). The 2016 expert review of the National Drug Strategy particularly highlighted concerns about the criminalisation of young people in Ireland caught in possession of drugs and the negative impact this may have on their life chances (Griffiths et al., 2016). Criminalisation may also create difficulties in gaining certain licenses (e.g. to drive passenger vehicles). Under the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, convictions that lead to a prison sentence of less than 12 months (or a fine) become ‘spent’ seven years after the sentence came into force. This means that the person is no longer required to declare the offence when applying for a job in Ireland, but they may still be required to declare an arrest or conviction in other circumstances (e.g. applying for a visa to enter the USA, or for Irish citizenship).

**Current practice in law enforcement**

Internationally, law enforcement practice cannot be read off directly from the law on the statute book, and may change over time (Belackova, Ritter, Shanahan, & Hughes, 2017). So, we need to look at the actual picture of law enforcement on the ground. In Ireland, the police, public prosecutors and courts have discretion – within the law – to act in the public interest in deciding on arrests, prosecutions and sentencing offenders. Herein we look at trends in all illicit drug offences over the last ten years as well as recent trends in drug possession arrests, court outcomes and convictions over the period 2015 to 2017, and how many convictions were for possession alone.

---

\(^1\) The 1977 Act may be viewed in full on [www.irishstatutebook.ie](http://www.irishstatutebook.ie)
Trends in the number of illicit drug offences in Ireland

Table 1 outlines the total number and type of illicit drug offences in Ireland from 2008 to 2017. This data is from the Central Statistics Office, under reservation, and as such is subject to change, but nevertheless provides a useful time series to contextualise recent trends. Table 1 shows that from 2008 to 2017 there have been an average of 17,800 recorded controlled drug offences per year in Ireland. Possession of drug offences for personal use account for between 71% and 77% in any one year, or 73% offences over the ten years inclusive. The number of recorded drug offences decreased year on year from 2008 until 2013, albeit that there has been a moderate increase over the last few years.

Table 1: Recorded controlled drug offences in Ireland, 2008 to 2017, by type of offence and year

<table>
<thead>
<tr>
<th>Year</th>
<th>Possession of drugs for personal use</th>
<th>Possession of drugs for sale or supply</th>
<th>Cultivation or manufacture of drugs</th>
<th>Importation of drugs</th>
<th>Other drug offences</th>
<th>All controlled drug offences</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>18,076</td>
<td>4,266</td>
<td>216</td>
<td>67</td>
<td>731</td>
<td>23,356</td>
</tr>
<tr>
<td>2009</td>
<td>16,765</td>
<td>3,967</td>
<td>271</td>
<td>46</td>
<td>824</td>
<td>21,873</td>
</tr>
<tr>
<td>2010</td>
<td>14,387</td>
<td>4,097</td>
<td>532</td>
<td>29</td>
<td>748</td>
<td>19,793</td>
</tr>
<tr>
<td>2011</td>
<td>12,606</td>
<td>3,817</td>
<td>579</td>
<td>40</td>
<td>530</td>
<td>17,572</td>
</tr>
<tr>
<td>2012</td>
<td>11,796</td>
<td>3,459</td>
<td>513</td>
<td>30</td>
<td>582</td>
<td>16,380</td>
</tr>
<tr>
<td>2013</td>
<td>11,160</td>
<td>3,241</td>
<td>390</td>
<td>44</td>
<td>490</td>
<td>15,325</td>
</tr>
<tr>
<td>2014</td>
<td>11,247</td>
<td>3,563</td>
<td>345</td>
<td>29</td>
<td>679</td>
<td>15,863</td>
</tr>
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<td>2015</td>
<td>10,932</td>
<td>3,683</td>
<td>240</td>
<td>19</td>
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<td>15,053</td>
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<td>2016</td>
<td>11,411</td>
<td>3,628</td>
<td>263</td>
<td>28</td>
<td>709</td>
<td>16,039</td>
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<tr>
<td>2017</td>
<td>12,201</td>
<td>3,888</td>
<td>249</td>
<td>21</td>
<td>491</td>
<td>16,850</td>
</tr>
</tbody>
</table>

Source: Central Statistics Office, 2018. Data is under reservation and hence may be subject to change.

There is large regional variation in possession offences, with both higher detections and unique trends in Dublin compared to other parts of Ireland (see Figure 1).

Figure 1: Recorded possession for personal use offences in Ireland, by region and quarter, 2003-2018

Source: Central Statistics Office, 2018. Data is under reservation and hence may be subject to change.
Section 3 Misuse of Drugs Act (S3 MDA) offences

Herein we look at data provided by An Garda Síochána. The number of recorded incidents detected by the Gardaí involving possession for personal use (a S3 MDA offence) for the three-year period 2015 to 2017 are outlined in Table 2. This shows that consistent with the data above, that the total number of recorded possession incidents has increased, and that there are an average of 11,826 incidents in any one year. (The number of offenders is unknown).

Table 2: Number of possession incidents under Section 3 Misuse of Drugs Act, 2015 to 2017

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incidents</td>
<td>11,149</td>
<td>11,740</td>
<td>12,589</td>
</tr>
</tbody>
</table>

Not all these incidents resulted in the person being charged for a S3 MDA offence and not all proceeded to court or led to a court outcome. Table 3 outlines the number of incidents and number of court outcomes recorded for a S3 MDA offence (irrespective of whether they did or did not lead to a criminal conviction). (Some incidents result in more than one court outcome. For instance, if a person was in possession of two different types of drugs this may result in two separate court outcomes.)

To arrive at the figure of number of incidents that involve simple possession only, Table 3 differentiates firstly all incidents and secondly all simple possession incidents excluding those linked to non-S3 MDA offences. The most common other offence types over the period were no insurance, obstruction, driving without a driver's licence, failure to produce insurance certificate or driver’s licence and intoxication. In the three-year period 2015-2017 there were 7,614 court outcomes for unlawful possession of drugs contrary to S3 MDA and 7,360 outcomes for S3 MDA which were not linked to any other offence type. This suggests that most S3 MDA court outcomes involve only possession of drugs.

Table 3: Number of possession incidents that led to a court outcome under Section 3 Misuse of Drugs Act, differentiating those that involved possession alone versus possession and other offences

<table>
<thead>
<tr>
<th>Offence description</th>
<th>Total incidents</th>
<th>Total court outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unlawful Possession Of Drugs Contrary to Section 3 MDA (all)</td>
<td>7,317</td>
<td>7,614</td>
</tr>
<tr>
<td>Unlawful Possession Of Drugs Contrary to Section 3 MDA (only where there are no other offences types linked to incident)</td>
<td>7,010</td>
<td>7,360</td>
</tr>
</tbody>
</table>

Looking at the number of outcomes versus the number of individuals sanctioned for this offence (see Table 4) shows that over the 3-year period 2015 to 2017 there were 5,633 individuals who received a court outcome for possession for personal use alone. Moreover, nearly 80% of suspected offenders were linked to just one outcome in the 3-year period 2015 to 2017.
Table 4: Number of outcomes versus number of individuals sanctioned under Section 3 Misuse of Drugs Act, 2015 to 2017 inclusive

<table>
<thead>
<tr>
<th>S3 MDA Outcomes</th>
<th>Total (All S3 MDA offences)</th>
<th>Total (S3 MDA only, no other linked offences)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Outcomes</td>
<td>7,614</td>
<td>7,360</td>
</tr>
<tr>
<td>Total Individuals</td>
<td>5,781</td>
<td>5,633</td>
</tr>
<tr>
<td>≥ 10 Outcomes</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>9 Outcomes</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>8 Outcomes</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>7 Outcomes</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>6 Outcomes</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>5 Outcomes</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>4 Outcomes</td>
<td>63</td>
<td>57</td>
</tr>
<tr>
<td>3 Outcomes</td>
<td>239</td>
<td>222</td>
</tr>
<tr>
<td>2 Outcomes</td>
<td>856</td>
<td>818</td>
</tr>
<tr>
<td>1 Outcome</td>
<td>4,569</td>
<td>4,484</td>
</tr>
</tbody>
</table>

Information from the Courts Service

The number of offenders put on probation is an important response, as under the Probation of Offenders Act 1907, a judge may decide not to convict. According to information provided by the Department for Justice and Equality if a person received the Probation Act in respect of a S3 MDA offence and for another offence it may be included in the information supplied by the Courts Service. Table 5 outlines the number of people who were dismissed under the Probation Act for a S3 MDA offence.

Table 5: Number of people receiving a Probation Act for a Section 3 Misuse of Drugs Act offence, 2015 to 2017

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>884</td>
<td>835</td>
<td>1,123</td>
</tr>
</tbody>
</table>

Combining this information with the information from Table 4 suggests that of the 5,781 people with a court outcome for a S3 MDA offence in the three-year period 2015-2017 2,939 of them may have received a criminal conviction. This amounts to 980 persons per year. That said, this assumes that all those given probation did not receive a conviction.

Information from the Irish Prison Service

The Irish Prison Service annual report for 2017 indicates there were 6,037 committals to prison for 2017. Of these 6% (371) were for a controlled drug offence. And as of 30 November 2017, there were 2,990 prisoners in custody and 11.6% (347) were for a controlled drug offence. The total number of persons committed with sentences solely for possession for personal use from 2015 to 2017 is outlined in Table 6 below, showing 752 persons. There is a clear downward trend from 365 in 2015 to 73 in 2017. Moreover, as of 31 July 2018, the figure for the number of individuals in prison for the unlawful possession of drugs only is 27. We have been advised this downward trend in people imprisoned for possession for personal use may be shaped by broader criminal justice reforms in Ireland, namely the introduction of the Fines (Payment and Recovery) Act 2016, which has reduced prison committal numbers generally and the implementation of the penal policy review (that has at its core custodial sentencing as a last resort).

Table 6: Number of people imprisoned for unlawful possession of drugs, 2015 to 2017

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>365</td>
<td>287</td>
<td>73</td>
</tr>
</tbody>
</table>
In summary, these figures show that over the period 2015 to 2017, there were 35,478 recorded incidents of possession for personal use (or about 11-12000 in any one year). A total of 5633 unique offenders received a court outcome for simple possession alone: and an estimated 2,939 offenders or 980 per year received a criminal conviction for simple possession alone. Custodial sentences were rare in Ireland for this offence. This raises implications for the use of alternatives (see below). Nevertheless, it shows that a small but potentially important group of offenders continues to proceed to court and/or receive a conviction for simple possession alone.

According to information provided by the Department of Justice and Equality, the cost of enforcing drug laws in Ireland was estimated to be €47 million in 2017 for Gardai drug enforcement and €17.36 million for Revenue/Customs drug enforcement. This means that the total cost in 2017 of enforcing drug laws was €64.35 million.

Consequences of enforcement of law on simple possession
The consequences of treating simple possession as a criminal offence may include general deterrence (i.e. deterrence of drug use in the general population), specific deterrence (i.e. deterrence of the individual offender from repeating that offence), costs incurred in the CJS (i.e. arrests, prosecutions, trials, imprisonments), and harms to the arrested individuals.

Our literature search did not find any peer-reviewed studies that have focused on these issues in the Irish context, but there are a number of relevant government and government commissioned reports, including the 2016 expert review of the Irish national drug strategy (Griffiths et al., 2016), the 2016 report of the working group on alternatives to prosecution, the 2017 report on the public consultation undertaken to inform the new National Drugs Strategy and the 2018 public consultation on personal possession of illegal drugs.

Key conclusions of these reports include:
- There is concern about the criminalisation of young people caught in possession of drugs and the negative impact this may have on their life chances.
- There appeared to be a widespread consensus that for minor drug offences, especially those related to cannabis possession, the long term costs for both the individual and society of the offence remaining on file were considerable and unjustified (Griffiths et al., 2016).

The 2017 report on the public consultation undertaken to inform the new National Drugs Strategy noted:
- That criminalisation of drug use impedes effective HIV prevention efforts.
- That criminalisation sometimes stops people who use drugs from contacting emergency services in an overdose situation due to fear of criminal repercussions.
- That criminalisation restricts travel and limits employability, productivity and full integration into society.
- That decriminalisation of some or all drugs would lower expenditure on policing and courts/prison.

Little research has been conducted on the ‘secondary effects of imprisonment’ in Ireland (Breen, 2010). One article commented on how the barriers to education and employment that are provided by incarceration and a criminal record operate in Ireland (O’Reilly, 2014), but did not specify how many of those affected were convicted of simple possession alone. Another echoed the international literature on the lack of a direct effect of imprisonment rates in reducing indictable crime (O’Sullivan & O’Donnell, 2003). The authors noted, ‘it may be that alternative measures, such as drug treatment, employment, community service or probation would have a similar (or greater) effect’.

Neither is there much ‘grey’ literature published that covers these issues specifically in the Irish context. They are covered by the international literature, as summarised in two editions of the book

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2 N.B. The majority of drug offences in Ireland are not treated as indictable crimes.
Drug Policy and the Public Good (Babor et al., 2010; Babor & et al, 2018). In short, this shows that the international literature:

- Suggests that drug law enforcement has little effect in the general deterrence of drug possession, partly because the proportion of consumers who face arrest is so small (see also Nguyen & Reuter, 2012).
- Does not support a specific deterrent effect of drug law enforcement, with very high rates of recidivism among those arrested and punished for drug possession. An interesting and relevant study from the USA shows, for example, that arrests for drug offences have little effect in reducing future offending, but do have an impact in reducing employment prospects, especially for ethnic minority arrestees (Mitchell, 2016).
- Shows that the costs of drug law enforcement are relatively high, compared to other policy interventions (such as prevention and treatment), with weaker evidence of effect or cost-effectiveness.
- Supports the argument that drug law enforcement has harmful effects on those who are arrested and prosecuted for simple drug possession.

**Issues related to simple possession offences**

There are a variety of harms related both to the possession and to the control of possession of drugs (Caulkins & Reuter, 2009). These include harms related to drug use itself, as well as to the existence of drug markets. It also includes drug-related crime and the need for and costs of drug treatment. The aim of this sub-section is to highlight some issues that are particularly relevant to how simple possession is dealt with in Ireland.

A more detailed picture on these and other issues is given by Bates (2017) in a report commissioned by the Health Research Board: “The drugs situation in Ireland: an overview of trends from 2005 to 2015.” This showed a general increase in current use (one or more times in the month prior to the survey) and recent drug use (one or more times in the year prior to the survey) between 2011 and 2015, particularly for cannabis and ecstasy and amongst young people aged 15-34, as well as increases in treatment presentations for cannabis, particularly among young people. This led Bates (2017, p.8) to conclude that patterns of drug use and harms had changed over the last decade and that the increased trends amongst young people pose concern given the “increased risk of cannabis related problems that may be associated with increased use of high potency cannabis”.

**Drug use and related harms**

The use of illicit drugs - as for licit and prescribed drugs - can lead to health problems including mental health issues, physiological damage, infectious diseases (especially among people who inject drugs), overdose and death. The 2014/15 all Ireland survey of drug prevalence suggested that 7.5 per cent of people aged 15 or over had taken any illegal drug in the year prior to the survey year (NACDA, 2016). This was defined as cannabis, ecstasy, cocaine powder, magic mushrooms, amphetamines, poppers, LSD, mephedrone, solvents, crack, heroin and new psychoactive substances. According to the 2016 census, there were 3,755,313 people aged 15 or over in Ireland. This suggests there may be about 280,000 who use drugs in Ireland each year. Cannabis is the most frequently consumed illicit drug in Ireland, with 13.8 per cent of the population aged 15-34 estimated to have taken it in 2015. This is the age group that is most likely to report use of illicit drugs and to be arrested for simple possession. Other commonly consumed illicit drugs include MDMA (4.4 per cent) and cocaine (2.9 per cent). Relatively to other EU nations Ireland, has the second highest prevalence of MDMA consumption and fifth highest prevalence of cocaine amongst those aged 15-34 (EMCDDA, 2018).

Heroin use is much less common. It was, however, estimated that there were between 18,720 and 21,454 ‘problematic opiate users’ in 2014. This gives Ireland the second highest rate (6.2 per 1,000 population) in the European Union. This group is heavily concentrated in Dublin. The highest rate (8.8 per 1,000 population) was estimated for the 25-34 age group, although the rate fell between

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3 Please note the addition of new psychoactive substances into this category for 2014/15 following the Criminal Justice (Psychoactive Substances) Act 2010.

4 The highest rate, 8.2 per 1,000 population, is reported in the UK.
2006/7 and 2014 in this age group. The rate rose between 2006/7 and 2014 in the 35-64 age group, which already accounted for two thirds of opiate users (NACDA, 2017).

Rates of HIV infection among people who inject drugs in Ireland are relatively high by European standards, with a concerning outbreak of new infections in 2015. Rates of recorded overdose deaths are also relatively high by comparison with other EU countries: 224 ‘overdose deaths’ were reported in 2015. However, it should be noted that Ireland has a more comprehensive reporting system for overdose deaths compared to other EU countries, which may account for the relatively high recorded death rate. Most of these deaths involved at least one opiate, with the majority involving more than one substance. The rate of drug-related deaths in Ireland is relatively stable. 5

Drug markets and violence
The demand for psychoactive substances, when combined with the prohibition of supply, creates illicit markets. These markets are very lucrative, with much higher profit margins than observed in licit markets (Kilmer & Reuter, 2009). Due to their illegality and profitability, these markets are sometimes, but not always, characterised by intimidation and violence. This has been a particular concern in Ireland, partly due to high profile killings, such as that of the journalist Veronica Guerin in 1996 (Conway, Daly, & Schweppe, 2010). More recently, there have been several murders that were reported to be related to the drugs trade, including several incidents relating to a reported feud between the Hutch and Kinahan gangs, both of which are linked to the drugs trade.

A review carried out for the Health Research Board also noted the problem of lower level violence and intimidation related to drug use and sale (Murphy, Farragher, Keane, Galvin, & Long, 2017). It noted the common practice of selling drugs on credit, and then using intimidation to ensure the payment of debts. A large proportion (46 per cent) of such incidents reported to 13 local and regional Drug Task Forces involved physical violence, while 32 per cent involved damage to home or property. A specific feature of the Irish drug market is the interaction between organised crime groups of paramilitary organisations, on both sides of the border (Hourigan, Morrison, Windle, & Silke, 2018).

Drug-related crime
Internationally, people who use drugs are more likely than other people to commit other crimes. And people who commit other crimes are also more likely to use drugs (Lurigio & Schwartz, 1999). This has also been observed in Ireland (Connolly, 2006). The highest rates of offending in Ireland are concentrated among those people who have problems with heroin and crack. As this is a compulsive behavioural pattern, these people often offend in order to get money to buy drugs; a phenomenon known as ‘economic-compulsive’ crime (Goldstein, 1985). Some drugs, and particularly alcohol and stimulants such as cocaine, may also reduce inhibitions and induce aggression; which Goldstein (1985) calls ‘psycho-pharmacological’ crime. Goldstein also coined a third term – ‘systemic’ crime – that refers to violence related to the regulation of illicit drug markers (see above).

Illicit drug use also contributes to forms of social harm that can be described as nuisance or anti-social behaviour, rather than crime. This includes the public use of drugs and the discarding of used injecting equipment in public places. In 2017, the Irish government decided to open a pilot safer injecting facility in Dublin. On the basis of evidence from other cities, this facility should reduce some of these harms in its local vicinity (Potier, Laprévote, Dubois-Arber, Cottencin, & Rolland, 2014)

These links between drugs and crime should not be taken out of the social contexts in which they operate. The highest rates of all forms of drug-related crime are observed in communities that suffer from deprivation, unemployment and social exclusion (O’Mahony, 2008; Stevens, 2010). Drug possession – even of heroin – tends not to be associated with other forms of criminality when consumed by people who are wealthy and well-connected (Warburton, Turnbull, & Hough, 2005). This

5 It has been much less stable in the UK, where the peak of initiation into heroin started a few years before the ‘heroin epidemic’ crossed the Irish sea. The British experience shows that long-term users become increasingly likely to die as they age; a phenomenon that has contributed to sharp increases in drug-related deaths in the UK (ACMD, 2016; Carew & Comiskey, 2018). Older opiate users are also at greater risk of dying with methadone (Pierce, Millar, Robertson, & Bird, 2018).
is not the group who typically seek treatment. According to Bates (2017), those receiving treatment for opioid use in Ireland were most likely to be unemployed (75%) and homeless (13%).

It is also important to emphasise that use of cannabis and ecstasy (i.e. the two most commonly used drugs in the Irish context and the drugs associated with most of the recent increase) have much weaker links with other types of crime (Payne & Gaffney, 2012).

The Department of Justice and Equality has provided an initial, indicative estimate of the cost of drug-related crime of approximately £2 billion, or 27 per cent of the total estimated cost of crime in Ireland.

**Drug treatment**

Although most people who use drugs do not become dependent, people who develop problematic patterns of drug use often require treatment to help them manage and overcome these problems. Data on demand for drug treatment are collected through the National Drug Treatment Reporting System (NDTRS) and Central Treatment List. The NDTRS data does not include continuous care service users i.e. those on methadone for longer than one year would not typically be included in this data. The Central Treatment List is the most comprehensive list of all people who are accessing methadone treatment in the county, but there is some overlap with the NDTRS data for those who have entered methadone treatment for the first time in 2016 or returned to methadone treatment after a period of absence. Data from the Central Treatment List shows that in 2016, there were 10,087 treatment cases in Ireland for problem opiate use on 31st December 2016 (Health Service Executive, 2017). Of those 69.5% were male, and 50.5% were aged 35-44 and 10% were aged ≤29. The NDTRS data indicate that in 2015 there were 9892 cases involving treatment for problem drug; which included 3742 new cases, 5855 previously known cases and 255 cases unknown (HRB, 2017).

Across all cases, 47.8% reported that opiates were their main problem, while 28.2% sought treatment for cannabis use, but amongst new cases cannabis was the main drug: 45.2% compared to 25.9% for opiates. In 2015 across all cases 72.2% were male and the median age was 30, an increase from 28 in 2010. In 2015 across new cases only 75.3% were male and the median age was 25, the same as in 2010 (HRB, 2017). Those entering treatment for cannabis were significantly younger, with a mean age of 22.9 years compared to 32.3 years for heroin (EMCDDA, 2018). As noted above, there are increasing numbers of people entering treatment for cannabis, but declining trends for heroin.

The main mode of treatment provided was outpatient. For people who have problems with opiates, the most commonly used treatment modality is opiate substitution treatment (OST). In Ireland, most of this is delivered in the form of methadone (EMCDDA, 2018), with suboxone also being offered in some cases. According to information provided by the Department of Justice and Equality, average waiting time between assessment for OST and either exit from the waiting list or treatment entry was 26.5 days.

Estimating expenditure on drug treatment in Ireland is not easy given the many different types of treatment and varying costs. The EMCDDA report noted that the annual cost to central government of providing addiction treatment services in Ireland was approximately €120 million in 2016. But this includes money spent by the Department of Justice on drugs. New figures for drug treatment specifically are currently being developed.

**Drug driving**

Driving under the influence of drugs has been illegal in Ireland since the Road Traffic Act 1961 and has more recently been the subject of an ‘anti-drug driving’ campaign by the Road Safety Authority (RSA, 2017). The RSA has noted high levels of positive tests for drugs among drivers, with a study in Kildare finding that almost a tenth of drivers killed in 1998 and 2009 tested positive for a drug.

There is international concern over the role of drugs in increasing the risks of driving (Watson & Mann, 2016). A 2013 meta-analysis showed detrimental effects on driving performance from all the drugs examined, including opioids, cocaine, amphetamines and cannabis (Elvik, 2013). Opioids do not necessarily impair the driving of people who are tolerant to them (Galski, Williams, & Ehle, 2000), but they do reduce the ability of new consumers (Schisler, Groninger, & Rosielle, 2012). Combining other drugs with alcohol while driving is particularly dangerous (Li, Brady, & Chen, 2013).
Alternatives already available in Ireland

The range of existing alternatives available for dealing with simple possession offences in Ireland remains limited, in comparison to some other European countries (Kruithof, Davies, Disley, Strang, & Ito, 2016). The expert review of the National Drug Strategy also noted concerns that it was difficult to establish the extent to which existing alternatives were being used, or the evidence base for their use (Griffiths et al., 2016, p. 26).

Formally, section 28 of the Misuse of Drugs Act 1977 enables courts to divert some drug law offenders to treatment, instead of imposing a different punishment. However, this is rarely used. This is for the following reasons (according to information provided by the Department of Justice and Equality):

- The sentencing resulted in a conviction.
- The sentencing resulted in a 12-month order which may have been considered overly punitive.
- Other options available to the court would be less punitive; e.g. adjourned probation supervision or probation supervision by way of the Probation Act 1907 – thereby preventing conviction.
- Lack of designated residential units.
- Research evidence that it was not good practice to order treatment on an involuntary basis.

Drug treatment court

The only alternative sanction mentioned in RAND Europe’s study of such measures is the Dublin Drug Treatment Court (DTC) (Kruithof et al., 2016). This also involves the threat of conviction. Participants who successfully complete the programme do not receive a conviction for the offence for which they were being prosecuted for on that occasion.

The DTC is intended to target offenders who commit a range of non-violent offences related to their problematic drug use such as shoplifting or failing to appear on bail and be used for offenders who would usually receive a custodial sentence. This means that the majority of people who are arrested for simple possession would not be eligible for the DTC (Connolly, 2006).

The DTC has served a relatively small number of people (DJELR, 2010); only 682 people were referred to this court between 2001 and 2014 (Kruithof et al., 2016). According to information provided by the Department for Justice and Equality, the number of people referred to the court has increased since 2014; 112 people were referred in 2017. The most common potential convictions are for theft, bail (failure to appear) and public order offences. Some also have records of drug possession offences, but a person could only be referred to the DTC for this offence if they were facing their third conviction for a S3 MDA charge and a possible custodial sentence (as they are then considered “at risk”).

In 2017, 10 people successfully completed the DTC programme (and so had their charges struck out), while 59 left the programme without completing it and 49 were still in the programme at the end of the year. Another 126 people were deemed unsuitable for entry.

Adult cautioning scheme

The Garda Adult Cautioning Scheme was established in 2006 on a non-legislative basis with the agreement of the Director of Prosecutions (An Garda Síochána, 2006). It enables the police to divert adults from prosecution by giving them a caution. It applies to a limited range of offences and offenders, and requires consideration of, not only the weight of evidence, but also public interest factors and views of victim (where relevant).

The offences covered by the Scheme include offences contained in the Criminal Justice (Public Order) Act 1994, the Criminal Justice (Theft and Fraud Offences) Act 2001, the Intoxicating Liquor Act 2003, the Non-Fatal Offences Against the Person Act 1997 and the Criminal Damage Act 1991, such as minor assault, minor theft, possession of stolen property, public drunkenness and disorderly conduct. These offences do not currently include any illicit drug offences.
The scheme is largely reserved for first-time offenders. A person may be given a second caution under the scheme only in the most exceptional circumstances and with the consent of the Office of the Director of Prosecutions. All cautions are required to take place at the Garda station: not on the street. According to Garda figures, between its introduction in 2006 to 5 June, 2013, there were a total of 67,765 adult cautions recorded on PULSE (Working Group on Alternatives to Prosecution, 2016).

The Minister for Justice and Equality has approved a recommendation of the Working Group to extend the Adult Cautioning Scheme to offences involving the simple possession of any illicit drug. This will still only apply to first offences and in contexts where this meets the public interest. It will still require the offender to attend a police station.

The Garda Authorities are currently working with the Health Service Executive to create a drug awareness and advice leaflet (including national and local contact points where people can get further support). This will be handed to everybody who is given a caution for simple possession. Although information can be provided alongside a caution, there is no provision in Irish law to attach conditions or obligations to cautions (such as a condition to attend a drug education programme or undertake an assessment of treatment need). The Working Group has considered the use of conditions alongside cautions for a range of offences, including persistent offending related to problematic drug use. It has described this as a complex issue and has recommended that a cross-sectoral committee consider it.

**Diversion programme, for juvenile offenders**

For offenders aged 12 to 18 (or very serious offences by children aged 10 or 11), the *Children’s Act 2001* formalised the previously existing Diversion Programme. This aims to avoid bringing children into the CJS. To enter this scheme, the child must admit the offence and give consent to receive a caution and – where judged appropriate by the Garda Juvenile Liaison Officer – supervision for up to 12 months. If they do, they will receive either a formal or informal caution. All juvenile cautions take place in the presence of the offender’s parents or guardians and occur at either the Garda station (required for all formal cautions) or offender’s home.

In 2016 17,615 referrals were made to the Juvenile Diversion Programme, covering 9,451 children. Of these 7,262 received cautions (5,016 informal and 2,246 formal). Only 794 of the referrals related to simple possession offences (Garda Bureau of Community Engagement, 2017).

While there is strong international evidence to suggest that diverting young people from the CJS reduces the chances of further offending (e.g. Mc Ara & McVie, 2005 from Scotland), concerns have been expressed in Ireland that diversion to caution may compromise the due process rights of suspected offenders (Cambell, 2005) and may also lead to a larger number of people having any action taken against them, rather than being dealt with informally, a phenomenon known as ‘net-widening’ (Cohen, 1985; Tolan, 2014).

**Other alternatives**

Some countries, such as Portugal, use administrative or civil processes to deal with offences that were formerly criminalised (Hughes & Stevens, 2010). Others, such as the UK and USA (Brunet, 2002; Heap, 2014), use civil orders and police-administered fines to deal with some relatively minor offences or anti-social behaviour.

Civil penalties have not been widely used in Ireland, and there may be constitutional impediments to doing so. Article 38.1 of the Irish Constitution states “no person shall be tried on any criminal charge save in due course of law”. Article 38.5 further states “no person shall be tried on any criminal charge without a jury”. This has been interpreted to mean that substantial criminal penalties cannot be imposed other than by a court (Fitzgerald & McFadden, 2011). However, there are situations under which an administrative penalty can be imposed. Using the *Central Bank Act 1942*, the Central Bank of Ireland can impose cautions, fines and other administrative sanctions on regulated bodies and individuals (CBI, 2018). While the Joint Committee on Justice, Defence and Equality did not consider the constitutional issue to be a blockage to establishing a civil procedure for dealing with simple possession offences they recommended that discretion for the application of this approach would remain with An Garda Síochána/Health Providers in respect of the way in which an individual in possession of a small amounts of drugs for personal use might be treated.
The potential constitutional barrier has not impeded the implementation and expansion of Fixed Charge Penalty Notices (FCPN) in Ireland. Originally introduced to deal with minor motoring offences, these have since been extended to pedal cycle offences and — under the Criminal Justice Act 2006 — public disorder offences (Working Group on Alternatives to Prosecution, 2016). There have been issues with non-payment of these penalties, but the payment rate increased towards 80% in 2013 and 2014.

FCPNs have been applied to offences that meet three criteria:

- There is no appreciable degree of moral culpability.
- There is no dispute as to whether or by whom the offence has been committed.
- It is not necessary to prove mens rea.

On this basis, the Working Group on Alternatives to Prosecution (2016) recommended that FCPNs be extended to more public order offences (under sections 21 and 22 of the Public Order Act). It may be argued that simple possession offences could also meet these criteria, but this has not yet been considered in detail.

**The national drug strategy**

Before 1996, Irish drug policy could be characterised as being led by a law enforcement approach to prohibition (O’Mahony, 2008), with the aim of creating a ‘drug-free Ireland’ (Comiskey, 2018). In the wake of the HIV epidemic, this shifted towards a policy based more on harm reduction, with a rapid expansion in the provision of methadone maintenance for people who had problems with heroin.

Both the Irish drug situation and its policy have evolved since then. Following a wide-ranging consultation, including the expert review (Griffiths et al., 2016), a new national strategy – entitled Reducing Harm, Supporting Recovery – was launched. The vision of the strategy is to create:

‘A healthier and safer Ireland, where public health and safety is protected and the harms caused to individuals, families and communities by substance misuse are reduced and every person affected by substance use is empowered to improve their health and wellbeing and quality of life’ (Department of Health, 2017, p.8).

The strategy is led by the Department of Health, reflecting the focus on drug use as a public health problem which requires a health-led approach. The focus on health is exemplified by the decision to open the pilot supervised injecting facility in Dublin, as well as the current exploration and consultation on options to provide alternative measures for dealing with simple possession offences. The strategy included ‘the establishment of a working group to examine alternative approaches to the possession of controlled drugs for personal use…to promote a harm reducing and rehabilitative approach to drug use’.

**Implications for consideration of alternatives for simple possession offences**

Ireland shares some important feature with several other countries where illicit drug consumption has grown since the 1960s. These include:

- The vast majority of simple possession offences go undetected and unpunished.
- The majority of those detected for drug offences are for simple possession, not supply.
- There is political and public concern over harms related to drug markets, and the role of violent organised crime.
- The scale and cost of drug-related crime is also a significant concern.
- The policing and criminalisation of illicit drug possession carries many costs, including costs of enforcement, reduced employment opportunities and barriers to accessing harm reduction and drug treatment services.

Specific features of the Irish policy context include:

- Arrest for simple possession can lead to a person receiving a conviction, although the numbers convicted for this offence alone are relatively small.
• The possible extension of the Adult Cautioning Scheme to include simple possession offences could reduce the number of people receiving a conviction for these offences. But this has yet to be implemented and it is unclear how many people this could apply to, or how cost-effective it will be. It could increase the number of people who are formally dealt with for this offence through ‘net-widening’. It may also provide an opportunity for people to receive information and advice on drugs and available health services.
• Ireland does not, as some other countries do, have a well-developed system of civil or administrative law to which to divert offenders from criminal conviction. Nor does it have a well-developed system of alternatives to prosecution for adults.
• Other potential alternatives already exist in Ireland, including the use of fixed penalties or administrative sanctions, but it is not clear whether and how these could be applied to simple possession offences.
• The most serious drug-related health harms in Ireland relate to heroin, although there appears to be increasing demand for treatment for problems related to cannabis, particularly among young people.
• There are substantial differences in the drug situation, and responses to it, between Dublin and the rest of the country.
• Ireland has decided, in a process involving consultation and public deliberation, to prioritise the aim of protecting public health and promoting individual recovery in its drug policy.

From these features flow several implications in the consideration of alternatives for dealing with simple possession offences. These include:

1. If Ireland wishes to reduce the harms done to people by being arrested and convicted when they are found in possession of drugs, it will need to:
   a. Avoid imposing penalties that are heavier than those that are already used.
   b. Avoid widening the net to include more people in the scope of formal intervention by the CJS.
   c. Provide pathways for people to enter treatment for drug problems, without having to be subject to a conviction which creates a criminal record.

2. If possible, this should be done in a way that does not predictably increase the size of illicit markets. This is relevant to
   a. The profits of organised crime groups.
   b. The scale of drug-related crime and intimidation.
   c. The level of health problems related to drug use.
   d. The demand for and cost of drug treatment.
   e. The risk of drug-related traffic accidents.

3. Any new system of alternatives will need to fit needs of both Dublin and other areas.
Chapter three: Methods for rapid realist review

This project used a ‘rapid realist review’ (RRR). More specifically, this RRR followed the RAMESES protocol (Realist And Meta-narrative Evidence Syntheses: Evolving Standards) to ensure high quality and transparency of the review process. As outlined by Wong et al. (2013) this approach differs from a traditional narrative or systematic review, in that:

- It aims specifically to inform policy makers of answers to questions that are directly relevant to the policy problem they are trying to solve.
- It uses systematic processes for searching the literature and extracting data from relevant documents. However, unlike a traditional systematic review or meta-analysis, the aim is not to aggregate effects across a range of studies from different contexts to provide an estimate of the general effect of an intervention.
- Rather, a RRR aims to inform policy makers of the mechanisms which produce both intended and unintended outcomes in specified contexts. This therefore enables better informed decisions on policy transfer and implantation.

The RRR approach is especially suited to research on complex policy interventions that are not amenable to randomised controlled trials. For decriminalisation and other alternatives to simple possession offences, the mode of implementation can vary substantially within the same legal framework, and RRR is suited to examining these complexities. We worked backwards from desired outcomes (and possible unintended adverse consequences) to develop a set of specific research questions on the ways in which different forms of decriminalisation of simple drug possession operate in real world empirical contexts (C) through identifiable mechanisms (M) to produce real outcomes (O). This produced a ‘logic model’ showing programme theories of ways in which different CMO combinations produce their effects and how each form of decriminalisation could be expected to operate in the Irish context.

The RRR approach

The RRR proceeded through ten steps. These steps were those recommended by Saul et al (2013) for projects which aim to meet the RAMESES protocol of Wong et al (2013):

1. **Development of the project scope**: This involved work between the researchers and the working group to clarify the aims and limits of the RRR, specifically being clear about what it could and could not achieve given available time and resources. This step also clarified the rationale for the RRR; what policy problems were we trying to solve?

2. **Development of specific research questions and choice of countries**: On the basis of the detailed project scope and the broad aims of the review (see page 5), the researchers then proposed a more specific list of research questions and choice of countries that were in scope (see below). This included decisions on the countries to be included for specific attention in the RRR (both common law and common countries).

3. **Identification of how the findings and recommendations would be used**: The researchers then proposed the ways in which it would be possible to use the results of the review, for agreement by the working group. This included: a. The broader policy questions to which the RRR results would be relevant. b. The intended forms of publication and dissemination of the results.

4. **Development of search terms**: On the basis of the specific research questions and selected country cases, researchers then specified terms to be used in a systematic search of the literature (including legislation and policy documents). Researchers also identified criteria for exclusion of documents (e.g. those that focused on legalisation of drug supply, or on cannabis
for solely medical purposes, or which did not provide original information on the contexts, mechanisms and outcomes of alternatives to simple possession drug offences).

5. **Identification of articles and documents for inclusion in the review:** The search terms were deployed systematically across a range of sources. For details see below.

6. **Quality review:** A quality review was then conducted including:

   a. initial assessment of the identified documents to select only those that were likely to produce information that is relevant to the specific research questions.

   b. outreach to experts in the field to ask for information on other or more recently published documents.

Such an approach ensured focus on forms of approaches and jurisdictions which can most produce useful and robust findings for the Irish context.

7. **Extraction of data from the literature:** Data were extracted from the selected documents and placed in an extraction template (designed based on the research questions). See below for the final template of extraction. The completed template was used to generate programme theories of the ways that mechanisms of alternatives to simple possession drug offences combine with contexts to produce outcomes, enabling informed judgement on which alternatives will or will not ‘work’ in the Irish context.

8. **Validation of findings with content experts:** The programme theories that were generated from data extraction were reviewed by senior researchers and members of the working group in order to check for quality and relevance of the emerging findings. Researchers attempted to fill any remaining gaps identified at this stage by returning to search even more specifically for relevant documents and reports.

9. **Synthesis of the findings in a final report:** Answers to the specified research questions were written up in ways that are directly useful to policy makers (e.g. by clarifying the context in which these findings were produced, the source and quality of the evidence for the findings). The final report therefore included policy options to deal with simple possession offences available to the Irish government and the advantages and disadvantages of each.

10. **Dissemination of results:** Researchers provided information in forms that can be disseminated, as agreed in step 3.

### Choice of countries in scope

Due to the relevance of the legal context, the initial review identified four common law countries for inclusion that have reduced penalties for simple drug possession offences. In effect, this includes:

- All states and territories of Australia.
- Some states of the USA.
- England and Wales (via the cannabis warning) and some English police service areas (via diversion schemes).
- Jamaica.

It is worth noting some common law countries also use civil penalties e.g. Australia.

Other countries were selected based on their salience, relevance and ability to provide useful information for the Irish context. A review of reviews was conducted to inform this. This showed a large variety in decriminalisation approaches across the globe and a lack of consensus about what countries had or did not have decriminalisation. It also showed different mechanisms by which decriminalisation can occur: by law, court judgement or police/prosecutorial agreement or multiple.

Based on the review of reviews, the following five additional countries were included:

- Portugal as it involved a **de jure** reform, high salience in public discussions of alternate legal approaches to drug possession and a high level of evidence.
- Czech Republic, on the basis it has a well-studied and long-standing system for the decriminalisation of possession of all drugs.
- Denmark, as it involved all illicit drugs and involved a reform via police.
- Germany, as it involved all illicit drugs and a reform via court ruling and police.
- The Netherlands, as it involved non-prosecution of simple drug possession.
- USA, due to high salience and diversity of approaches taken.

NB. Austria was identified for potential inclusion but excluded on the basis it was too recent for meaningful information.

The final list of countries included in the detailed country search was thus:

- Australia
- Czech Republic
- Denmark
- England and Wales
- Germany
- Jamaica
- Portugal
- The Netherlands
- USA

**Detailed country search**

On the basis of the selected countries, the detailed per country search included:

1. Three bibliographic databases (Web of Science, Scopus, Criminal Justice Abstract).
2. Two grey literature bibliographies: one held by the International Society for the Study of Drug Policy [ISSDP] and the other being the drug law reform bibliography at UNSW’s Drug Policy Modelling Program).
3. The bibliographies of existing reviews identified in the initial search above.
4. A forward citation search for relevant documents which cite these reviews.
5. A forward web search of all cited documents (using Google Scholar).
6. A check with country level experts. (These were identified on the basis of our existing international networks each of whom sent the full list of material and asked to identify if there were any missing documents).

The search terms for the detailed per country/state search included:

- [country OR state] AND (drug OR cannabis OR marijuana OR heroin OR cocaine ) AND
- (decriminali* OR depenal* OR liberal* OR diversion OR warning OR expiation OR civil OR infringement OR law OR policy) AND ( possess* OR use ) AND
- (evaluat* OR effect* OR impact* ) NOT ( pharma* OR medici* )

The specific search for relevant literature on Ireland used the following terms:

- Ireland AND [(drug AND possession) or (drug AND policy)] AND NOT [pharma* OR medici*]

In search tools that did not allow the use of Boolean operators (AND/OR/AND NOT) or ‘wild’ word endings denoted by asterisks, different searches were run using these alternative terms and spellings (e.g. decriminalisation/decriminalization). In these searches, results from journals in the pharmacological and purely medical subject areas were excluded from the results. Citations were managed using the bibliographic software Endnote, with duplicates removed manually.
Document selection
Inclusion criteria for documents found in the detailed per country search were:

- Contains original 6 data on the contexts, mechanisms and/or outcomes of some form of decriminalisation or alternative to simple drug possession in the selected countries.
- Is written in English.
- Is available via open access, through the libraries of University of Kent or UNSW Australia, or on request from the lead author.
- Refers to drug policy in the modern era (i.e. since the UN Single Convention on Narcotic Drugs 1961).

We excluded studies of the legalisation or regulation of drug production or supply which did not cover decriminalisation of possession. Documents that discussed opinions, policies or preferences without providing any original data on decriminalisation were excluded from the review.

Data extraction
A standardised coding form was used, and the key domains were:

- Description of the study
  - Authors
  - Date
  - Type of study (e.g. cost, quasi experimental, observational cross-sectional)
  - Country (and state/territory/area if relevant)
  - Type of approach (e.g. formal decriminalisation, formal depenalisation, alternative disposals without legal change)
  - Year of change in law/practice
  - Period covered after the change
- Contexts
  - Common law/penal code legal system
  - Level of drug use and related problems prior to decriminalisation.
  - Criminal penalties for possession prior to reform
  - Simultaneous economic developments
  - Simultaneous health system developments
  - Simultaneous criminal justice developments
- Mechanism
  - General text description of the mechanism
  - Any changes to statute law, guidance to police and/or guidance to prosecutors
  - Drugs covered (cannabis only/all/other)
  - Eligible target group/s
  - Applies to minors <18 (yes/no)
  - Threshold amount if specified (e.g. 50g cannabis)
  - Any sanctions applied to those found in drug possession post reform
  - Measures for diversion to treatment (if any)
  - Other diversionary measures
- Outcomes
  - Arrests
  - Charges
  - Convictions
  - Prison sentences
  - Prison population
  - Prevalence of drug use (by drug type if available)
  - Age of onset of use (cannabis, heroin, other drugs)
  - Drug availability
  - Health harms
    - Drug-related deaths

6 By original, we mean data that is not available in English in previous documents found by the search.
- Overdoses
- HIV infections
- Viral hepatitis infections
- Hospital presentations
- Monitored drug poisonings
- Dependence or problematic drug use
- Injecting drug use
- Presentations to drug treatment
- Road traffic accidents
  - Costs in health system
  - Crime harms
    - Crime in general
    - Acquisitive crime
    - Violent crime
    - Organised crime
    - Street dealing
  - Costs in CJS
  - Harms of criminalisation
    - Employment
    - Housing
    - Family
    - Travel
  - Cost-effectiveness
  - Other potential unintended consequences
    - Net-widening
    - Burden on health system
    - Burden on police officers
  - Attitudes to drug use
  - Attitudes to the policy
  - Other outcomes and impacts

**Search results**
A total of 5910 records were initially identified via the database searches and 288 from other sources (see Figure 2). 405 articles were accessed for eligibility, with 11 excluded due to full text not being available and a further 210 excluded primarily for lacking original information on the context, mechanisms or outcomes of decriminalisation policies in the countries of interest. A total of 183 articles met the eligibility criteria and 158 were included for extraction. The number of documents included for extraction ranged from three in Jamaica (the country with the most recent reform) to 45 in the USA. There were 12 unique studies extracted that contained content relevant to multiple countries of interest. See Appendix A for the list of included studies.
Figure 2: PRISMA extraction of studies on alternative approaches taken to simple possession drug offences

5,910 records identified through database searching
- Criminal Justice Abstracts = 1,375
- Scopus = 2,425
- Web of Science = 2,110

288 additional records identified through other sources
- Grey/first-phase searches = 53
- Forward citation checks = 152
- Content experts = 31
- Cross-country articles = 52

6,004 records after duplicates removed

6,004 records screened for eligibility (title/abstract)

5,599 records excluded

405 articles assessed for eligibility

11 abstracts excluded (no full text available)
3 cross-country duplicates excluded
208 full-texts excluded due to not meeting the eligibility criteria

183 articles met eligibility
- International (multi-country) = 19
  - Australia = 37
  - Czech Republic = 13
  - Denmark = 7
  - Germany = 5
  - Jamaica = 3
  - Netherlands = 21
  - Portugal = 20
  - UK = 11
  - US = 47

158 articles included for extraction
- International (multi-country) = 12
  - Australia = 29
  - Czech Republic = 13
  - Denmark = 6
  - Germany = 5
  - Jamaica = 3
  - Netherlands = 14
  - Portugal = 20
  - UK = 11
  - US = 45

25 relevant but not extracted due to duplicative information
Data analysis
Data analysis occurred via two methods.

- First, within countries: to describe the context, mechanism and outcomes (CMO) and any areas of conflict between studies. Here we also differentiated evidence on different types of reforms within a nation.
- Second, qualitative comparative analysis (QCA) was used to produce a typology of alternative approaches across the nine countries (for details see chapter five).

A programme logic or programme theory was then developed for each approach. As described by Wong et al. (2013, p. 11) the goal of a realist review is to provide theor(ies) of why a social programme/intervention generates particular outcomes in particular contexts: that is how the programme triggers change. Then we outlined the outcomes from each alternative approach.

By way of example, in chapter four we describe the impacts of depenalisation within several different countries (including the Netherlands, Denmark and the UK). In the final chapter we consolidate all known examples to describe the mechanisms, programme theory and outcomes across the set of nations, as well as any contextual factors that shape the outcomes. This is followed by a list of advantages and disadvantages (and where relevant other factors to consider) for each reform type. Unlike a meta-analysis where the aim is to produce a single statistical analysis (e.g. that drug use increased by 5% given a particular reform), the aim was to explicate patterns of responses across a broad array of data (including quantitative, qualitative or administrative) and multiple contexts, as well as the contingencies that may shape reform outcomes. In so doing the realist review sought to produce a guide of the potential outcomes of alternative approaches to simple drug possession as well as the steps that policy makers may need to take to trigger the desired outcomes.
Chapter four: Country analysis of approaches to simple possession drug offences

This chapter describes the approach to dealing with simple possession offences in our nine nations. We outline the context (including legal context and drug situation), the rationale for reform, the legislative and judicial regime(s) that has been employed and the main outcomes. We also outline key changes in reform when they have occurred: and lessons for understanding the mechanisms and outcomes of reform. The main alternatives are summarised in Table 1, showing fourteen alternative approaches taken across the set of countries.

Table 7: Summary of alternative approaches taken to simple possession drug offences across the nine countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Legal basis</th>
<th>Reform type</th>
<th>Drug type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>De jure</td>
<td>Decriminalisation with civil penalties</td>
<td>Cannabis</td>
</tr>
<tr>
<td>Australia</td>
<td>De facto</td>
<td>Police diversion (cannabis caution) with referral to education session</td>
<td>Cannabis</td>
</tr>
<tr>
<td>Australia</td>
<td>De facto</td>
<td>Police diversion to treatment (assessment and brief intervention)</td>
<td>Other illicit drugs</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>De jure</td>
<td>Decriminalisation with administrative penalties (fine)</td>
<td>All illicit drugs</td>
</tr>
<tr>
<td>England and Wales</td>
<td>De facto</td>
<td>Depenalisation with on the street warnings</td>
<td>Cannabis and khat</td>
</tr>
<tr>
<td>England and Wales</td>
<td>De facto</td>
<td>Police diversion to structured interventions involving treatment and social services</td>
<td>All illicit drugs</td>
</tr>
<tr>
<td>Denmark</td>
<td>De facto</td>
<td>Depenalisation – guidelines from Attorney General to police to issue warnings for a first offence</td>
<td>All illicit drugs</td>
</tr>
<tr>
<td>Germany</td>
<td>De jure</td>
<td>Constitutional court decision for non-prosecution</td>
<td>All illicit drugs</td>
</tr>
<tr>
<td>Jamaica</td>
<td>De jure</td>
<td>Decriminalisation with civil penalties</td>
<td>Cannabis</td>
</tr>
<tr>
<td>Netherlands</td>
<td>De facto</td>
<td>Depenalisation (‘tolerance policy’)</td>
<td>Cannabis</td>
</tr>
<tr>
<td>Netherlands</td>
<td>De facto</td>
<td>Police diversion to treatment</td>
<td>Other illicit drugs</td>
</tr>
<tr>
<td>Portugal</td>
<td>De jure</td>
<td>Decriminalisation. Offence became an administrative offence, with referrals to dissuasion committee</td>
<td>All illicit drugs</td>
</tr>
<tr>
<td>USA</td>
<td>De facto</td>
<td>Depenalisation – police instructed to treat as “lowest priority”</td>
<td>Cannabis</td>
</tr>
<tr>
<td>USA</td>
<td>De jure</td>
<td>Decriminalisation with civil penalties</td>
<td>Cannabis</td>
</tr>
<tr>
<td>USA</td>
<td>De facto</td>
<td>Police diversion to education / treatment / social services</td>
<td>All illicit drugs</td>
</tr>
</tbody>
</table>

NB. This outlines the main approaches only. Further specificities were included in the final analysis: such as that Australia has some de jure diversion programmes and that some US states e.g. Maryland have decriminalisation with diversion to treatment.
England and Wales

Context
England and Wales use the same, common law legal framework, while Scotland and Northern Ireland have their own legal systems. Policing in England and Wales is carried out by 43 local police services, plus the British Transport Police, under the direction and funding of the Home Office. Police policy and practice is coordinated by the National Police Chiefs Council (NPCC), the successor body to the Association of Chief Police Officers (ACPO).

England and Wales have a similar drug situation to Ireland, having experienced general increases in illicit drug use and, since the 1980s and 1990s, a serious problem with the use of heroin and later crack cocaine. These and other substances are controlled by the Misuse of Drugs Act 1971, which separates drugs into three classes, depending on their potential for causing social harm. Class A includes those most considered the most harmful, including heroin and cocaine. Class B contains cannabis (although, as described below, it was in class C from 2004 to 2009).

Since drugs were originally controlled in the early 20th century, the usual method for dealing with simple possession has been arrest, leading to a caution or conviction. The Misuse of Drugs Act allows for a range of penalties on conviction, including fines, community sentences and imprisonment. Imprisonment is used rarely for simple possession offences. In the later 20th century, concern grew over two issues. One was the over-policing of people for cannabis possession, and the related drain on police and other criminal justice resources. Another was the high proportion of acquisitive offending that is associated with problematic use of heroin and crack cocaine.

Alternative mechanisms for dealing with simple possession offences
Over the last 20 years, England and Wales have experienced two types of alternatives: police depenalisation; and diversion. Neither of these have involved a change in the legislation (i.e. de jure): instead they have occurred through changes to police practices (i.e. de facto).

There have also been other changes in police policy that have affected the policing of drugs offences. During the 2000s, this included the use of targets for ‘offences brought to justice’ or ‘sanction detections’ to manage police performance. Since 2010, these targets have not been used. There has been a substantial fall in the numbers of police in England and Wales due to budget cuts. There have also been reductions in the use of stop-and-search.

Police depenalisation of cannabis
In Lambeth (a borough of London), a local programme was started in 2001 which came to be known as the Lambeth Cannabis Warning Scheme (LCWS). The goal of the scheme was to save police time to focus resources on ‘high priority’ crimes such as gun crime, street robbery, class A drug enforcement and other serious crime. Police officers were instructed to avoid arresting adults for simple possession of cannabis, and instead to focus their attention on other offences, including class A drug offences, drug supply, robbery, theft and burglary. This scheme ran from 4 July 2001 to 31 July 2002.

Later, in 2004, the UK government reclassified cannabis from class B to class C. At the same time, ACPO issued guidance that advised police officers throughout England and Wales to issue on-street warnings for adults in possession of unspecified small amounts of cannabis, rather than arresting them, unless there were aggravating circumstances. The person must admit to the offence of possession to receive the warning. Police retained discretion over whether to arrest. These cannabis warnings would be counted as sanction detections, but would not lead to an arrest, charge, conviction or criminal record.

In 2009, following media and political controversy (often focusing on the effect of cannabis on mental health), cannabis was again reclassified into class B, but an amended version of the cannabis...
warning continued. Police were advised to continue using an on-street warning for the first possession offence, but to issue a Penalty Notice for Disorder (an on-street fine of £60) for the second offence. A third offence should lead to arrest and a criminal justice disposal (formal caution or conviction). In 2014, this escalating warning system was extended to the possession of khat, when the plant was controlled under the Misuse of Drugs Act.

**Diversion for other drugs and other offences**

Some police services have developed schemes to divert drug-related offenders from prosecution and conviction. The two best-researched examples are the Operation Turning Point programme in the West Midlands and Operation Checkpoint in Durham. Both are open to a wider group of offenders than just those found in possession of drugs.

In the West Midlands, Operation Turning Point (OTP) was between November 2011 and July 2014. It was targeted at ‘low risk’ offenders ‘for whom the police had decided it was in the public interest to prosecute, but who had no more than one conviction’, in the aim of reducing costs and recidivism (via structured interventions and avoiding the potentially counterproductive impacts whereby first-time convictions often increase offending). Another objective was to increase access to Black, Asian and Minority Ethnic (BAME) offenders and as such they removed the requirement for offenders to first admit an offence before being given the diversion (Lammy, 2017). These offenders had their prosecution deferred. They agreed to take part in ‘structured interventions’. This included drug or alcohol treatment, mental health assessments, anger management courses, restorative action (such as attending a restorative justice conference) and social interventions such as education, training and employment. Prosecutions were subsequently dropped for offenders who successfully completing the intervention. Prosecutions were resumed for those who did not.

Operation Checkpoint in Durham is potentially available to any offender who faces being charged. Offenders do not have to admit guilt to be eligible. Instead of being charged, diverted offenders go through a needs assessment, leading to engagement in interventions. The offender must agree to conditions including: ‘no reoffending within a four-month period (mandatory); participation in a restorative approach (mandatory if the victim agrees); attend appointments regarding individual personal issues or undertake one-to-one intervention work; carry out community/voluntary work for 18-36 hours and/or wear a Global Positioning System (GPS) tag; and undertake voluntary drug testing’ (Lammy, 2017).

Both have been the subject of evaluations by the University of Cambridge. The results have not yet been fully published, but some are available in ‘grey’ literature (see below).

Avon police are also trialling a diversionary approach in which drug possession offenders (all controlled drugs) are diverted to a drug awareness session. If they attend, then charges are dropped. No details or results of this approach have been published.

**Outcomes**

**Depenalisation**

There is some controversy over the outcomes of the LCWS, partly due to the difficulty in measuring and attributing outcomes. For example, there was a 61 per cent increase in recorded cannabis possession offences during the period of the scheme (Adda, McConnell, & Rasul, 2014). It is not known whether this reflects an increase in cannabis use, or an increase in the police recording of possession offences, as the warning scheme made it much easier and cheaper for police officers to do this. However, Adda, McConnell, and Rasul (2014) note that the increase in cannabis possession offences persisted after the LCWS ended. They also note increases in recorded cannabis supply.
offences, relative to other London boroughs. They observe a 12 per cent increase in recorded offences of possession of class A drugs; ‘the evidence does not suggest the Lambeth police turned a blind-eye towards Class-A drug possession in Lambeth during or after the LCWS policing experiment’.

On other crimes, Adda et al (2014) observe significant increases in arrest rates for nearly all crime types, with significant reductions in robbery, burglary, theft and handling, fraud and forgery and criminal damage. This supports the contention that the LCWS achieved the intention of enabling Lambeth police to focus their resources on higher priority crimes.

On the other hand, a time series analysis by Kelly and Rasul (2014) showed ‘an immediate and sustained increase in drug-related hospital admissions in Lambeth compared to other boroughs’. They argue that this is an effect of increases in cannabis use leading to increases in class A drug use, and therefore to increased hospital admissions. They do not directly observe an increase in cannabis use.

A public opinion poll was also carried out to assess local residents’ views on the LCWS. These were generally supportive. The report of this poll concluded: ‘probably the over-riding message to emerge from the data is how positively the overall population of Lambeth has received the scheme. The survey contained a diverse range of measures of public reaction to the scheme, and across all of these, the survey consistently recorded high levels of public support’ (Ipsos MORI, 2002). This is even though Adda et al (2014) found that house prices in Lambeth were reduced in Lambeth, compared to other London boroughs, which they suggest shows a loss of local quality of life.

If there were effects of depenalising cannabis possession on increasing cannabis use, crime and mental health problems in Lambeth, they were not observed when the national cannabis warning was introduced in 2004. Nationally, reported cannabis use continued to fall in the adult population and remained stable among young people. There were general reductions between 2005 and 2011 among people aged 10-18 in England, except for some increases among people aged 16-18 (Herbert, Gilbert, Cottrell, & Li, 2017). It could be argued, from the data provided by Herbert et al (2017), that these indicators improved more rapidly in children in Scotland than in England, but it should be noted that Scotland started this period with higher rates of use.

A study of self-reported drug use and offending exploited the fact that the cannabis reclassification implied different changes to the threat of punishment for people in different age groups. By comparing changes in behaviours reported by this age group before and after the reclassification, it conclude: ‘findings imply no consistent pattern of changes in either cannabis consumption or other risky behaviour’, including crime and consumption of other drugs (Braakmann & Jones, 2014). The survey used did not ask these young people whether they were aware of these changes in potential penalties.

A particularly interesting finding, given the concern expressed over mental health while cannabis was in class C, is that hospital admissions for cannabis psychosis reduced rather than increased between 2004 and 2009. They started to rise again once cannabis was put back in class B (Hamilton, Lloyd, Hewitt, & Godfrey, 2014), although – given that the cannabis warning remained – there is no clear mechanism by which to link classification to mental health outcomes.

In terms of policing, there was clear evidence of net-widening associated with the introduction of the cannabis warning. Despite the apparent absence of an increase in cannabis use, there was a substantial increase in the numbers of people who were given some sort of recorded intervention – mostly in the form of a cannabis warning – by the police. This increase reversed after the government stopped using targets for sanction detections to manage police performance. Initially, the number of cautions and convictions fell as cannabis warnings rose, but these started to climb back from 2006 (Shiner, 2015).
Diversion
There has been one main evaluation of diversion to date in England: of the Operation Turning Point programme in West Midlands. This compared two randomised groups: those given the deferred prosecution versus those receiving prosecution as normal. It found **victims** were in general satisfied with the scheme, that the scheme yielded 68 per cent **fewer court cases** than those prosecuted in the usual way. There was little difference in **re-offending** for OTP participants compared to treatment as usual, except that OTP participants showed lower recidivism for violent offences than the treatment as usual comparison group. Finally, “despite the costs associated with the structured interventions paid for through the OTP scheme” the Turning Point programme led to “a **saving** of around £1,000 per case” (Lammy, 2017, p. 28). More generally they concluded:

Rarely does an intervention improve outcomes for victims, offenders and wider society all at the same time. OTP does this – and without the usual trap of sifting out defendants through the plea process, which is likely to disproportionately affect those from BAME [Black, Asian and Minority Ethnic] backgrounds. Critically, it also holds the potential to prevent large numbers of children and young adults from picking up a criminal record, which can be hugely damaging for their future employment prospects (Lammy, 2017, p. 29).

An internal presentation by the Cambridge University evaluators (provided by the West Midlands police) further noted that compared to the comparator group the Turning Point programme had led to an overall reduction of 36 per cent in the relative ‘crime harm’ of **reoffending** as measured using the Cambridge Crime Harm Index. There had been a 45 per cent reduction when comparing ‘all costs of processing (All Courts, CPS, Police)’: Cost of prosecution as usual = £1762.03 per person. Cost of Turning Point = £977.34. This suggests that the programme may achieve several objectives, particularly **reducing costs**. That said, we do not yet know whether impacts and cost-effectiveness may differ for possession offenders specifically. No other outcomes of depenalisation or diversion have been evaluated in published documents.
Czech Republic

Context
The context of drug policy reform in the Czech Republic is unique for several reasons. First, the Czech Republic employs a “continental” legal system: with both Civil and Criminal Codes. It also has administrative procedures to protect individual rights in relation to public law. Second, over the last thirty years the Czech Republic has experienced significant political and economic change. Of note, Czechoslovakia was under communist rule from 1948 until 1989. Czechoslovakia then split into two countries—the Czech Republic and Slovakia on 1 January 1993. In 2004, the Czech Republic joined the European Union. Third, the Czech Republic has traditionally had much lower rates of drug use than other European nations, due in large part to Soviet rule and restrictions on the free movement of goods (Zábranský, 2004). For example as noted by Radimecký (2007, p. 15) “under the control of the communist regime, nonconformists such as drug users were treated as public enemies of the so-called ‘ideal classless society’ and were persecuted.” Patterns of drug use also differed to other European nations as heroin use was rare and the main drugs consumed were cannabis, MDMA and pervatin (a home-made variant of methamphetamine). The penal code of the Czechoslovak Socialist Republic had established criminal sanctions, for drug possession, of up to three years imprisonment for possession and a fine, albeit also mandated compulsory “treatment” for people deemed problematic drug users (Zeman, 2007). This was rarely used due to the low levels of drug use. Nevertheless, the penal code was changed in 1990.

Rather than being in response to rising drug use (or drug-related harms), reform occurred simultaneously with political and CJJS upheaval following the 1989 transition to democracy that included the abolition of the death penalty and a shift towards a legal system that emphasised the use of criminal sanction as the last resort (ultima ratio). The resultant reform - decriminalisation of possession – was thus part of this broader change, albeit here using criminal sanctions for drug use as a last resort. For example as noted by Zábranský (2004): “These changes constituted one component of a larger systemic reform that was designed to revise the deviant system of communist ‘class-conditioned justice’ where those who supported the regime were treated differently than those who did not.”

Alternative mechanisms for dealing with simple possession offences
In 1990 the Czech Republic decriminalised possession for personal use of all illicit drugs making drug possession of any amount an administrative offence: de jure decriminalisation. In line with the objective of use of criminal sanctions for drug use as a last resort the reform removed criminality of the offence. Detected offenders were instead liable to pay a fine (amounts have varied over time).

As outlined in Table 8, since 1990 there have been changes to the amount of drug that could be possessed under the reform. Specifically, in 1999, following fears that decriminalisation of all possession could send the wrong message, the law was amended to decriminalise use up to a specified amount (Zábransky, 2004) and to allow criminal sanctions for possession over that amount. Specific threshold quantities (TQs) were not legislated at that time. Following a national evaluation (see below) the law was then modified in 2010 and 2014 to introduce threshold quantities on the amount of drug that could be possessed. Importantly, as outlined by Belackova and Stefunkova (2018), while there have been changes in TQs, the intent and operation of the law has remained largely constant over the time.
Table 8: Czech Republic decriminalisation periods of reform

<table>
<thead>
<tr>
<th>Period</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990-1998</td>
<td><em>De jure</em> decriminalisation of possession for personal use of all illicit drugs by law (for possession of any amount)</td>
</tr>
<tr>
<td>1999-2009</td>
<td><em>De jure</em> decriminalisation only for possession in 'small amount'. But TQs were not legislated and internal guidelines differed across CJS institutions. (TQs from the General Instructions of Supreme Public Prosecutor were: 0.3 grams of pure THC, 0.15 grams of pure heroin, 1 grams of pure MDMA, 0.25 grams of pure cocaine. TQs for police were: 0.3 grams pure THC, 0.5 grams pure heroin, 1 grams of pure MDMA, 0.3 grams of pure cocaine.)</td>
</tr>
<tr>
<td>2010 -2013</td>
<td><em>De jure</em> decriminalisation of possession in 'small amount' using legislated TQs. (15 grams dried cannabis, 2 grams methamphetamine, 1.5 grams of heroin, 1 gram of cocaine, 0.4 grams of MDMA). Personal cultivation in 'small amount' also decriminalised.</td>
</tr>
<tr>
<td>2014-present</td>
<td><em>De jure</em> decriminalisation of for possession in 'small amount' similar with revised legislated TQs for personal use (10 grams of cannabis, 1.5 grams of methamphetamine or heroin, 1 gram of cocaine, 0.4 grams of MDMA)</td>
</tr>
</tbody>
</table>

Outcomes

Analysis of the outcomes of reform, shows most data has been collected since 1999, following the introduction of threshold quantities. Comparison of trends over time is also complicated given that there was negligible drug use prior to reform: and that the opening of the Czech Republic borders led to an inevitable rise in drug use and supply. For example, as noted by Zeman (2007, p. 50): “the period immediately after the fall of communism proved very favorable to the creation and stabilization of a ‘classic’ drug scene and drug markets similar to those found in Western countries.” It also led to more open recognition of behaviours that had previously been covert (Radimecký, 2007). Nevertheless, some clear observations can be made.

First, there was some evidence of an increase in drug consumption following the 1990 reform and specifically, an increase in heroin use. In more recent times trends in drug use have been stable and/or increased in line with European Union trends. As summarised by Radimecký (2007, p. 16), “contrary to various media portrayals… the situation with regard to rates of drug use has not changed significantly since the change in political regimes at the end of 1989. The number of problem drug users in the Czech Republic has remained relatively stable over the long term”. Thus, there is little evidence that decriminalisation directly increased drug use in the Czech Republic.

Second in relation to drug markets, post the 1990 reform drug markets both increased and became more visible. For example as noted by Zábranský (2004) “in major Czech cities, relatively small-scale open drug scenes have appeared in public places where users meet dealers – especially pervitin purveyors – but increasingly also those who deal in heroin.” There was also a subsequent increase in organised crime involvement in the pervatin (methamphetamine) trade involving the Russian outlaw motorcycle gangs (OMCGs), but this coincided with and has largely been attributed to the opening of the borders: not the reform per se.

Third, demands on the CJS for possession-related offences have remained very low, particularly compared with other nations. For example, an analysis by Belackova et al (2017) of trends from 2002 to 2012 showed that 72.4 per cent of use/possess offenders received administrative sanctions and there were only 0.02 court proceedings for use/possession per 1000 population and 0.001 people sentenced to prison for use/possession per 1000 population. The number of court proceedings involving use/possess offenders was also much lower than in other national contexts that did not have *de jure* decriminalisation. Specifically, there were 0.02 court proceedings for use/possession per 1000 population in the Czech Republic, compared to 1.21 court proceedings per 1000 population in Florida (where drug possession remained a criminal offence). A comparison of drug policy in the Czech Republic and Slovakia is also instructive here. Following the dissolution of Czechoslovakia in 2003, Slovakia penalised drug possession for personal use. Moreover, while it subsequently removed criminal penalties for possession of drugs in the amount of up to 10 doses in 2004 (on accession to the EU), analysis showed that this post-soviet country remained more punitive on paper and in practice. For example, analysis in 2010 showed that while some cases in Slovakia were disposed of
through fines rather than prison sentences, little use was made of diversion to treatment. In addition, many instances of inhumane treatment of people in custody for drug offences, and other violations of detainees’ rights were uncovered (Csete, 2012).

Fourth, decriminalisation and the removal of stigma around drug use, facilitated the provision of harm reduction services and reduction in drug-related harms. As noted by Zábranský (2004):

“It seems very likely that that the relatively early inception of Czech NGOs [non-government organisations] providing drug services and introducing new treatments and harm reduction services helps to explain the success of the Czechs in sustaining an extremely low prevalence rate for both HIV/AIDS. For example, the Czech rate was less than 0.1 per cent in 2003, compared to the level of 30 per cent of HIV-positive IDUs in neighboring Poland…. and 1 to 34 per cent in the European Union … Regarding viral hepatitis C, the Czech rate in 2003 was 30 per cent among intravenous drug users and in the general population as well … compared to …. 40-90 per cent in individual EU member states.”

More generally as noted by Radimecký (2007, p. 16) even after the “tightening of drug legislation in 1999 (introducing potential punishments for drug possession), fewer drug users are being processed through the CJS than are being handled through the system of social and health services. Specifically, all drug offences prosecuted numbered 2,357 in 2003, 232 of which were for drug possession alone. In contrast, 18,000 persons were treated in 2003, and these treatment participants accounted for about 60 per cent of all problem drug users.”

To date the most comprehensive evaluation of decriminalisation in the Czech Republic was a government sponsored evaluation of the introduction of the 1999 reform (the most punitive of the four decriminalisation reforms). This was conducted by Zábranský, Mravčík, Gajdošíková, and Milovský (2001) and sought to test whether the introduction of the penalty for possession of illegal drugs of above a particular threshold would (1) reduce the availability of illegal drugs; and (2) reduce the prevalence of drug use; without increasing the negative health consequences related to illegal drugs and increasing the social costs. The evaluation concluded that the new law met none of the objectives. Instead, they found youth consumption increased. Demands on the CJS increased significantly. For example, the number of people arrested for use/possession increased from 0 in 1998 to 235 in 2001, (with 85 people convicted and 28 imprisoned for use/possession) and the costs of CJS response increased by 37 million Czech crowns (or about U.S. $1 million). The reform was also found to reduce treatment seeking due to increased stigma of people who used drugs and increase arbitrary police enforcement and on the street police corruption (e.g. requests for information in exchange for turning a blind eye to possession). They thus concluded that the reform led to no additional benefits and that it had increased social costs and wasted resources that could otherwise have been used for better purposes.

Outcome analyses in more recent times have showed that demands on the CJS have reduced, that there are no apparent indicators of arbitrary enforcement and drug use trends have largely remained stable, albeit with increased injecting of methamphetamine / pervatin. Importantly, the prevalence of drug-related harm – particularly overdose and drug-related HIV – have remained low and are still some of the lowest in the European Union. Overall this reform has thus been found to reduce CJS costs and sanctions for many (young) people who use drugs and to reduce barriers to the provision of harm reduction and treatment services (albeit not via direct referral as in some reforms, such as the Portuguese decriminalisation). The reform has also shown the importance of careful design of threshold limits for decriminalisation reforms to avoid discretionary enforcement and fear amongst people who use drugs.
Denmark

Context
As with all Scandinavian countries, Denmark has a civil law system, albeit with many common law traits. Denmark is also characterised by its comparatively strong welfare-oriented profile and egalitarian ethos.

In 1955 the Danish Act on Euphoriant Substances made illicit drug possession a criminal offence punishable by up to two years imprisonment. But in the mid-1960s the patterns of drug use shifted beyond being a behaviour of a small socially deviant sub-group who resided in Copenhagen. Instead, there was a growth of a ‘new type of drug user’ who were young people, school children and students, artists, musicians and bohemians (Houborg, 2010). By the late 1960s, national surveys, academic studies and a public committee showed that exposure to drug use was increasingly routine and part of the everyday life amongst young people, albeit that those who developed drug problems were those who were more socially disadvantaged. Drug use thus came to be seen as a normal activity and drug ‘abuse’ as a symptom of fundamental social problems (Houborg, 2017).

Alternative mechanisms for dealing with simple possession offences
From 1969 to 2004 Denmark depenalised possession of illicit drugs for personal use. The rationale for depenalisation was to avoid criminalising young people. More specifically there was recognition that drug use was a widespread but largely non-problematic phenomenon amongst young people and that treating it as a social issue was preferable to criminalisation and treating young people as deviants. As noted by Houborg (2010, p. 790) the Danish Government “did not wish to criminalise a large number of otherwise normal young people and risk alienating them from society.” As such the Attorney General issued guidelines to police, prosecutors and the courts to exempt possession of illicit drugs for personal use from penalties for a first offence and to instead issue warnings. Fines could be used for repeat offenders.

Threshold limits were set: up to 10 grams of cannabis or 0.2 grams of heroin or cocaine. The target group were youth and first-time offenders and it was immaterial if it involved public or private use. Supplementing the depenalisation policy were broader welfare policies targeting drug demand and problematic drug use (via improving living conditions) and tougher penalties and enforcement of supply.

Outcomes
Analysis of the outcomes of the Danish depenalisation is limited; there is more published on the reversal of the reform in 2004 (discussed further below). From the mid-90s and until early 2000, there was a clear increase in experimental drug use in the general population, young adults and adolescents (15 and 16-year-olds) (EMCDDA, 2004b). By the early 2000s, the prevalence of cannabis use was amongst the highest in Europe. As outlined by Houborg (2017) “various studies and reports provided evidence of extensive drug use amongst young Danes and indicated that a new culture of intoxication was developing.” The extent to which this was attributable to the reform, versus broader European trends, is not clear. For example, much of the increase in stimulant use occurred in the context of the night-time economy and echoed that seen in other European countries including the UK, the Netherlands, France and Spain (EMCDDA, 2004a, 2004b). Police however argued that the increase was due in part to the reform and that the depenalisation had made legal control difficult and also undermined social controls about the acceptability of illicit drug use (Houborg, 2017).

More generally the EMCDDA (2004b) report on Danish drug trends at the conclusion of the depenalisation indicated there had been a reduction or stabilisation in drug-related harms. Specifically:
• The number of cases of drug-related cases of hepatitis A, B and C reduced: such as from 49 cases of drug-related Hepatitis C in 1993 to 2 in 2003.
• The number of cases of drug-related HIV was stable.
• The number of drug charges made by the CJS were stable or decreasing: from 18,604 in 1993 to 14,316 in 2003.

The main indicator of concern was drug-related deaths which had been stable in the 1980s (at around 150 per year) but increased significantly in the 1990s (to around 250 per year from 1994 to 2003). Moreover, while most deaths in the 1980s occurred in Copenhagen they were more spread across the country.

In 2004 the depenalisation was ended: under arguments that it sent the wrong message, the exception being for dependent drug users who continued to have options of warning due to the recognition they should not be punished for being dependent and that they would have few economic means to pay a fine (the typical sanction for possession). Houborg (2010, p.795) noted that the 2004 reforms took place in a broader context of a new conservative Government and adoption of tough on crime penal policies, and “in light of these changes in the political culture in Denmark, it is hardly surprising that possession of illegal drugs for personal consumption would be re-penalized.”

Analysis of the re-criminalisation by Møller (2010) showed there was a significant negative correlation between the number of seizures of cannabis and amount seized – indicating the increased focus on retail distribution may have displaced control of trafficking/wholesale offences. Møller argued that this is an indication of policy displacement with scarce police resources redirected to targeting use and possession rather than higher-level trafficking and wholesale distribution. It is important, however, to interpret this in the context of highly fluctuating seizure amounts on an annual basis. Note there were no significant findings for other drugs, including heroin, amphetamine and cocaine.

Equally importantly, Møller (2010) found evidence of a clear increase in punishment that had occurred post re-penalisation. The number of fines for drug law misdemeanors was approximately three times higher in 2006 and 2007 than in 2000 and 2002: up from 2,950 in 2000 to 4,789 in 2004 to 7,950 in 2008 (Møller, 2010). Finally, he looked at ethnic bias in policing and found that the proportion of non-Westerners who were given a fine for use / possession cannabis increased between 2000 and 2008 from 2.6 to 6.8 per 1,000 citizens. In contrast, the proportion of Danish citizens and people of Western origin who were fined only increased from 1.6 to 2.4 per 1,000 citizens. This led him to conclude that re-penalisation increased ethnic bias in policing of people who use drugs in Denmark, due in large part to differential access to public space.
Netherlands

Context
The Netherlands has a civil law system. In 1953 possession of illicit drugs became a criminal offence, punishable with up to two years imprisonment, but drug use was rare until the late 1950s. Concern in relation to illicit drugs increased in the 1960s, as young people started experimenting with cannabis, LSD and amphetamines and the use of psychoactive substances in the Netherlands increased rapidly. Dutch law enforcement authorities initially responded forcefully leading to a spike in arrests (from 74 in 1966 to 544 in 1969), however, enforcement was found to be difficult, time consuming and ineffective and the “repressive approach” was widely criticised (Grund & Breeksema, 2017). In 1969 the Public Prosecutor’s office shifted the focus of policing away from cannabis consumption towards trafficking of cannabis and ‘hard drugs’. Such an approach – known as the “Gedoogbeleid tolerance policy” – is consistent with a number of Dutch traditions. First, it is customary for Dutch police to act on the basis of the expediency principle, whereby laws and rules are only enforced when there are reasons to intervene (Uiterman, 2004). Second, there is a longstanding Dutch preference for “gedogen” or a pragmatic and minimalistic approach to difficult social problems. However, a further rise in heroin consumption sparked more explicit attention to optimal policy responses.

It was in this context that two Government advisory committees were established, the Hulsman Commission and the Baan Commission, and became highly influential in shaping the future of the Dutch drug policy. Both emphasised the normalisation of use: that drugs are ‘a normal social problem’, hence the optimal approach for society is to depolarise and integrate people who use rather than exclude and punish. They also proposed separating drug markets based on their risk profiles, to reduce the exposure of young cannabis consumers to other illicit drugs.

Alternative mechanisms for dealing with simple possession offences
In 1976 the Netherlands introduced a formal written policy of depenalisation of adult possession of cannabis and a system of regulated cannabis supply, which eventually led to the establishment of ‘coffee shops’ where sale of cannabis is tolerated. Here we focus on the response to possession, rather than the coffee shops. Under the new reform, charges for the possession of up to 30 grams of cannabis would be dismissed (in accordance with a Gedoogbeleid ‘tolerance policy’) or be charged as a petty offence or misdemeanour (comparable with a traffic tickets) that would not result in a criminal record.

A second (and lesser known) mechanism of response was provided to adults found in possession of other illicit drugs: namely diversion to treatment. Potential offenders are visited in police custody by social workers and referred to treatment. Here threshold limits are lower at 0.5 grams.

The central aim of Dutch drug policy was the prevention or alleviation of social and individual risks caused by drug use. This was premised on the belief that individual policy measures should reflect a rational response to those risks and the inadequacy of the criminal law to resolve aspects of the drug problem other than the trafficking of drugs. As such repressive measures are prioritised for drug trafficking (other than cannabis) rather than drug use. The Dutch policy has shifted over time. Of note, in 1995, the threshold limit of the amount of cannabis of which possession would be tolerated was reduced to 5 grams.

Netherlands (cannabis)
Rationale: To use criminal sanctions as a last resort
Mechanism: De facto – depenalisation (Gedoogbeleid ‘tolerance policy’)
Drugs: Cannabis
Threshold limits: Yes, 30 grams cannabis (from 1976-1995), 5 grams (since 1995)

Netherlands (hard drugs)
Rationale: 
- Early intervention
- Reduce drug-related harms
Mechanism: De facto – diversion to treatment
Drugs: Other illicit drugs
Threshold limits: Yes, 0.5 grams of heroin or cocaine
Outcomes
There is a large evidence-base on the Dutch drug policy, which shows that the rates of drug use in the Netherlands are similar or lower than other nations. For example, Chatwin (2016) found that the prevalence of cannabis use increased post the 1976 reform, however this increase was in line with broader European trends. For example, 25.7 per cent of the general population reported lifetime cannabis use, slightly above the European average of 21.7 per cent. Moreover, the Netherlands has the lowest rate of problematic drug use in the EU (Grund & Breeksema, 2017). The use of “hard drugs”, with the exception of ecstasy, is relatively low in the Netherlands, and cannabis users in the Netherlands report less use of other illicit drugs like cocaine, amphetamine, heroin and crack than those in other countries (van Ooyen-Houben, 2017). Moreover, in 2013, the number of opiate users was 14,000; a 21 per cent reduction since 2009 and a much lower rate than in other European countries.

Cross-national comparisons are particularly instructive here. Comparing Amsterdam to San Francisco in the United States, Reinarman, Cohen, and Kaal (2004) found the overall pattern of use was similar across both cities: with age of onset, age at first regular use, age at the start of their periods of maximum use nearly identical. But, contrary to expectations, the general population prevalence surveys (age 18 and above) showed significantly lower lifetime prevalence of cannabis use in Amsterdam (34.5 per cent), where it has been depenalised, than in San Francisco (62.2 per cent) where criminal sanctions for possession were still used.

Another important cross-national comparison was undertaken by MacCoun and Reuter (2001). This study compared the prevalence of cannabis use over time in the Netherlands, USA and several European nations (including Denmark and the UK), taking into account two phases of Dutch cannabis policy: first, involving only depenalisation and second, involving depenalisation and the growth of commercialised coffee shops. During the first phase from 1970 to 1983, they found that Dutch lifetime prevalence of cannabis use was 3.6 per cent lower than that of the USA, but somewhat higher than that of some, but not all, of its neighbours (on average 5 percentage points higher). In relation to trends they showed that cannabis use was declining among Dutch adolescents in the years prior to the 1976 reform, which had little effect on levels of use during the first seven years of the new regime (i.e. no evidence of further reductions, but also no evidence of increase). During the second phase, from 1984 to 1996, lifetime prevalence of cannabis use increased consistently and sharply in the Netherlands. The US, Norway and Canada all experienced similar sharp increases in use from 1992 to 1996, but only the Netherlands showed an increase from 1984 to 1992. This led the authors to conclude this rise was the consequence of the gradual progression from a passive depenalisation regime to the broader de facto legalisation involving commercialised coffee shops, which allowed for greater access and promotion (MacCoun & Reuter, 2001). This suggests that the depenalisation of possession of cannabis did not increase cannabis use, though commercialisation may have.

Irrespective of the trends in use there is now a large amount of evidence showing that the Dutch policy is associated with fewer drug-related harms.

- There have been declines in injecting drug use, and only 7 per cent of opiate users inject – the lowest in Europe. The Dutch model has resulted in a very low rate of AIDS infection contrasted with that found in the US (about 12 per cent of all dependent people and 25 per cent high-risk intravenous (IV) users in Amsterdam tested positive for HIV compared to at least 50 per cent HIV positive among IV users in the US) (Bullington, 1994).
- There is also increased evidence of contact with health services. Specifically, because there is no overt threat presented by the authorities, health care workers in the Netherlands have been able to maintain close contact with about 70 per cent of local dependent people, as contrasted with a figure of 15 per cent in New York. Moreover, the low rates of drug injecting and risks of overdose and HIV have contributed to high rates of survival amongst people who use heroin in the Netherlands: with 81 per cent of clients in treatment for opiates aged 39 or over (Grund & Breeksema, 2017).
- Finally, the rates of arrest and conviction are low in comparison with other European nations. For example, in 2005 there were 3 arrests per 1000 users compared to 44 per 1000 users in Austria and 34 per 1000 users in Germany (Grund & Breeksema, 2017).
Germany

Context

Germany is a federated country comprised of 16 states or Landers that enjoy a high level of autonomy in many areas of public policy (drug policy included). That said, as opposed to its Australian and US counterparts, the German federal government is exclusively responsible for enacting criminal laws, states mainly have responsibility for decisions around enforcement of laws (Pacula et al., 2005)(Pacula et al., 2005)(Pacula et al., 2005)(Pacula et al., 2005). Germany has a civil legal system as well as a Constitution that guarantees rights to personal freedom, inviolability of the home, freedom of expression and equality before the law (Holzer, 2017).

The Federal Narcotics Law enabled punishment of up to 4 years imprisonment for drug possession. During the 1960s illicit drug use and drug offences in Germany were rare. However, 1968 saw an exponential rise in consumption, drug offences and thereafter, drug-related deaths (Holzer, 2017). Then, despite the allocation of significant resources (particularly by law enforcement), the 1980s saw further increases in the availability of heroin, as well as drug-dependent people, drug-related harms and property crime. For example, from the early to late 1980s, the number of deaths in Germany caused by illicit drug use tripled to more than 2,000 mortality cases per year. Moreover, amongst those who were arrested, recidivism rates continued to climb. In combination, these factors increased levels of police activity and youthful resistance, producing a “revolving door effect” and drove increased attention to seeking alternative mechanisms for dealing with simple possession offences (Holzer, 2017).

Alternative mechanisms for dealing with simple possession offences

In 1992 the German Parliament introduced Section 31a BtMG, which partially depenalised consumption-related drug offences by giving public prosecutors the authority to decide when to prosecute defendants charged with consumption-related drug offences. Then, in 1994 the Federal Constitutional Court delivered a landmark ruling, that there was no ‘right to intoxication’ but made it obligatory for the prosecution to drop the case (nolle prosequi: no further action) when it involved possession of small amounts for personal use if there was no danger to third parties. One key rationale for the ruling was the belief that such offences would amount to excessive state intervention and thus seriously infringe upon the constitutional principle of proportionality. The ruling also allowed for the removal of a punishment that had already been pronounced in a court verdict if an offender underwent drug treatment in an inpatient treatment institution.

However, the Federal Court left it up to the states to decide what constituted ‘small amounts’. This has resulted in large variation. The first variation is whether this applies to cannabis or all illicit drugs, as while the ruling stated cannabis, many states extended this to other illicit drugs. The second variation is in threshold limits, which vary across states between 0.1–2 grams of heroin or cocaine; 6–30 grams of cannabis; and 10–30 ecstasy pills. The southernmost state insisted on very low limits (e.g. 6 grams of cannabis, 0.5 grams of heroin, 0.3 grams of cocaine, 0.2 grams of amphetamine and its derivatives), while other states (e.g. Berlin and Hamburg) adopted limits of between 10 and 30 grams of cannabis. A third variation is whether states allow dismissals for repeat offences – this is common in liberal states, but largely ruled out in conservative states unless in exceptional circumstances.

The German approach to dealing with simple possession offences was based on harm reduction principles: concentrating reversion by directing law enforcement efforts towards drug traffickers and smugglers rather than on users, and of offering “Help instead of Punishment,” Sect. 31a BtMG. These reforms occurred alongside a significant expansion in harm reduction in Germany: including the introduction of methadone maintenance, heroin assisted treatment and supervised injecting facilities.
Outcomes
In Germany, impacts on the CJS appear mixed. For some, the procedural decriminalisation has led police to increasingly abstain from proactive enforcement and even from reactively responding to such incidents, particularly cannabis and ecstasy. But, drug offences have risen in Germany: from 122,240 in 1993 to 253,525 in 2013, two-thirds of which are for consumption alone (mainly cannabis) (Holzer, 2017). More generally the differences in interpretation have fuelled large variations in enforcement and justice by geography. For example, the proportion of unconditionally discontinued prosecutions ranged between 49 per cent (e.g. Bavaria) and over 90 per cent (e.g. Berlin), with further variance evident in the numbers that go to court (5 per cent of cases in Berlin compared with 30 per cent of cases in Bavaria) (Schäfer & Paoli, 2006). Data indicate that there is no correlation between the prosecution policy adopted and self-reported rates of cannabis consumption. Bollinger (2004) further notes that the Bavarian government sometimes instructed the Bavarian police to intensify cannabis enforcement.

Germany has seen increased use of the inpatient treatment system. As Bollinger (2004, p. 501) noted “practically all perpetrators now accept or undergo treatment. The proportion of in to outpatient treatment was originally about 9 to 1, but that has now been reversed.” This has led to much greater and faster access to drug treatment.

There is evidence of declines in drug-related harms particularly in relation to studies conducted post the first reform. For example, the number of newly registered heroin users in Frankfurt declined significantly from 903 in 1992 to 557 in 1993 after a consistent increase in the previous years (Fischer, 1995). Drug overdoses further decreased in Hamburg from 184 in 1991 to 135 in 1993. While the number of deaths caused by heroin use in Frankfurt in the 1980s rose by a rate of 50 per cent per year to a peak of 147 deaths in 1991, this trend was reversed: deaths related to heroin use decreased by almost 60 per cent to 68 in 1993. Drug-related crime in Frankfurt also declined significantly over the same period. The percentage of street robberies in Frankfurt that were committed by heroin users, as identified by the authorities, decreased from 35 per cent in 1991 to 8 per cent in 1993. That said, the expansion of harm reduction services has clearly played a role in such trends. As such, the extent to which reductions in drug-related harm could be attributed to the law versus the expansion of harm reduction or other interventions remains unclear.

Amongst German youth annual trends in lifetime cannabis consumption was stable pre-reform (16.3 per cent in 1989 and 1993), but almost doubled by 2004: to 31.3 per cent and has now stabilised at 25 per cent in 2015. Trends in last 12 month use also point to an increase from 1990 to 2003 then a stabilisation. That said, Germany has lower rates of drug use, including problematic drug use, than many other European countries (Eastwood, Fox, & Rosmarin, 2016), as well as lower rates of HIV and drug-related overdose.

The net result of the German reform is thus mixed, with clear reductions in the number of people prosecuted and reductions in drug-related harm in some regions, but also increased prosecution in others. While this in part reflects the federated context of the reform it also reinforces the potential divergence that can arise if reforms are interpreted in different ways or if there is opposition or a lack of support for reform.
Portugal

Context
Portugal’s legal and judicial system was based on Roman civil law, albeit contemporary Portugal has criminal, civil and administrative laws. It also has a constitution that guarantees human rights and freedom, including the right to safeguarding of health and guaranteed access to health care. The most relevant article of the Portuguese Constitution is article 64 on health care which states the Government has a duty, “to guarantee access by every citizen, regardless of his economic situation, to preventive, curative and rehabilitative medical care.” Portugal consists of 18 administrative regions, including Lisboa, which hosts the capital city Lisbon. Portugal also includes two autonomous regions, the Archipelagos of Azores and Madeira Islands, both located in the Atlantic Ocean.

The main drug law preceding reform was Decree-Law 15/93. This law distinguished between consumption, trafficking-consumption and trafficking. Under this law, the maximum penalty for occasional or habitual consumers in possession of small quantities of drugs was three months imprisonment (Decreto-Lei n.º 15/93, de 22 de janeiro 1993). The penalty for possession of a larger quantity was up to one-year imprisonment. In practice, however fines were commonly used.

Portugal has traditionally had a low prevalence of illicit drug use, albeit Portugal’s location on the south-western border of Europe means it is a gateway for drug trafficking. However, the context changed rapidly in the 1980s with the emergence of a public health and humanitarian crisis, surrounding injecting use of heroin, infectious diseases and open-air drug markets. For example, the number of drug-related AIDS cases increased from 47 in 1990 to 635 in 1999. In 1999, Portugal had the highest rate of drug-related AIDS cases in the EU and the second highest prevalence of HIV among injecting drug users (Hughes, 2017). Moreover, there were up to 5,000 people attending open air drug markets such as Casal Ventoso in central Lisbon on a daily basis, amongst whom 60 per cent were HIV positive, 74 per cent were HCV positive and many were homeless and socially marginalised.

An expert committee was established by the Government to develop a new strategy and way forward. One of the key recommendations was to decriminalise drugs. This was based on a number of core principles, the most important of which were pragmatism and humanism: Pragmatism reflected the notion that the dogmatic policies of the past had not worked and humanism recognised the need to treat all people with respect and humanity and to take measures to integrate or re-integrate them into society, including by removing the barrier of the criminal law and by expanding prevention, harm reduction, treatment and social reintegration resources.

Alternative mechanisms for dealing with simple possession offences
On 1 July 2001, Portugal decriminalised the use, possession and acquisition of all illicit drugs, when deemed for personal use. The decriminalisation is a de jure reform, enacted through Law no. 30/2000.

The definition of “one’s own consumption” is a quantity “not exceeding the quantity required for an average individual consumption during a period of 10 days” (Article 2(2)). The quantities delineated are 1 gram of heroin, 1 gram of ecstasy, 1 gram of amphetamines, 2 grams of cocaine, or 25 grams of cannabis. The 2000 law is notable in its breadth—it includes all previously controlled psychoactive drugs and does not distinguish between public and private use.

Since that time drug use became an administrative offence, with all detected people referred by police to a Commission for the Dissuasion of Drug Addiction (CDT). The CDTs are regional panels made up of three people, including lawyers, social workers and medical professionals. They are connected with a broader network of agencies, including drug

Portugal

- Rationale: Social integration of problematic drug users
- Mechanism: De jure – Possession became an administrative offence, with diversion to dissuasion committees and targeted referrals to treatment
- Drugs: All
- Threshold limits: Yes (10 days’ supply e.g. 1g heroin, 25g cannabis)
treatment; primary care; mental health; schools; employment; social services; and child protection. There is one CDT for each of the 18 regions of continental Portugal and 3 in the autonomous archipelago of the Azores.

The CDTs conduct an interview with referred offenders to assess their treatment needs and explore the cause and circumstances of drug use and - where relevant - their mental health history. The CDTs also assess whether there are any social issues such as in school, employment or housing (and refer affected people to relevant support agencies). The CDTs then decide on an appropriate ruling or sanction. They have a range of possible sanctions, including: warnings; community service; suspended sentence; bans on obtaining a firearms license; requiring regular attendance at a specified site (e.g. an employment service); and fines (these cannot be used for dependent users). However, their primary aim is to dissuade drug use and to encourage dependent users into treatment. In practice, most offenders are deemed non-dependent and receive a suspended sentence. For example, in 2013 the CDTs completed 7,528 rulings and 70 per cent involved suspended sentences for non-dependent users (EMCDDA, 2015). A further 12 per cent of rulings involved suspended sentences with a referral to treatment for dependent users and 11 per cent were ‘punitive’, of which 8 per cent required periodic attendance at a site (EMCDDA, 2015).

Decriminalisation is supported by a national drug strategy and action plan, which has as its central goals (i) to reduce use and (ii) to reduce the health and social consequences of use. The first iteration of these documents was adopted in May 1999 (National Strategy in the Fight Against Drugs (NDFAD)) and led to an expansion in policies across multiple domains, including a range of harm reduction and social measures (such as needle syringe programmes, outreach teams, free hepatitis B vaccinations, shelters, guaranteed minimum wage and subsidies for employers to hire drug-dependent individuals). The new policy also coincided with improvements in social housing and the introduction of a guaranteed minimum income.

Outcomes

The major perceived success of the Portuguese reform has been its contribution to changes in public health problems, with significant referrals—particularly in the early years—by the CDTs of heroin users to treatment. For example, the overall numbers of drug users in treatment expanded in Portugal from 23,654 to 38,532 between 1998 and 2008 (Hughes & Stevens, 2010). Evaluation of the CDTs found that about a quarter of the participants were referred to specialised services in addictive behaviours, mainly Treatment Structures, and that for half of them this was their first contact with the structures (Carapinha, Guerreiro, & Dias, 2017). The largest increase in treatment was in outpatient opioid substitution therapy.

Pombo and da costa (2016) further evaluated drug treatment involvement in the periods of pre-and post-drug policy reform and showed that treatment engagement increased by 94 per cent. Drug injection had decreased with heroin users smoking heroin rather than injecting it and HIV infection also decreased (28.0 per cent to 19.6 per cent) (Pombo & da costa, 2016). Moreover, the population of people who use drugs had aged and become better educated. This led them to conclude that the drug-use profile of heroin-addicted patients changed after the new policy on drugs was implemented with stable or reducing harms.

Drug-related HIV infections decreased significantly between 2000 and 2009 from 1,400 to fewer than 200 cases per year. Significant reductions in mortality for HIV, HCV and tuberculosis (TB) also occurred (Moreira, Trigueiros, & Antunes, 2007). The number of new diagnoses of HIV and AIDS has also declined. For example, between 2000 and 2008, the number of new cases of HIV reduced amongst people who use drugs from 907 to 267 and the number of new cases of AIDS reduced from 506 to 108 (Hughes & Stevens, 2010). This was attributed primarily to expansion of harm reduction services, which may have been facilitated by the reduction in stigma around harm reduction services after the removal of criminal penalties. As of 2016, Portuguese trends in the total number of annual notifications of drug-related HIV infection cases had continued to decrease to 30 cases (EMCDDA, 2017).
Between 2000 and 2005, the number of problematic drug users and the prevalence of injecting drug use also declined. For example, the rate of injecting drug users decreased from a mean of 3.5 people who inject drugs per 1,000 population aged 15–64 to 2.0.

The number of drug-induced deaths in Portugal (defined according to ICD protocols) also decreased from the time of reform (Hughes & Stevens, 2015a). Following a large drop in drug-related deaths from 2001 to 2005, there has been a subsequent increase, although levels remain much lower than at the time of reform. Trends in relation to drug-induced deaths have showed consecutive increases in the last two years: but much lower than at the time of reform. In 2015 the rate of drug-induced mortality among adults (aged 15 to 64 years) was 5.8 deaths per million: much lower than the 2015 European average of 20.3 deaths per million (EMCDDA, 2017). Given that heroin problems were the major driver of the reform, this reduction in overdose and opiate-related death was deemed a considerable achievement of both the decriminalisation and the broader drug strategy.

There was also a significant reduction in the burden on the CJS. The number of people arrested for criminal offences related to drug offences reduced from over 14,000 offenders in 2000 to an average of 5,000-5,500 offenders per year in 2008 (with 6,000 sent to CDTs). Stakeholders thus argued that decriminalisation did as conjectured reduce the burden on the Portuguese CJS and enable police to refocus their attention on more serious offences, namely drug trafficking-related offences. It also led to a reduction in prison overcrowding (Hughes & Stevens, 2010).

Trends in relation to drug use are complex as there were no general population data prior to the reforms. Between 2001 and 2007 the reported prevalence of lifetime drug use increased in Portugal for almost all illicit substances and amongst most age groups. But analysis of rates of discontinuation of drug use (the proportion of the population that reported ever having used a drug but opting not to in recent years) also increased, which suggests that the growth in lifetime reported use reflected predominantly short-term experimental use (Hughes & Stevens, 2015a). Trends moreover in recent use were stable (only a 0.3 per cent increase), and trends actually reduced amongst those aged 15-24 – those most at risk of initiation. The most recent data on drug use among students, from the 2015 European School Survey Project on Alcohol and Other Drug, showed lifetime use of cannabis and other illicit drugs among Portuguese students was slightly lower than the European average (based on data from 35 countries); with trends either stable or decreasing over time. This all indicates that the feared increase in drug use has not occurred and that net-harms may have reduced.

Again cross-national analyses are particularly informative here. Hughes and Stevens (2012) combined stakeholder interviews with analysis of trends in Portugal, Spain and Italy in relation to drug use, drug-related harms, CJS and drug markets. This study concluded that post reform there were:

- small increases in reported illicit drug use amongst adults albeit on par with Spanish and Italian trends;
- reductions in illicit drug use among problematic drug users (in direct contrast to those trends observed in Spain and Italy);
- reductions the burden of drug offenders on the CJS (in direct contrast to those trends observed in Spain and Italy);
- reductions in illicit drug use among adolescents, at least since 2003;
- increases in the uptake of drug treatment;
- reductions in opiate-related deaths and infectious diseases;
- increases in the amounts of drugs seized by the authorities; and
- reductions the retail prices of drugs.

This led to the conclusion that combining the removal of criminal penalties with the use of alternative therapeutic responses to dependent drug users may offers several advantages: reducing the burden of drug law enforcement on the CJS, while also reducing problematic drug use.

Gonçalves, Lourenço, and da Silva (2015) evaluated the social costs of the reform including the strategy. They found a significant average reduction (12 per cent) in the social cost of drugs in the 5 years following the NSFADs approval (2000 - 2004). In a longer timeframe (2000 - 2010), the social cost (average) reduction was more significant (18 per cent).
Jamaica

Context

The cultivation and consumption of cannabis have long had major economic and cultural importance in Jamaica (Emanuel, Haughton, & K'Nine, 2018). For example, while cannabis use and cultivation in the Caribbean was made illegal in 1913, it remained popular amongst members of the Rastafari faith for religious and medical purposes. Moreover, in the 1940s, Jamaica was home to the first Ganja Enterprise and used to cultivate and transport cannabis to England during the Second World War. More recently, in 2014 the International Narcotics Control Board reported that Jamaica remains the largest illicit producer and exporter of cannabis in Central America and the Caribbean. Nevertheless, general population rates of cannabis/ganja use have tended to be lower than in North America (Younger-Coleman et al., 2017).

Use has traditionally been concentrated amongst sub-populations, particularly members of the Rastafari faith, and there have been ongoing concerns about the policing and enforcement of the cannabis laws and disproportionate impacts on such groups. For example, there have been many accounts of police brutality and shootings of people who use cannabis/ganja and the Jamaican police have been branded as operating a death squad trained to pursue extrajudicial strategies to fight the War on Drugs, especially in relation to religious minorities (Niaah, 2016). In 1999 the Government of Jamaica established a National Commission on ganja which discussed possible policy options of legalisation or decriminalisation (Emanuel et al., 2018). Twelve years later, the subject of amending the law in Jamaica re-emerged as a hot topic when a construction worker died in police custody three days after being arrested for the possession of a ganja spliff (Niaah, 2016).

Alternative mechanisms for dealing with simple possession offences

On 15 April 2015, the Government introduced de jure decriminalisation by replacement of criminal penalties with a civil fine for possession of small quantities of cannabis. The purpose of the reform was multiple including: efficiency (to reduce the backlog on the courts); human rights (to reduce conflict with rights to privacy); and to reduce the harm to young people from provision of a criminal conviction. Under the new law possession of 2 ounces or less of ganja is no longer an offence for which one can be arrested, charged and sent to court, and it will not result in a criminal record. However, the police may issue a ticket to a person in possession of 2 ounces or less of ganja, similar to a traffic ticket, and the person has 30 days to pay the sum of J$500 at any Tax Office. A person who is found in possession of 2 ounces or less who is under the age of 18 years, or who is 18 years or older and appears to the police to be dependent on ganja, will also be referred to the National Council on Drug Abuse for counselling, in addition to paying the ticket. The reform was part of a broader suite of changes. These included allowing members of the Rastafari faith to use and cultivate, once granted authorisation, cannabis for religious purposes, and the establishment of a court supervised drug treatment programme for persons dependent on cannabis and other substances who commit crimes such as theft as an alternative to imprisonment. Laws enabling past convictions for cannabis possession or use to be expunged were also passed.

Outcomes

Given the recency of the change, there are very few studies. But, a general population survey was conducted in 2016 (all data was collected between April and July) which examined knowledge and attitudes to the new law and drug use trends (Younger-Coleman et al., 2017). The survey found 34.6 per cent of the population reported that they did not know of any of the changes recently made to the Dangerous Drugs Act. Knowledge appeared lower amongst the younger population with 52 per cent of those aged 12-17 and 40.4 per cent of those aged 18-24 aware of none of the changes, compared to 25.4 per cent amongst those aged 35-44. Nevertheless there was strong support for the change in regards to possession; 70 per cent of Jamaicans aged 12-65 years old agreed with being allowed to have limited amounts of cannabis for personal use (Younger-Coleman et al., 2017). This

Jamaica

- Rationale: To reduce harm to people who use drugs from a criminal conviction
- Mechanism: De jure – Replacement of criminal penalties with a civil fine (‘fixed penalty notice’) of J$500 (€3.14)
- Drugs: Cannabis only
- Threshold limits: Yes, 2 ounces
led these authors to conclude that the provisions appear to have public support but that more work needs to be done to educate the populace about the changes.

The general population survey showed that in 2016, 18.0 per cent of the general population aged 12 to 65 reported recent (last 12 month) cannabis use. Comparison of the findings from the 2001 and 2016 survey showed a 6 per cent increase in last year cannabis use in the general population of 12-55/65 year-olds (Younger-Coleman et al., 2017), but any increase appeared concentrated amongst older populations. Amongst those aged 10-17, last year cannabis use increased by less than 1 per cent. Across both surveys the prevalence of use of other illicit drugs such as cocaine was stable and very low (<1 per cent reported lifetime or past year use).
Australia

Context
Australia is a federated nation comprised of the Commonwealth of Australia and eight states and territories. Australia has a common law system, but this has evolved over time to include criminal, civil and administrative laws. The main legislative responsibility of the Commonwealth, in relation to drugs, is for border control (Customs Act 1901), and drug trafficking and manufacturing (Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990). Responses to simple drug possess offences are largely the remit of states and territories.

Most states prohibit the trafficking, cultivation, possession and consumption of substances including heroin, cocaine, cannabis and amphetamines, with maximum penalties for use or possession of 1 to 2 years imprisonment. For example, the maximum penalty in Victoria for use or possession of an illicit drug is $500 fine for cannabis or $3,000 fine and/ or 1-year imprisonment for any other drug (McDonald & Hughes, 2017).

Drug use in Australia is relatively high. For example, in 1993 the Australian national household survey showed that 37.1% of people aged 14 years and over had tried illicit drugs, mainly cannabis (24%) and 13.7% reported they had used an illicit drug in the last 12 months. Moreover, 7% of women and 15% of men were weekly cannabis users.

The first National Drug Strategy (the National Campaign Against Drug Abuse) was adopted in 1985, with the objective of harm minimisation; i.e. reducing harms without necessarily reducing use. This led to a practice (or at least rhetoric) of focusing criminal justice intervention on drug traffickers, rather than drug users. There has also been a commitment to a partnership approach to responding to illicit drugs, exemplified by the involvement of both health and law enforcement stakeholders in the peak body overseeing the National Drug Strategy.

The diversion of offenders away from the CJS has long been part of Australian police practice, especially relating to youth offenders, but early programmes were ad hoc or relied on informal police discretion. Throughout the 1980s and 1990s programmes that targeted illicit drug offenders started to be introduced. The most well-known of these was the South Australian Cannabis Expiation Notice Scheme, introduced in 1987 (see below). Diversion became much more systematic and embedded into all states and territories after adoption of the Council of Australian Government Illicit Drug Diversion Initiative (IDDI); a national commitment, signed in 1999, to divert minor drug offenders away from the CJS into assessment, education and/or treatment programmes via both police and courts. The IDDI was accompanied by a national framework, principles of best practice for diversion and federal funding amounting to over A$310 million to enable an expansion of treatment places (Hughes & Hughes, 2007).

The introduction and expansion of alternate mechanisms was driven by multiple factors. This included inquiries into cannabis such as the National Cannabis Taskforce in 1992 which highlighted the adverse consequences associated with the application of criminal penalties for cannabis possession for personal use, and a rise in the late 1990s of heroin and drug-related crime, an increasingly overburdened CJS, and increased research and an international therapeutic jurisprudence movement showing diversion could be a useful policy option (Hughes & Hughes, 2007).

Alternative mechanisms for dealing with simple possession offences
Australia has evolved a broad array of alternatives for drug-related offenders, including de jure and de facto reforms, as well as therapeutic and non-therapeutic options. For example, Hughes and Ritter (2008) conducted a review of all Australian drug diversion options, and showed that in 2007 there were 51 programmes provided across Australia: and that most states employed 5 or 6 different programmes. Two main types of alternative mechanisms for simple possession offences now operate.
Decriminalisation with civil penalties

The first approach is decriminalisation with civil penalties. This is a de jure system that removes criminal penalties for possession for personal use of 50-100 grams (and cultivation of up to two plants) and provides offenders with the opportunity to avoid a criminal record through the payment of an expiation fee ($100-300). South Australia was the first state to introduce de jure decriminalisation of cannabis by a civil penalty scheme – in 1986 (enacted 1987), via the Cannabis Expiation Notice (CEN) scheme in the Controlled Substances Amendment Act 1986. At the time, it was one of the first places in the world to introduce such a reform. The Australian Capital Territory and Northern Territory followed suit in 1992 and 1996 respectively. Western Australia also introduced a civil penalty scheme in 2004, but this was repealed in 2008 following the election of a centre-right Government. A common feature of the Australian programmes (that differs from the US examples) is that they do not target first-time offenders alone. Instead, they provide unlimited opportunities for offenders to be expiated. Failure to pay the expiation fee may however result in criminal proceedings.

Police diversion

The second type of alternative used in Australia is police diversion. In most cases, this is a de facto system that offers police the option to refer detected offenders to education or treatment instead of laying criminal charges. Two main types of police diversion programmes operate. The first, a cannabis caution programme, is aimed at offenders detected using or possessing 10-50 grams cannabis. This leads to an “on the street” formal caution by police and referral to an education session or telephone service. The second, other drug diversion programmes, are aimed at offenders detected using or possessing small quantities of amphetamines, cocaine, ecstasy or heroin (1-10g) and lead to a police referral for an alcohol and other drug (AOD) assessment and brief intervention. The nature and intensity of the programmes vary. For example, in the New South Wales Cannabis Caution Program offenders are provided with a caution notice outlining the legal and health consequences of cannabis use and a phone number for a 24-hour Alcohol and Drug Information Service, albeit any contact to the information line is optional unless it is an offender’s second caution. In contrast, cannabis caution programmes in other states - including Queensland - require offenders to undertake a face-to-face assessment of their cannabis use and then receive education on the health effects of cannabis. The diversion programs for other illicit drugs typically involve a more intensive response: counselling, albeit this can vary between one to three sessions. All police diversion programmes have the option to impose sanctions for non-compliance, albeit this is rare in practice.

<table>
<thead>
<tr>
<th>Australia Cannabis Expiation Schemes (three states: ACT, NT, SA)</th>
<th>Australian Cannabis Caution programmes (four states: NSW, Qld, Vic, WA)</th>
<th>Australia other drug diversion programmes (six states: ACT, NT, SA, Tas, Vic, WA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rationale: To use criminal sanctions as a last resort</td>
<td>Rationale: To educate people who use drugs about the legal and health consequences of cannabis use</td>
<td>Rationale:</td>
</tr>
<tr>
<td>Mechanism: De jure – replacement of criminal penalties with civil penalties ($100-300)</td>
<td>Mechanism: De facto – police “on the street” formal caution and referral to education session or telephone service</td>
<td>• Early intervention</td>
</tr>
<tr>
<td>Drugs: Cannabis</td>
<td>Drugs: Cannabis</td>
<td>• Reduce recidivism</td>
</tr>
<tr>
<td>Threshold limits: Yes 50-100g (varies by state)</td>
<td>Threshold limits: Yes 10-50g (varies by state)</td>
<td>• Reduce harmful drug use</td>
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<tr>
<td></td>
<td></td>
<td>Mechanism: De facto – referral for AOD assessment &amp; brief intervention (typically 1-3 counselling sessions)</td>
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<tr>
<td></td>
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<td>Drugs: All illicit drugs / All except cannabis</td>
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<tr>
<td></td>
<td></td>
<td>Threshold limits: Yes typically 1 or 2g heroin or cocaine, but up to 5g heroin &amp; 10g ecstasy</td>
</tr>
</tbody>
</table>
All Australian diversion programmes have eligibility restrictions including on priors and concurrent offences and some also require offenders to admit an offence or admit guilt. Notably while most of the cannabis caution and drug diversion schemes are de jure – operating via police guidelines – there are three de facto diversion schemes that are based in law: the South Australian Police Drug Diversion Initiative (for all illicit drugs) and Queensland Police Diversion Program for Minor Drug Offences (for cannabis) and the Western Australian Cannabis Intervention Requirement (for cannabis).

Outcomes

Expiration

The best studied cannabis expiation notice scheme in the South Australian Cannabis Expiation Notice Scheme. In the early years, two perverse effects were observed. First, net-widening as evidenced by a 2.5-fold increase in expiable cannabis offences: from 6,231 in 1987 to over 17,170 in 1996 (Christie & Ali, 2000). Second, low rates of compliance in paying the expiation notices. at 45%. The net widening was attributed to the greater ease with which CEN can be issued under the scheme, compared to the procedures for an arrest and charge that would be required for a prosecution. The low compliance rates was attributed to lack of knowledge of the law and financial difficulty experienced by a substantial proportion of those detected for minor cannabis offences. This led to more cannabis users incarcerated for non-payment of fines. In 1996, the South Australian Government responded by introducing new payment options, including payment by instalments and substitution of community service for fees and increased education about the reform. Such measures led to a reduction in net-widening and increased payment (Eastwood et al., 2016).

In spite of the early perverse effects, the scheme was found more cost-effective for dealing with minor cannabis offences. For example, in the 1995/96 the total cost was estimated to be $1.24m and revenue from CEN fees, fines and costs was $1.68m. In contrast, the total cost of the prohibition approach was estimated to be $2.01 million, while revenue from fines and levies was estimated to be $1.0 million (Ali et al., 1999).

Comparisons of cannabis users who had received an expiation versus a conviction in South Australia and Western Australia respectively showed that decriminalisation with civil penalties was associated with significant social benefits, including fewer negative employment problems such as a loss of a job and less relationship disruption. The WA convicted group were also more likely to identify negative episodes of involvement with the CJS which they thought were related to their cannabis offence, such as further police enquiries or questioning.

There is some contestation about the impacts on drug use. For example, Damrongplasit et al. (2010) used the 2001 National Drug Strategy Household Survey to assess the impact of cannabis decriminalisation policy on cannabis smoking prevalence in Australia. They concluded that on average, living in a decriminalised state significantly increases the probability of smoking cannabis, by 16.2%. However, Donnelly et al (1995) used four household drug-use surveys and showed that while there was a national increase in self-reported lifetime cannabis use between 1985 (26%) and 1995 (36%), with a greater degree of increase in South Australia than in the average of other Australian states and territories, the SA increase is unlikely due to the CEN system, because (1) similar increases occurred in Tasmania and Victoria, where there was no change in the legal status of cannabis use; (2) there was no differential change in weekly cannabis use in South Australia as compared with the rest of Australia, and (3) there was no greater increase in cannabis use among young South Australian adults aged 14 to 29 years (the group most likely to take up use). Finally, Cameron and Williams (2001) found that holding all else equal, the probability that an individual used cannabis was 2.0 percentage points higher if the individual lived in South Australia, but that the increase was temporary and dissipated over time:

“Cannabis participation was not higher in South Australia in 1988 than in the other states. However, it was significantly higher in 1991 and 1993 (by 4.5 and 3.3 percentage points respectively). The probability of participating then dropped in 1995 to the same level in the other states. The effect of introducing a more legal regime has only a transient effect on cannabis use. In particular, 7 years after decriminalisation of cannabis in South Australia, the probability of an individual from South Australia using cannabis is no different than an individual from one or the other Australian states, all else being equal” (Cameron & Williams, 2001, p. 31)
Importantly, they also found that the increase reflected delayed exit of older consumers (aged 30 and over): not an increase amongst young people.

Moreover, analysis of prevalence of use in other states has shown stable trends or reductions. Of note the Northern Territory has historically reported high rates of cannabis use well exceeding all other states in Australia. However, rates of cannabis consumption in the state have fallen significantly since 1998 – two years after the introduction of decriminalisation – with reported use in that year of 36.5 per cent of the population, meaning that prevalence has more than halved in the last 17 years (to 17.1 per cent in the past year), supporting the evidence that the ending of criminal sanctions does not lead to an increase in use (Eastwood et al., 2016).

Police diversion
Cannabis cautioning programmes have been found to reduce number of people convicted for cannabis use or possession. For example, Baker and Goh (2004) found that the NSW Cannabis Cautioning Program led to 2,658 fewer persons convicted with a principal offence of cannabis by the local courts in the three years since the introduction of the Scheme, compared with the three years prior to the Scheme.

The burden on the CJS also reduced, as evidenced by 5,241 fewer sole cannabis charges dealt with by the local courts in the three years since the introduction of the scheme compared with the three years prior to the scheme. As such it was estimated that over the first three years of the scheme the police saved over 18,000 hours, or over $400K and the local courts have saved at least $800K and probably more than $1m (Baker & Goh, 2004). Analysis of the Queensland Police Drug Diversion Program also showed that over the first two years this led to a 28% reduction in the number of minor illicit drug possession charges being prosecuted through the courts (Hales, Mayne, Swan, Alberti, & Ritter, 2004).

A more recent analysis by Belackova et al (2017) showed further evidence of reductions in the burden on the CJS. Over the period 2002 to 2012, 31.53% of all cannabis use/possess offences in NSW received a caution, and few proceeded to court or were imprisoned for this offence alone. For example, there were 1.10 court proceedings for use/possession per 1000 population (Belackova et al., 2017). This was lower than in a nation with a prohibitionist context (Florida): 1.21 per 1000 population, but higher than in a nation with de jure decriminalisation (Czech Republic): 0.02 per 1000 population. One apparent reason is the reach of the programme: as the Czech Republic diverts more than double the proportion of use/possess offenders away from criminal sanction: 72.44% versus 31.53% in NSW (Belackova et al., 2017).

The Australian drug diversion programmes have led to a large increase in treatment referrals in Australia. For example, in the 10 years to 2012-13, the number of treatment episodes provided to clients referred from diversion programmes more than doubled, whereas numbers of treatment episodes of other clients were about constant (Australian Institute of Health and Welfare, 2014). Moreover, clients referred from police or court diversion programmes received 27,405 treatment episodes in 2012-13, accounting for 18% of all treatment episodes provided by all Australian alcohol and other drug treatment agencies. Diversion clients have also been shown to be a distinct group who otherwise do not access the system. For example, they are younger (25% aged 10–19 compared with 11% amongst clients not-diverted). The increase in treatment uptake is particularly significant as Shanahan et al (2017) found that respondents detected for cannabis use or possession in Australia had high levels of dependence and other health problems. For example, 50% of those detected by police were daily cannabis users compared to only 12.8% in the general population of cannabis users (measured using the 2013 National Drug Strategy Household Survey).

That said, it is also clear that not all reforms are equally likely to lead to treatment uptake. For example, over the first three years of the scheme the NSW Cannabis Caution Program led to only 63 persons calling the Alcohol Drug Information Service helpline after receiving a caution – or 0.7% of the 9235 cautions that were issued. This was attributed to the voluntary nature of the reform. In contrast, a total of 10,623 offenders were referred by police to the Diversion Coordination Service of the Queensland Police Drug Diversion Program for education and assessment, of whom 81% complied (Hales et al., 2004).
Some studies (especially those with high treatment exposure) have shown that diversion programs are associated with reductions in harmful drug use. For example, the Queensland Police Drug Diversion Program found that use of cannabis regularly reduced from 95% at baseline to 74% at the 3 month follow-up: a rate that was sustained at 6 month follow-up (Hales et al., 2004). However, a national cost-effectiveness and outcomes study by Shanahan et al (2017) that compared pre-post impacts of three forms of diversion (caution, cannabis expiation and warning) versus a traditional criminal justice response for minor cannabis offenders found that all programmes led to a small overall reduction in the number of days cannabis was used and in the number of other illicit drugs used the previous month, but there was no added benefit (or cost) from diversion versus a traditional criminal justice sanction.

Like Australian cannabis expiation schemes, cannabis diversion programmes have been associated with social benefits. Shanahan et al (2017) showed that those receiving a diversion for cannabis possession versus charge reported fewer employment problems, with those in the charge group significantly more likely to report a change in employment status e.g. a termination and to directly attribute this to their police encounter. They also reported less disruptive relationships with family and friends. Moreover, those diverted to had more positive perceptions of police legitimacy (23.9% compared to 14.9% for those charged). This suggests that diversion may have flow on effects for police beyond reducing CJS costs.

Cost-effectiveness analysis of both cannabis expiation and cannabis caution programmes showed both were significantly cheaper than a traditional criminal justice response (charge). Cannabis diversion cost six to 15 times less than a criminal charge (Shanahan et al., 2017). The charge group's mean cost was the highest (A$1,918), reflecting additional police and court activities, with the next most expensive being the caution group, following by expiation.

Payne et al (2008) conducted a national evaluation of rates of reoffending post the IDDI programmes. This showed that rates varied across the states and territories reflecting differing eligibility criteria and programme design, but that there were significant reductions in the rates of reoffending across all diversion programmes. Reductions were particularly noted in relation to individuals who had a prior offending history, amongst whom between 53 per cent and 66 per cent recorded fewer offences in the 18 months after diversion. The majority of first-time or non-recent offenders diverted under the national IDDI also did not reoffend (between 70 per cent and 86 per cent).

The Australian studies have, however, also highlighted the importance of careful design of eligibility criteria. For example, in 2014 Hughes et al (2014) evaluated police and court diversion programme in the ACT, showing that at the time, police diversion for drugs other than cannabis were restricted due to low threshold limits (2 'ecstasy' pills or 0.5 pure grams of heroin, amphetamine or cocaine). As a consequence, police were diverting 70.9% of cannabis offenders but only 0-7.9% of other illicit drug use/possess offenders, which meant that many offenders were missing out on diversion opportunities. Threshold limits have since been lifted and diversion rates increased. For other design considerations see Hughes et al. (in press).
USA

Context
The USA has a common law system. As a federated system with large devolved powers to the 50 states, and large differences in demography, inequalities, health and judicial systems, the USA presents a very diverse set of experiences in responding to illicit drugs.

Drug use was relatively rare in the 1940s and 1950s in the USA, but following dramatic changes in the 1960s, 1970s and 1980s with the spread of cannabis, the heroin epidemic, the explosion in cocaine initiation and the spread of crack and street markets, it now has amongst the highest rates of use and drug-related harms in the world. In 1970 then President Richard Nixon declared a ‘war on drugs’ and signed the Controlled Substances Act that confirmed the prohibited the use, possession, manufacturing and importation of illicit drugs and classified cannabis as a Schedule I drug alongside heroin and cocaine. Almost immediately, alternative mechanisms - particularly for cannabis - started to be discussed. For example, the National Commission on Marihuana and Drug Abuse recommended in 1972 that criminal penalties for the private possession and use of cannabis be eliminated and that states decriminalise public possession (but not use) (Logan, 2014).

In spite of a number of reforms in the 1970s (see below), the USA is renowned for having the highest rates of arrests and imprisonment of drug offenders in the world. This has contributed to significant collateral consequences, including the erosion of civil liberties, over-policing, high rates of conviction and imprisonment of largely black and minority populations and an estimated cost to the criminal justice and legal systems of over one trillion dollars in the past four decades (Caulkins, Reuter, Iguchi, & Chiesa, 2005). This has continued to spark many considerations of alternative policy options.

Alternative mechanisms for dealing with simple possession offences
The USA has developed three broad types of mechanisms of response. The first is depenalisation. For example, in Los Angeles county a low-priority initiative mandates that minor cannabis possession offences be the lowest enforcement priority for local law enforcement agencies, with the goal of saving police time to focus on other more serious crime. While there are some differences in the specific laws implemented in each jurisdiction, there are a few common components, namely that it: operates through a de facto approach (not in law), targets minor cannabis possession offences only (and excludes felony drug crimes), is only for adults and for offences committed in private (DeAngelo, Gittings, & Ross, 2018).

The second approach is police diversion. This is again a de facto system that involves diversion to treatment or diversion to other types of non-criminal sanctions. For example, one scheme was the 1994 Baltimore "pre-booking diversion" where an arrest was initially made but no formal charges were filed. This was targeted at possession of all illicit drugs. Under the leadership of Commissioner of Public Health, Peter Beilenson (1992-2005), a "Treatment on Request" policy was adopted, defined as the provision of detoxification and drug treatment services to people who use drugs within 24 hours. Publicly funded treatment slots, including those for residential-based and outpatient facilities, detoxification centers and methadone maintenance, were doubled from about 4,100 to almost 8,000 by the end of the 1990s. They were made available through a quasi-independent agency: Baltimore Substance Abuse Systems (Goetz & Mitchell, 2006). Such an approach developed in the context of high rates of heroin and cocaine use, linked to high level of violence in Baltimore's drug markets, which drew attention to how to break drug/crime connection. Another pre-booking scheme operated in San Francisco from 1998 (Goetz & Mitchell, 2006).

Amore recent programme, launched in 2011, is the Seattle Police Department programme – law enforcement assisted diversion (LEAD). This provides for the voluntary diversion of low-level drug (and prostitution) offenders from criminal prosecution (Collins, Lonczak, & Clifasefi, 2015b). LEAD was developed in response to the calls of Washington State legislators to identify evidence-based programmes for drug offenders. The primary goal was to reduce recidivism, but it also sought to reduce use of the CJS and improve psychosocial, housing and quality-of-life outcomes for drug offenders. It provides case management, access to drug treatment, legal services and other social supports (including referrals to job training and housing assistance).
A final diversion programme of note is prosecutor-led diversion programme that provide individualised alcohol and other drug (AOD) education, treatment and social services, as well as requiring community service. Such programmes focus on reducing costs of the CJS, as well as rehabilitation and increasing community engagement. Some have a pre-filing model (diverting cases before and in lieu of initiating a criminal court case), eight adopt a post-filing model (after the court process is underway), and four programmes enrol different participants either pre- or post-filing (i.e. a mixed model).

The third approach is decriminalisation. This is a de jure system that removes criminal penalties for possession for personal use, often with use of civil penalties instead. As noted by Logan (2014, pp. 326-327), the “laws have been motivated by a variety of factors. In addition to the cost associated with incarcerating individuals convicted of possessing cannabis, and a desire to loosen government control over victimless crimes more generally, decriminalisation advocates point to major racial disparities in arrest and conviction rates, and the long-term negative consequences of continued criminalization for individuals (including collateral consequences such as lost access to student loans and housing).” All states with decriminalisation have been for cannabis only, and most involve possession of up to an ounce of cannabis (28 grams).

In the 1970s there were 11 “decriminalisation states”. The first such reform was introduced in Oregon in 1973. It was then followed by Colorado, Alaska and Ohio in 1975; California, Maine and Minnesota in 1976; Mississippi, New York and North Carolina in 1977; and Nebraska in 1978. Alaska then followed suite in 1996. One challenge is that as outlined by Pacula et al. (2003) it is “impossible to uniquely identify the so-called decriminalisation states using the statutes.” For example, they noted that California and North Carolina retained cannabis possession as a criminal offence at that point in time. (California then expanded to proper decriminalisation on 1 October 2010). Some also limited the removal of criminal penalties to one offence only. This has led Pacula et al. (2003) to conclude that some were more examples of depenalisation than decriminalisation. As of 2017, there are 20 US states with a proper decriminalisation in practice, defined as the removal of criminal penalties for possession of up to an ounce (personal communication with Rosalie Pacula on 6 September 2018). 7

### USA Depenalisation (e.g. LA County)
- **Rationale:** To save police time to focus on more serious offences
- **Mechanism:** De facto – guidance to police officers to treat possession as ‘lowest priority’
- **Drugs:** Cannabis
- **Threshold limits:** No

### USA Decriminalisation (e.g. Ohio, Mississippi and Rhode Island)
- **Rationale:** To reduce the burden on the CJS and to reduce collateral consequences to people who use drugs
- **Mechanism:** De jure – with civil penalties
- **Drugs:** Cannabis
- **Threshold limits:** Varies by state but one ounce is the norm

### USA Diversion (e.g. LEAD)
- **Rationale:** To support/treat/rehabilitate instead of punish (?)
- **Mechanism:** De facto – referral to education/treatment/social services instead of charge
- **Drugs:** All illicit drugs
- **Threshold limits:** No

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7 The 20 decriminalisation states as of 2017 (defined as removal of criminal penalties for possession of up to one ounce of cannabis) are: AK, CO, CA, ME, MS, NE, NY, OH, OR, NV, MA, CT, RI, WA, VT, MD, DE, IL, NK, MO. Two others are often called decriminalisation states but are not (MN & NC), as they retain the criminal misdeameanour offence for possession of cannabis albeit without the threat of jail time.
Outcomes
Most of the research to date has focused on the decriminalisation schemes, rather than
depenalisation or diversion. Moreover, as has been well documented by Pacula et al (2005; 2014) a
key finding has been that many of the apparent decriminalisation schemes were not applied in
practice. There can be gaps between the policy and the practice.

Depenalisation
While depenalisation programmes sought to save police time to focus on more serious crime,
research has shown that impacts have been mixed. For example, Ross and Walker (2017) and more
recently DeAngelo et al. (2018) both showed that as intended the adoption of a low-priority initiative
caused a reduction in the number of arrests for misdemeanour cannabis offences. This effect was not
statistically significant at conventional levels, but was statistically significant when the sample was
restricted to the largest cities with populations above 100,000. However, there was no evidence of
benefit for other crimes: “We do not find that adoption of a low-priority initiative caused a statistically
significant reduction in any type of violent or property crime. In fact, the only statistically significant
effect we obtain is that adoption of the low-priority initiative increases some crime rates, specifically
robbery and burglary in large cities. We do not find a statistically significant effect of the law on the
clearance rate for violent and property crimes” (DeAngelo et al., 2018). Moreover, analysis showed
evidence of displacement: namely that there was a sharp increase in cannabis arrests in the non-
adopting jurisdictions after the implementation of the low priority initiative.

Diversion
Local evaluations of diversion suggested benefits were realised in getting more people into
treatment and reducing HIV infections (Goetz & Mitchell, 2006). However, numbers of imprisoned
drug offenders in Maryland continued to rise and the scheme was ended by the mayor in 1999.
Impacts of the San Francisco pre-booking scheme were more limited as Goetz and Mitchell (2006)
noted the programme was hampered by arguments between police and health over funding, leading
to only four people entering the scheme during the first year.

The most efficacious diversion programme in the USA appears to be the law enforcement assisted
diversion programme. Research conducted by the University of Washington in Seattle has shown a
58 per cent reduction in recidivism among LEAD participants when compared against a
comparative group that went through the traditional CJS, and that the LEAD group had 87 per cent
lower odds of at least one prison incarceration subsequent to evaluation entry (Collins et al., 2015b).
Participants were also significantly more likely to obtain housing, employment and legitimate income
in any given month subsequent to their LEAD referral (i.e., during the 18-month follow-up) compared
to the month prior to their referral (i.e., baseline). Moreover, there were observed statistically
significant reductions for the LEAD group compared to the control group on average yearly criminal
justice and legal system utilisation and associated costs. For example, while from pre- to post-
evaluation entry, LEAD participants showed substantial cost reductions (-US$2,100), control
participants showed cost increases (+US$5,961). That said, evaluators also found some
implementation challenges, as some police were disinclined to use the diversion system (on the
grounds it could be harmful and enabling to people who use drugs). This lead to fewer diverted than
expected (Collins, Lonczak, & Clifasefi, 2015a). Moreover, during the first 6 months of LEAD, diverted
individuals were disproportionately white and female and it was only in the second 6 months that
more black men (the target group) were diverted. This again shows the importance of implementation
and getting police support for such programmes, particularly if they are discretionary to use.

Decriminalisation
Studies in relation to the CJS impacts of US decriminalisation with civil penalties have diverse
findings. For example, Males and Buchen (2014) compared decriminalisation in California (2011),
Connecticut (2011) and Massachusetts (2009) for all age groups against impacts of legalisation of
cannabis in Washington State and Colorado for people aged 21 and over. They found that all states
that introduced decriminalisation saw large declines in cannabis arrests: an average decrease of 72
per cent in rates of arrest for cannabis compared to a 7 per cent decrease for states that undertook no
reform. But they found that the extent of decline varied, as evidenced by declines in cannabis arrests
of 90, 86 and 67 per cent in Massachusetts, California and Connecticut respectively. Grucaz et al
(2018) conducted a longitudinal difference-in-difference analysis of data on arrests and youth cannabis use (from the Youth Risk Behaviour Survey) of five states that passed decriminalisation measures between the years 2008 and 2014: Massachusetts (decriminalised in 2008), Connecticut (2011), Rhode Island (2013), Vermont (2013), and Maryland (2014). They showed that decriminalisation was associated with an immediate and strong reduction in the rate of drug-related arrests for youth and adults; the risk of arrest more than halved for both groups.

In contrast, Pacula et al. (2005) found that states that have eliminated the criminal status of possession offences involving amounts of one ounce or less of cannabis did not have systematically lower arrests per capita than those states retaining the criminal status. Several of the states, including New York and Louisiana, had larger per capita arrest rates in most years than the national average across states. They thus concluded that the enforcement of cannabis laws was not highly correlated with the criminal status of cannabis possession offences. Logan (2014) also outlined specific examples where the decriminalisation states have significant increases in arrest, noting that arrests for cannabis possession have skyrocketed in number in recent years and that several states adopting decriminalisation have some of the nation's highest per capita arrest rates for possession: particularly in New York and Chicago. For example, there had been a 2,461 per cent increase in cannabis possession arrests in New York since the late 1990s and that despite strenuous public criticism, and concern voiced by Governor Cuomo, possession arrests continued unabated. Logan (2014, p. 330) attributed this to implementation programmes, including lack of “police buy-in”. For example, “In Flint, Michigan… city police and state troopers publicly proclaimed their intent to make possession arrests despite voters’ strong endorsement of a ballot decriminalisation initiative” (Logan, 2014, p.331).

Added to that was continuation of police performance monitoring systems that incentivise police officers to make arrests.

Findings further vary in relation to drug use. For example, Grucca et al (2018) difference-in-difference analysis (of recent decriminalisation states) found that decriminalisation was not associated with any increase in the past-30 day prevalence of cannabis use. Significant declines in prevalence were observed for Rhode Island and Vermont. Decriminalisation had no impact on measures of availability, perceived risk, or disapproval/stigmatisation of cannabis use. In contrast, Pacula et al’s (2003) cross-sectional analysis found youths living in decriminalised states are 2 per cent more likely to use cannabis both in the past year and in the past month, although the finding with respect to annual use was not statistically significant at conventional levels and Yulia (2011) found that in decriminalised states, users consume cannabis on average 11 days per year more than their counterparts living in non-decriminalisation states. Finally, Miech et al. (2015) analysis of the California decriminalisation found youth cannabis use increased at a significantly greater rate in California as compared to the other U.S. states following decriminalisation. For example, amongst 12th graders in both 2012 and 2013 the prevalence of any cannabis use in the past 30 days was proportionately about 25 per cent higher in California as compared to the other states.

Pacula et al. (2003) suggest some reasons for the differences in studies. These include: studies may be comparing apples and oranges (due to the large variance in what “decriminalisation states” actually mean); failures of authors to control for other reforms that have occurred in “non-decriminalisation states”; and the fact that public knowledge of decriminalisation is imperfect. A latter study demonstrated this latter issue by finding from population surveys in various states that “the percentages who believe they could be jailed for marijuana possession are quite similar in both states that have removed … penalties and those that have not” (MacCoun, Pacula, Reuter, Chiriqui, & Harris, 2009).

Pacula et al (2003) looked at how decriminalisation policies have been operationalised, and what additional implementation elements might influence outcomes. This study found that that prevalence of lifetime and recent cannabis use among young people is very sensitive to the statutory penalties imposed. That is, higher minimum jail times were statistically associated with lower prevalence rates. Specifically, a one-day increase in statutorily imposed minimum jail time is associated with a 7 to 9 percentage point reduction in annual cannabis prevalence and a 4 percentage point reduction in thirty-day prevalence (Pacula et al., 2003). This suggests that states that ruled out all forms of imprisonment were associated with higher prevalence of use. They offer two explanations for these
findings: “First, formal decriminalization statutes may be an indicator of a larger social acceptance of marijuana use within the state. Second, they might be an indicator of greater public knowledge (or advertisement) of the reduced penalties associated with possession of marijuana.” They acknowledge “our data are insufficient to explore these two alternative hypotheses” (Pacula et al, 203, p.26). The later finding by MacCoun et al (2009), lends support to the first hypothesis (that decriminalisation follows social acceptance of cannabis use) than the second (that awareness of punishments deters use).

In relation to the link between alternatives and non-drug crime, Huber, Newman, and LaFave (2016) used state panel data on recorded crime rates from 1970 to 2012 to examine the relationship between cannabis control policies and non-cannabis crime. They found a link between medical marijuana laws and reduced violent crime, but no or unfavourable changes for states that had removed criminal penalties for cannabis without providing a legal avenue to supply. In these states, they found an increase in crimes they regard as related to the cannabis market (e.g. robbery and burglary). They speculate that this is due to the continuation or increase of the illicit market when criminal sanctions are removed without enabling legal supply. Their study is vulnerable to the criticism that it uses police-recorded crime (a notoriously unreliable measure of underlying crime rates). Its authors do not consider the possibility that recording of other crimes increased as police shifted their attention from cannabis possession to other offences. They support their speculation with the funding that there was no increase in recorded crimes that they consider not to be related to the cannabis market (e.g. murder and theft of motor vehicles).

A number of studies have found that decriminalisation is associated with increased risks of drug driving. These studies, however, are subject to similar problems in comparing states and attributing differences to decriminalisation to those identified by Pacula et al (2003). For example, Lee et al. (2018) found that there is a general association between the change in cannabis laws, except for medical legalisation, and an increase in fatal crashes involving cannabis. For example, cannabis-related crashes significantly increased in Massachusetts – a decriminalisation state - compared with their comparison states. Moreover, Huber et al. (2016) found that the odds of a driver being THC positive is 17 per cent higher in jurisdictions that have decriminalised cannabis. Finally, Pollini et al (2015) found a significant post-decriminalisation increase in cannabis-positive driving among fatally injured drivers but no significant changes in THC-positive driving among night-time weekend drivers. In contrast, Males and Buchen (2014) found that cannabis decriminalisation in California has not resulted in harmful consequences for teenagers, such as increased crime, drug overdose, driving under the influence, or school dropout. In fact, California teenagers showed improvements in all risk areas after reform. For example, post reform there was a 20 per cent reduction in overdose in California compared with a 4 per cent increase in the rest of the USA, moreover there was a 25 per cent reduction in California compared with a 14 per cent reduction in the rest of the US for property crime. It should be noted that this finding is confounded by the different nature of the heroin market, with a higher prevalence of Mexican ‘black tar’ heroin in California, which is more rarely contaminated with fentanyl.

Evidence in relation to substitution between alcohol and drugs is also conflicting. For example, Yulia (2011) found decriminalisation has a positive significant impact on the alcohol consumption. People living in states which have decriminalised cannabis are 4.2 per cent more likely to consume alcohol last month than people living in non-decriminalised ones. In contrast, Thies and Register (1993) examined whether the decriminalisation of cannabis in eleven states has affected self-reported usage of alcohol, cannabis or cocaine. In their analysis, decriminalisation did not significantly impact either the choice or frequency of use of drugs, either legal (alcohol) or illegal (cannabis and cocaine). They concluded that the demand for drugs is highly inelastic with respect to incremental changes in the legal sanctions for possession of small amounts of cannabis. On the other hand, Chaloupka and Laixuthai (1997) found that amongst high school seniors, where cannabis was decriminalised, consume alcohol less frequently and are less likely to engage in heavy drinking than those in states where cannabis possession was still criminalised. Moreover, they conducted simulations to shows that moving from a policy where cannabis is criminalised to one where cannabis is decriminalised everywhere (nationwide) would increase the number of alcohol abstainers in the past year by nearly 12 per cent, while reducing the number frequent drinkers in the past year by almost 11 per cent.
Two PhD theses analysed impacts on racial bias in law enforcement. Crouch (2015) found that decriminalisation in Massachusetts decreased the black-white gap in juvenile arrests by 192.0 per 100,000 for cannabis possession and by 14.57 per 100,000 for cannabis sales. There was also evidence that decriminalisation also reduces the black-white arrest-rate gap for other crimes including the sale of cannabis and non-cannabis drugs for adults and juveniles and theft-related crimes for adults. Overall, the results are consistent with a shift in police resources away from poor black neighborhoods after decriminalisation of cannabis in Massachusetts. Munslow (2017) also found decriminalisation has a significant effect for all ethnic groups and that black arrest rates decrease more than 4 times as much as whites due to decriminalisation.

Finally, Pacula et al. (2010) examined price changes in relation to a number of variables, including decriminalisation policies. They found that both decriminalisation and conditional discharge is positively associated with price. As economists, they note that this price increase could be explained by decriminalisation increasing demand for cannabis, or by it increasing risk for sellers (as police shift their attention from buyers).
Chapter five: Policy learnings across the reforms

In this chapter we look at lessons across the nine countries, about the a) types of reforms that can be undertaken to simple possession, b) the programme logic or theory of how each operates and c) the lessons about positive and potential negative impacts of each. To do this we firstly use Qualitative Comparative Analysis (QCA), which is a theoretically driven method for testing sets of relationships between cases (Rihoux, 2006; Schneider & Wagemann, 2010).

QCA of alternatives for dealing with simple possession offences

Aim
The aim was to use QCA to produce an empirically-based, theoretically informed typology of alternatives for dealing with simple possession offences, based on the mechanisms and targets that currently operate.

Mechanisms
This analysis is based on a matrix of the different mechanisms of alternatives reviewed in the nine countries chosen for the review. Three dimensions of comparison were chosen as they offer the most theoretically interesting and policy-relevant modes of comparison between alternatives. These dimensions are:

1. Whether the alternative is *de jure* (rather than *de facto*).
2. Whether the alternative provides pathways to an intervention (e.g. education, treatment assessment or social services).
3. Whether the alternative provides for the imposition of a civil or administrative penalty (e.g. fine, suspension of licence).

The combination of dimensions 2 and 3 enables this comparison to identify a fourth, logically implicated dimension of whether the alternative provides any sanction at all (if the answer to both 2 and 3 is no, then there is no sanction provided for).

The matrix of 26 different alternatives found in these nine countries was created by scoring each alternative as either 0 (no) or 1 (yes) on each of these three dimensions. This matrix was then used to create a ‘truth table’, showing which combinations of the dimensions actually exist in these alternatives. Out of eight possible combinations of these dimensions, six were found to exist in practice. This is partly because there are two ‘missing’ combinations that are probably logically, legally impossible. These are the combinations of *de facto* change with the imposition of civil sanctions, either with or without diversionary measures. There would need to be a legal basis for such civil sanctions.

Table 9 shows the six combinations and the examples that exemplify these types.
Table 9: Typology of alternate approaches to dealing with simple possession drug offences

<table>
<thead>
<tr>
<th>Type</th>
<th>Legal basis</th>
<th>Pathways to education / therapy / social services</th>
<th>Administrative/ civil sanction</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Depenalisation</td>
<td><em>De facto</em></td>
<td>No</td>
<td>No</td>
<td>Netherlands Gedoogbeleid ‘tolerance policy’ (cannabis only), US police ‘deprioritisation’, UK cannabis and khat warnings, Denmark warnings</td>
</tr>
<tr>
<td>Police diversion (de facto)</td>
<td><em>De facto</em></td>
<td>Yes</td>
<td>No</td>
<td>Police diversion schemes in seven Australian states, Netherlands diversion (hard drugs only), English police diversion schemes in Durham, West Midlands and Avon, US LEAD programme, Baltimore pre-booking scheme</td>
</tr>
<tr>
<td>Police diversion (de jure)</td>
<td><em>De jure</em></td>
<td>Yes</td>
<td>No</td>
<td>South Australian Police Drug Diversion Initiative and Queensland Police Drug Diversion Program (police mandated by law to offer diversion to treatment)</td>
</tr>
<tr>
<td>Decriminalisation with no sanctions attached</td>
<td><em>De jure</em></td>
<td>No</td>
<td>No</td>
<td>Germany (by virtue of Constitutional ruling) and Vermont USA (since 2018)</td>
</tr>
<tr>
<td>Decriminalisation with civil or administrative sanctions</td>
<td><em>De jure</em></td>
<td>No</td>
<td>Yes</td>
<td>Czech Republic, Jamaica, Cannabis Expiation Notice schemes in three Australian states (ACT, SA, NT), many US states (e.g. Ohio, Mississipi, Massachusetts, Rhode Island)</td>
</tr>
<tr>
<td>Decriminalisation with targeted diversion to health / social services</td>
<td><em>De jure</em></td>
<td>Yes</td>
<td>Yes</td>
<td>Portugal and several US states (Maryland, Connecticut &amp; Nebraska)</td>
</tr>
</tbody>
</table>

**Targets**
We subsequently tried creating a truth table based on three dimensions of the targets of these alternatives. These dimensions were:

1. Whether the alternative targets cannabis only or includes other drugs.
2. Whether the alternative is available for adults only (rather than including minors)
3. Whether the alternative includes a threshold amount for the weight of drugs.

No clear pattern emerged from this truth table, in terms of groups of alternatives or jurisdictions. Instead it appears each of these factors (what could be classed as eligibility characteristics) can be utilised with each model. Herein, we therefore look at our six ideal types of responses to drug possession and then take into account the factors that may affect the reach or intensity of response in our assessment of outcomes. For example, a programme that applies to all illicit drugs may have more reach than one for only cannabis. Alternatively, one that has variable implementation will have less intensity than one with consistent implementation.
Programme logics and advantages and disadvantages of each approach

Herein, we outline the programme logics and known outcomes for each approach. A programme logic (also known as outcome model, or logic model,) sets out what a project will do, how it will do it and what needs to be delivered to achieve the desired outcomes (McLaughlin & Jordan, 1999; 2004). It makes explicit the relationships between inputs, activities, outputs and outcomes. Establishing the programme logic is important for programme development and evaluation design as it helps to determine “for whom” and “in what circumstances” a programme works (Pawson, 2006). It also helps to build a common understanding about expectations and identify any assumptions or flaws in thinking before programmes are introduced (Funnell & Rogers, 2011). Programme logic has been found particularly useful in criminal justice settings where many programmes have been introduced and achieved less than desired impacts or even counterproductive impacts (Welsh & Harris, 2016).

Model 1: Depenalisation

The first approach – depenalisation – has been used in many parts of the world, including Denmark, the Netherlands, England and Wales and the USA. Under depenalisation, the goal is to avoid criminalising young people and to save police time to focus on more serious criminal activity. This is based on the belief that traditional policing approaches are ineffective and that police could better allocate their resources to more serious crime (be that drug trafficking or other offences). Implicit in this approach is also the belief that people detected for drug possession do not warrant criminal sanctions, nor do they warrant any other form of sanction. (One variant is that they only warrant sanction if they continue to offend).8 This reflects the theories of Stanley Cohen and the concerns that however well-intentioned, social control risks funneling offenders into “different nets” or “deeper nets” (Cohen, 1979). As such, “doing nothing” or “doing little” may be the best approach for people who possess drugs. It also reflects the idea that the imposition of a sanction for drug possession is disproportionate as it may cause more harm than the actual use of that drug.

<table>
<thead>
<tr>
<th>Danish (1969-2004)</th>
<th>Netherlands (soft drugs)</th>
<th>England &amp; Wales: Cannabis (and khat) warning</th>
<th>USA LA County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rationale: To avoid criminalising young people</td>
<td>Rationale: To use criminal sanctions as a last resort</td>
<td>Rationale: To save police time to focus on more serious offences</td>
<td>Rationale: To save police time to focus on more serious offences</td>
</tr>
<tr>
<td>Mechanism: De facto – Attorney General advised police to issue warnings for personal possession</td>
<td>Mechanism: De facto – depenalisation (Gedoogbeleid 'tolerance policy')</td>
<td>Mechanism: De facto – police directed to issue on-street warnings, rather than arrest</td>
<td>Mechanism: De facto – police directed to make enforcement of cannabis possession their ‘lowest priority’</td>
</tr>
<tr>
<td>Drugs: All drugs</td>
<td>Drugs: Cannabis</td>
<td>Drugs: Cannabis and khat</td>
<td>Drugs: Cannabis</td>
</tr>
<tr>
<td>Threshold limits: Yes (e.g. 10 grams cannabis and 0.2 grams heroin)</td>
<td>Threshold limits: Yes, 30 grams cannabis (from 1976-1995), 5 grams (since 1995)</td>
<td>Threshold limits: No</td>
<td>Threshold limits: No</td>
</tr>
</tbody>
</table>

The programme theory for this approach is outlined in Table 10. The theory contends that if police switch to doing little or nothing to people who possess drugs for personal use (e.g. issuing warnings instead of arrests), police, prosecutors and the courts will have more time to focus on other activities (e.g. serious crime) and there will be fewer people who use drugs who are arrested or convicted for possession alone. In turn, this will save the CJS money, lead to more effective resource allocation, and improve the livelihoods of people who use drugs, including their ability to gain employment without the collateral consequences of a drug conviction.

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8 Here we note the cannabis warning system in England and Wales which offers a partial model of depenalisation. Here depenalisation is provided only for the first one or two detections of cannabis possession. Subsequent detections lead to arrest.
Table 10: Programme logic – depenalisation

Programme aim: To ensure that people are not criminalised for simple possession alone and to allow police more time to focus on more serious criminal activity, while minimising any form of sanction or intervention by police.

<table>
<thead>
<tr>
<th>Problem statement</th>
<th>Inputs</th>
<th>Process</th>
<th>Outputs</th>
<th>Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminalising people for drug possession alone is disproportionate and costly. But, any alternative system of responses is also potentially disproportionate and costly.</td>
<td>New procedure (police or prosecutorial)</td>
<td>Police do little or nothing (e.g. they may issue warnings instead of arresting offenders for simple possession)</td>
<td>Offenders contact with the CJS is reduced Fewer people are convicted</td>
<td>Reduce/avoid collateral consequences of convictions (e.g. on employment) Reduce burden on the CJS and cost Increase policing of serious crime Increase voluntary treatment uptake</td>
</tr>
</tbody>
</table>

Advantages and disadvantages

As outlined in Table 11 a key advantage of depenalisation is that it is simple to implement, as it requires no changes in laws. Particularly in the Irish context it would not necessitate the adoption of civil or administrative sanctions. There is also little risk of over-burdening other systems such as treatment. There is evidence from Netherlands and Denmark that this approach can reduce demands on police, courts and prison. There is some evidence that this may also increase access to drug treatment and harm reduction services (via voluntary means).

There are some disadvantages of this approach. Firstly, impacts on drug use appear to be variable. For example, evidence from the depenalisation model adopted in the Netherlands suggested that there was no or limited impact on use. In Denmark police argued depenalisation directly increased use of stimulants, as it sent the wrong message and undermined social controls about the acceptability of illicit drug use (Houborg, 2017). That said, no increase in cannabis use has been attributed to the partial depenalisation in England and Wales. Risks of justice by geography have also been observed in some US contexts, where programmes reduced cannabis arrests in specific areas but led to increased targeting in other areas (DeAngelo et al., 2018). Finally, the Lambeth experiment, showed that depenalisation can lead to net-widening. In Lambeth, there was a 61% increase in recorded cannabis possessions, in spite of no other evidence of change in cannabis prevalence (Adda et al., 2014). Such studies suggest that depenalisation can be shaped by level of police support for the reform and by performance targets. The latter was particularly shown in the UK as net-widening reversed after the government stopped using targets for sanction detections to manage police performance (Shiner, 2015). This suggests that if adopted, top down leadership is required as well as guidance about the purpose and benefits of the reform.

Table 11: Advantages and disadvantages from depenalisation

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Simple to achieve and few implementation costs</td>
<td>• Risk of net-widening</td>
</tr>
<tr>
<td>• Reduces convictions of PWUD</td>
<td>• Risk of a sense of impunity</td>
</tr>
<tr>
<td>• Reduces demands on and costs to the CJS (unless net-widening)</td>
<td>• Risk of increasing drug use</td>
</tr>
<tr>
<td>• May reduce other more serious crimes</td>
<td>• Risk of differential application / justice by geography</td>
</tr>
<tr>
<td>• Avoids over-burdening other services</td>
<td></td>
</tr>
</tbody>
</table>
Model 2: Police diversion (de facto)
The second approach – *de facto* police diversion – has been used in Australia, England, the Netherlands and the USA. There are two main approaches. The first is therapeutic diversion: where offenders are directed to education/assessment/treatment programmes (e.g. Australian models and Dutch Early Intervention Approach for hard drugs). The second has a broader diversionary approach: diversion to social and/or reintegration options as well as in some instance health programs (e.g. US LEAD programme and West Midlands Turning Point Programme).

As outlined in Table 12 the programme logic of this approach contends that drug use is often more of a health or social issue than a criminal justice issue and as such police should not be arresting people for simple possession alone. It is also argued that police are one of the main gatekeepers who come into contact with people who possess drugs, and as such that they should play a role in fostering early intervention by referring offenders to services that they may not otherwise access. As such the key goal is to redirect people who use drugs away from the traditional criminal justice response and into other services that may be more beneficial. This can include alcohol and other drug education/treatment system or social systems (e.g. employment, training). Implicit in this approach is the notion that referring people who possess drugs to the health or social services will increase their knowledge and skills (e.g. awareness of the harms from drug use or resilience), address needs (e.g. treatment or employment) and/or reduce their likelihood of reoffending. This draws on three proven approaches to AOD dependence and offender management: first, the efficacy of drug treatment; second, the importance of seeing the law as an agent of change that can be therapeutic or anti-therapeutic – and the proven benefits of employing a more therapeutic non-adversarial approach (Wexler, 2011); and third, the efficacy of offender rehabilitation that targets risk, need and responsivity (Andrews et al., 1990). Diversion programmes can also retain the deterrent threat of prosecution. As per Lammy (2017) the “hypothesis is that police can prevent crime by a combined treatment, holding a prosecution over the offender.”

<table>
<thead>
<tr>
<th>Australia (five states)</th>
<th>Netherlands (hard drugs)</th>
<th>England (e.g. West Midlands Turning Point Programme)</th>
<th>USA Diversion (e.g. LEAD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rationale: Early intervention, reduce recidivism and reduce harmful drug use</td>
<td>Rationale: Early intervention with drug dependent offenders and to reduce harmful drug use</td>
<td>Rationale: To reduce cost and recidivism (and increase access to all racial groups)</td>
<td>Rationale: To support/treat/rehabilitate instead of punish</td>
</tr>
<tr>
<td>Mechanism: <em>De facto</em> – referral for assessment &amp; brief intervention</td>
<td>Mechanism: <em>De facto</em> – visit by social worker in police custody and referral to treatment</td>
<td>Mechanism: <em>De facto</em> – police divert minor offenders to structured interventions eg treatment, mental health, and/or social services</td>
<td>Mechanism: <em>De facto</em> – referral to education/treatment/social services instead of charge</td>
</tr>
<tr>
<td>Drugs: All illicit drugs or all except cannabis</td>
<td>Drugs: Other illicit drugs</td>
<td>Drugs: All (and other petty offences)</td>
<td>Drugs: All illicit drugs</td>
</tr>
<tr>
<td>Threshold limits: Yes (typically 1 or 2g heroin or cocaine)</td>
<td>Threshold limits: Yes 0.5g heroin or cocaine</td>
<td>Threshold limits: No</td>
<td>Threshold limits: No</td>
</tr>
</tbody>
</table>
Table 12: Programme logic – police diversion (de facto)

<table>
<thead>
<tr>
<th>Problem statement</th>
<th>Inputs</th>
<th>Process</th>
<th>Outputs</th>
<th>Outcomes</th>
</tr>
</thead>
</table>
| Drug use is more of a health or social issue than a criminal justice issue. Criminalising people for drug possession alone is disproportionate and costly, but turning a blind eye is also not the right approach. Police should thus divert offenders to health or social services | New procedure (police or prosecutorial), including rules around eligibility e.g. drug types and TQs  
Police training  
AOD education/ treatment or other social supports | Police switch to referring people instead of arresting for possession alone | Quicker police interactions for simple possession  
Fewer people are convicted  
More referrals to health or social services | Reduce/avoid collateral consequences of convictions (e.g. on employment)  
Reduce burden on CJS and cost  
Increase knowledge/skills amongst people who use drugs  
Reduce drug-related harms |

Advantages and disadvantages

The evidence reviewed suggests there are many advantages from de facto police diversion (see Table 13). For example, most programmes led to more offenders accessing treatment and/or other services (e.g. AIHW, 2014; Goetz and Mitchell, 2016), albeit the types of services accessed varied according to the specific mechanism. For example, the LEAD programme tended to lead to access to employment/training services (Collins et al., 2015b), whereas the Australian programmes to treatment or education services. Moreover, many showed evidence of increased knowledge acquisition and skills as well as reduction in drug-related harms, including reductions in intravenous use and high-frequency use.

There were also clear reductions in recidivism from many programmes. For example, research conducted by the University of Washington in Seattle has shown a 58% reduction in recidivism among LEAD participants when compared against a similar group that went through the traditional CJS entry (Collins et al., 2015b). Payne et al (2008) showed similar reductions in recidivism from police drug diversion in the Australian context: 53% to 63% reductions. Reductions in demand on the CJS have also been observed from most programmes. For example the English Turning Point programme yielded 68% fewer court cases than those cases that were prosecuted in the usual way for all crimes (Lammy, 2017).

Police diversion, even when de facto, requires establishing a new system of responding, including new police procedures that define any eligibility criteria for access, such as if there are limits on the number of opportunities someone can be referred and if non-compliance will be followed up. Referral pathways also need to be established: will it be done by police or by offenders, and online or via telephone, as well as any new service provision (e.g. drug treatment). Importantly, the theory of this approach is that the setup costs of the programmes and ongoing costs for service provision will be cost-effective, as they will reduce drug-related harms and recidivism. Studies from Australia, England and the USA largely show that they are (Shanahan et al., 2017). For example as noted in the English context, “despite the costs associated with the structured interventions” the Turning Point programme led to “a saving of around £1,000 per case” (Lammy, 2017, p. 28).

Finally, while in general police diversion has been associated with large increases in access to treatment (or social services) there are two noted exceptions in our review. The first was the NSW Cannabis Caution programme, which led to only 0.7% uptake of drug education (Baker and Goh,
2004). The second was the Dutch Early Intervention Approach that showed that only 1,590 persons out of the target group of 4,582 offenders in police custody or pre-trial detention were visited by a social worker from the Early Intervention team, and only 30% of those visited chose a treatment option, and even fewer actually entered treatment (Stevens et al. 2005). This suggests that therapeutic benefits of *de facto* police diversion may be less if it is "voluntary" for people who use drugs to attend and/or if the services provided are not attractive to the target group.

The main disadvantages are firstly, the potential for this to be more resource intensive at least initially, for both the police/justice system and for treatment or social systems. Arguably more importantly is that given this is a discretionary model it may lead to inequitable application. This can lead to specific sub-groups of offenders (particularly ethnic minorities) less likely to be diverted, or to geographic variation in coverage, as was exemplified by the NSW Cannabis Caution programme (NSW Auditor General, 2011).

There are several issues to consider for best practice implementation of *de facto* police diversion. The first is resourcing - if services are not properly funded or there are delays it will affect referral numbers, compliance and outcomes. Second, is the challenge in building mutual understanding and expectations between police and new service providers about the purpose of any diversion. Experience from the Australian context suggests this can take time, but that conflict is minimised if a harm reduction rather than abstinence goal is employed (Hughes et al., 2014). Third, given the discretionary nature of *de facto* programs, feedback mechanisms to police about the "worth" of diversion, such as from program evaluations can be vital. This is particularly important in the early years to build support and reduce any cultural resistance (Hughes et al, in press). Finally, careful design of any adopted eligibility criteria, such as threshold limits on amount of drug that can be possessed, rules around prior offences, limits on programme entry, or rules around requirements to admit an offence, is important to ensure any criteria do not adversely limit access to specific categories of groups (such as ethnic minorities) or exclude whole groups (Hughes et al, 2014; in press).

**Table 13: Advantages and disadvantages from police diversion (*de facto*)**

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduces convictions of PWUD</td>
<td>May be resource intensive (in short term) for police/justice system</td>
</tr>
<tr>
<td>Increases access of offenders to treatment/mental health/social services</td>
<td></td>
</tr>
<tr>
<td>Assessment and early intervention</td>
<td>Increases costs for other services</td>
</tr>
<tr>
<td>Addresses offender needs e.g. access to AOD treatment, employment or legal</td>
<td>Given this is discretionary there may be specific groups of offenders who 'miss out' e.g. people of minority backgrounds</td>
</tr>
<tr>
<td>(dependent on model)</td>
<td></td>
</tr>
<tr>
<td>Reduces costs of criminal justice</td>
<td>Access may vary by region e.g. regional versus metropolitan areas</td>
</tr>
<tr>
<td>Reduces drug-related harms e.g. high frequency use</td>
<td></td>
</tr>
<tr>
<td>Reduces recidivism</td>
<td></td>
</tr>
</tbody>
</table>

**Model 3: Police diversion (*de jure*)**

*A de jure* model of police diversion has a similar programme logic to Model 2, namely that drug use is often more of a health or social issue than a criminal justice issue and that police can play a critical early intervention role (increasing knowledge about drugs or fostering behavioural change) by referring people who possess drugs onto health or social services (see Table 14). The key difference to Model 2 is that *de jure* diversion adopts a legislated approach to ensure that police are required to offer police referral to all in the target groups. This seeks to overcome some of the known challenges with Model 2 in which police retain discretion. Implicit in this approach is thus the belief that all people who possess drugs should be given the same opportunity of a health/social response. Examples of note are the South Australian Police Drug Diversion Initiative, the Queensland Police Diversion Program and the Western Australian Cannabis Intervention Requirement.
Table 14: Programme logic – police diversion (de jure)

<table>
<thead>
<tr>
<th>Problem statement</th>
<th>Inputs</th>
<th>Process</th>
<th>Outputs</th>
<th>Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drug use is more of a health or social issue than a criminal justice issue. Hence people who use drugs should be directed to such services. But, de facto diversion will lead to bias and inconsistent application.</td>
<td>New procedure (police or prosecutorial), including rules around eligibility e.g. drug types and TQs</td>
<td>Police switch to referring people instead of arresting for possession alone</td>
<td>Quicker police interactions for simple possession</td>
<td>Reduce/avoid collateral consequences of convictions for all detected offenders who meet criteria (e.g. on employment)</td>
</tr>
<tr>
<td></td>
<td>Police training</td>
<td></td>
<td>Fewer people are convicted</td>
<td>Reduce burden on CJS and cost (more so than Model 2)</td>
</tr>
<tr>
<td></td>
<td>AOD education/treatment</td>
<td></td>
<td>More referrals of offenders to health or social services</td>
<td>Increase offender’s knowledge/skills</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Reduce drug-related harms.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Equitable response to all PWUD</td>
</tr>
</tbody>
</table>

**Advantages and disadvantages**

One challenge in assessing the impacts of this policy option is that there are few examples. Two of the de jure schemes implemented in Australia – the Queensland Police Drug Diversion Program and the South Australian Police Drug Diversion Program – show very high treatment referrals and compliance and evidence of reduction in drug-related harms. For example, analysis of 10 years of provision of the South Australian Police Drug Diversion Initiative showed that 13,627 people had been diverted over that period, with 80% fulfilling the requirements and individuals who complied with their diversions were significantly less likely to reoffend. The Queensland Police Drug Diversion Program also led to 10,623 referrals for education and assessment: the highest rate of referral for a programme of its type in Australia, of whom 81% complied (Hales et al., 2004). Arguably the major advantage is that by removing discretion there are less likely to be specific groups of offenders who miss out (such as people of minority backgrounds). This can thus significantly increase access (Hughes et al, in press).

Table 15: Advantages and disadvantages from police diversion (de jure)

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduces convictions of PWUD</td>
<td>May be resource intensive for police/justice system</td>
</tr>
<tr>
<td>Removes discretion that may limit access in de facto approaches</td>
<td>Increases costs for treatment services</td>
</tr>
<tr>
<td>Increases access to all offenders to treatment/mental health/social services</td>
<td>May lead to “frequent fliers” entering the programme on repeated occasions</td>
</tr>
<tr>
<td>Address offender needs e.g. access to AOD treatment</td>
<td></td>
</tr>
<tr>
<td>Reduces costs of criminal justice</td>
<td></td>
</tr>
<tr>
<td>Reduces drug-related harms</td>
<td></td>
</tr>
<tr>
<td>Reduces recidivism</td>
<td></td>
</tr>
</tbody>
</table>
Disadvantages are that this requires legislation and it is more resource intensive, both for treatment sectors as well as police/justice to manage referrals and compliance. The South Australian programme has also observed that while the majority of people receive only a single diversion (72.8 per cent) there are some “frequent flyers”: 4 per cent had four or more diversions and one offender had 32 diversions, which can lead to allegations of the scheme being “soft”. It is also increasingly clear that even a de jure scheme will limit diversion access if the eligibility criteria are narrow. Of note, while the Queensland Police Drug Diversion Program has enabled very high levels of diversion of cannabis use/possess offenders, the programme is only open to people who use cannabis. This, coupled with the absence of any other illicit drug diversion programme, means that this state continues to have increasing rates of detections and people sent to court for minor possession alone (Hughes et al, in press).

A key unknown is whether this type of reform would be cost-effective if applied to all illicit drugs. For example, the South Australian Police Drug Diversion Initiative operates alongside the South Australian Cannabis Expiation Notice scheme which offers a cheaper and faster response to the lionshare of people detected for simple possession offences.

Model 4: Decriminalisation with no sanctions attached

The fourth model is decriminalisation with no sanctions attached. The main such example is Germany, although Vermont, USA, adopted a similar approach in their 2018 legalisation of possession of cannabis for personal use. As outlined in Table 16 the programme logic of this approach is that drug possession should not be a crime, and that rather than setting up any alternate system or merely depenalising the offence, the best response is complete removal of the offence from the law. This has clear similarities with Model 1 (depenalisation), but this approach is legislated, in the aim of humanising the person, reducing stigma, sending a clear signal to society and overcoming any issues that may arise from a discretionary model. Reduction in stigma is conjectured to increase voluntary service uptake: more so than under Model 1 due to the legislative nature of the reform, which would tend to make it more widely known.

Table 16: Programme logic – decriminalisation with no sanctions attached

<table>
<thead>
<tr>
<th>Problem statement</th>
<th>Inputs</th>
<th>Process</th>
<th>Outputs</th>
<th>Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminalising people for drug possession alone is disproportionate and costly. Any alternative system of responses including mere depenalisation is also potentially inequitable and disproportionate, so the best response is to remove the offence from the law.</td>
<td>Legislative change (removal criminal penalties for possession)</td>
<td>Police cease arresting people for simple possession alone</td>
<td>Offenders contact with the CJS is ceased</td>
<td>Eliminate collateral consequences of convictions (e.g. on employment)</td>
</tr>
<tr>
<td></td>
<td>Public education</td>
<td></td>
<td>No new people are convicted</td>
<td>Reduce burden on CJS and cost</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Police attend to other crimes</td>
<td>Increase policing of serious crime</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Reduce stigma</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Increase voluntary treatment uptake</td>
</tr>
</tbody>
</table>
Advantages and disadvantages
There is limited evidence-base on this approach and one reform (in Vermont) has only just commenced. Analysis of the German reform suggests this approach may lead to some benefits, including reductions in reliance on the CJS for simple possession offences, and reductions in drug-related harms such as overdose and problematic drug use. For example, the number of newly registered heroin users in Frankfurt declined significantly from 903 in 1992 to 557 in 1993 after a consistent increase in the previous years (Fischer, 1995). More generally, Germany has lower rates of drug use, including problematic drug use, than many other European countries (Eastwood et al., 2016), as well as lower rates of HIV and drug-related overdose. These rates have causes other than drug laws, including economic wellbeing, systems of healthcare and social support. The constitutional decision has been inconsistently applied at the local level, and there is little published in English on its implementation or effects on drug use and related harms.

Overall, as outlined in Table 17, this suggests there may be positive benefits: of both reducing demands on the CJS and reducing drug-related harms via reducing barriers to treatment seeking and humanising people who use drugs. Decriminalisation with no sanctions attached is arguably simpler to implement than other legislative reforms (Models 5 and 6). This is particularly in the Irish context, as it does not require new civil or administrative systems to be set up. It also avoids the need for any new systems of referral or ongoing monitoring of offender compliance to be established.

A key disadvantage, as evident in some German regions, is that this may be seen as giving a “free go” and hence may have less support of the police and/or differential application (justice by geography). That said, it remains unclear whether such effects were a by-product of the German experience, as opposed to an inevitable consequence of this model. Access to services is not directly facilitated via this model, which may affect the potential gains and the application/reach of the model. Best practice implementation may thus necessitate top down police leadership and investment in public education.

Table 17: Advantages and disadvantages from decriminalisation with no sanctions attached

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Eliminates convictions for possession alone</td>
<td>• Little evidence of effect on prevalence and frequency of drug use.</td>
</tr>
<tr>
<td>• Reduces stigma of people who use drugs</td>
<td>• Reduces legal possibility to intervene in problematic drug use.</td>
</tr>
<tr>
<td>• Reduces costs of criminal justice</td>
<td></td>
</tr>
<tr>
<td>• Reduces barriers to harm reduction and treatment seeking</td>
<td></td>
</tr>
<tr>
<td>• Reduces drug-related harms e.g. high frequency use</td>
<td></td>
</tr>
<tr>
<td>• Simple to achieve and few set up costs (albeit more complex than Model 1)</td>
<td></td>
</tr>
</tbody>
</table>

Model 5: Decriminalisation with civil or administrative sanctions
Decriminalisation with civil or administrative sanctions operates in a number of countries, including the Czech Republic, Australia, USA and Jamaica. The programme logic for this approach is that drug possession should not be a crime, but it also should not just be ignored (see Table 18). Treating it as a lesser offence, similar to a driving / motor vehicle violation, thus provides the opportunity for the state to still sanction the behaviour, but without the risk of providing criminal convictions that may have adverse impacts on the future of people who use drugs. This model makes use of low level sanctions rather than therapeutic interventions. For example, it could be argued that it is better in some circumstances to charge a fine or to restrict a license than to send a person to treatment: particularly for relatively low risk activities like cannabis use.
Table 18: Programme logic – decriminalisation with civil/administrative sanctions

Programme aim: To ensure that people are not criminalised for simple possession alone, while also recognising that complete removal of sanctions may send the wrong signal and thus to institute a new and alternate system. This also seeks to save police time to focus on more serious criminal activity.

<table>
<thead>
<tr>
<th>Problem statement</th>
<th>Inputs</th>
<th>Process</th>
<th>Outputs</th>
<th>Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drug possession should not be a crime, but it shouldn’t just be ignored as this may send the wrong message people for drug possession and lead to new harms.</td>
<td>Legislative change (new civil/administrative law)</td>
<td>Police switch to issuing civil/admin sanctions instead of arresting offenders</td>
<td>Quicker police interactions for simple possession</td>
<td>Reduce collateral consequences of convictions (e.g. on employment)</td>
</tr>
<tr>
<td></td>
<td>New system to response e.g. pay a fine online</td>
<td></td>
<td>No new people or fewer people are convicted (dependent upon model)</td>
<td>Reduce burden on CJS and cost</td>
</tr>
<tr>
<td></td>
<td>Public education</td>
<td></td>
<td>Offenders pay civil penalties</td>
<td>Increase policing of serious crime</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Reduce stigma but also send a message that it is a sanctionable offence</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Increase revenue</td>
<td></td>
</tr>
</tbody>
</table>

Advantages and disadvantages

When well implemented decriminalisation with civil/administrative sanctions has been found to be faster for police and to lead to a reduced burden on the CJS. For example, demands on the Czech Republic CJS for possession have remained very low; particularly compared against other nations, including those with police diversion alone (Belackova et al., 2017). Decriminalisation with civil/administrative sanctions is also associated with social benefits for offenders from the removal of convictions, including employment prospects and housing stability (Ali et al, 1998; Shanahan et al, 2017). More generally, there is evidence that decriminalisation with civil/administrative sanctions can facilitate the provision of harm reduction and treatment services and reduce drug-related harms.
(although the benefit is realised by the removal of stigma around service access as opposed to via direct referral as in some reforms, such as Models 2, 3 or 6). The benefits of reducing stigma for service access were particularly apparent in the natural experiments in Czech Republic where both harm reduction services and people who use drugs noted that the tightening of the reform reduced service access (Zábranský et al. 2001). Most schemes have found drug use trends have remained stable or reduced. Of note, Gruzia et al. (2018) found decriminalisation was not associated with any increase in the past-30 day prevalence of cannabis use among adolescents and instead significant declines in prevalence were observed for Rhode Island.

However, outcomes have been less positive in some contexts. For example, Pacula et al (2003) found youths living in US decriminalised states were 2% more likely to use cannabis both in the past year and in the past month, and that states that ruled out all forms of imprisonment were associated with a higher prevalence of use. Moreover, some recent US studies have noted increases in drug driving in states with decriminalisation with civil penalties. Examples of net widening have also been observed, particularly in the early years of the South Australian Cannabis Expiation Notice that resulted in a 2.5-fold increase in detections. (Similar experiences occurred in New York and Chicago). Two aspects of these findings should be noted, following the work of Pacula et al (2003), MacCoun et al (2009) and Logan (2014). One is that many people are not aware what sanctions apply to cannabis possession in their state. The other is that many states that have formally decriminalised actually have higher rates of arrest for low level drug offences than state that have not decriminalised. This means that findings on the effects of decriminalisation on cannabis use in US states are ‘fairly weak’ as well as being ‘inconsistent’ (MacCoun et al 2009).

Importantly, the more recent reforms in the US have been associated with more positive outcomes. For example, Gruzia et al (2018) analysis of five states in the USA that passed decriminalisation measures between the years 2008 and 2014 found the reforms were associated with an immediate and strong reduction in the rate of drug-related arrests for youth and adults, including reductions in most cases by 50% or more. But this nevertheless shows that there may be some unintended consequence of this approach particularly if the approach is not well implemented.

The research suggests that it is important to consider the impacts of an expiation system on groups who have financial difficulty. For example, in the South Australian Cannabis Expiation Notice scheme people who were unemployed could not comply with the new expiation scheme. This suggests that two requestele elements for effective implementation include allowing for different avenues to pay (e.g. via community service) and ensuring easy systems of payment (e.g. online). Moreover, reforms that continue to retain the option of prison penalties (for repeat offenders) will inherently reduce the number of people who will avoid a conviction. Full implementation as per the examples from the Czech Republic and Australia would thus appear to offer much greater potential benefit.

Table 19: Advantages and disadvantages from decriminalisation with civil/administrative sanctions

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduce convictions for PWUD</td>
<td>Need a civil/administrative system</td>
</tr>
<tr>
<td>Faster for police</td>
<td>Need a system for payment</td>
</tr>
<tr>
<td>Very cheap to run (particularly with new revenue)</td>
<td>Alternate system may not be fair for all i.e. advantages wealthy people</td>
</tr>
<tr>
<td>Social benefits for offenders from reducing conviction e.g. increased employment prospects</td>
<td>Risk of net-widening as “easy” for police</td>
</tr>
<tr>
<td></td>
<td>Risk of increased drug use and driving</td>
</tr>
</tbody>
</table>
Model 6: Decriminalisation with targeted diversion to health / social services

A sixth model and alternative is decriminalisation with targeted diversion to health/social services. The clearest example of this is the Portuguese decriminalisation, where all drug possession offenders are referred to dissuasion committees and then problematic drug users are referred to drug treatment and other social services. A handful of states in the USA have also adopted targeted diversionary elements as part of their approach to decriminalisation of cannabis. The key mechanism that differentiates this approach from Model 2 and 3 is that intensive responses are aimed at high-risk offenders.

<table>
<thead>
<tr>
<th>Portuguese decriminalisation</th>
<th>Maryland decriminalisation (2014)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Rationale:</strong> Social integration of problematic drug users</td>
<td><strong>Rationale:</strong></td>
</tr>
<tr>
<td><strong>Mechanism:</strong> <em>De jure</em> – Possession became an administrative offence, with diversion to dissuasion committees and targeted referral of drug dependent offenders to treatment</td>
<td></td>
</tr>
<tr>
<td><strong>Drugs:</strong> All</td>
<td><strong>Mechanism:</strong> <em>De jure</em> – Possession became a civil offence ($100-500), but with diversion to education, assessment &amp;/or treatment for youth and repeat offenders</td>
</tr>
<tr>
<td><strong>Threshold limits:</strong> Yes (10 days supply e.g. 1 gram of heroin, 25 grams of cannabis)</td>
<td><strong>Drugs:</strong> Cannabis</td>
</tr>
<tr>
<td></td>
<td><strong>Threshold limits:</strong> Yes (10 grams)</td>
</tr>
</tbody>
</table>

The extent of application in the US examples differs but each are instructive. The first example is Maryland, which in 2014 made possession of up to 10 grams of cannabis a civil offence only (sanctionable with a $100-500 fine). Maryland retained the option to divert offenders to education/assessment and/or treatment for youth aged less than 21 and repeat adult offenders (defined as third time offenders). The goal was to identify those with or at risk of a substance abuse disorder and to encourage treatment uptake. The second example is Connecticut, which in 2011 made possession of less than half an ounce (14 grams of cannabis) a civil offence (sanctionable with a $150-500 fine). Here for a second offence, the court must make an evaluation and if the court decides the person is drug dependent, prosecution may be suspended, and the person ordered to complete a drug abuse treatment programme. The final example is Nebraska, which in 1978 made a first offence involving possession of up to an ounce of marijuana a civil infraction punishable by a $300 fine — and a possible drug education course — instead of jail time. Under this reform any subsequent possession offences could lead to imprisonment.

As outlined in Table 20 the programme logic for this approach is that society can and should deal with drug possession outside the criminal law. However, there should be options for the employment of health/social services instead of criminal sanction for those who need it. This model is about recognising that most people will use drugs in non-problematic ways, but for a minority there may be broader drivers and hence more complex needs. Hence, removing criminal penalties whilst also providing targeted options for diversion to health/social services is a more effective hybrid system that offers the potential to firstly, reduce the harms from giving people a criminal conviction for simple possession alone, secondly reduce the burden on the CJS, and thirdly, assess and potentially treat or provide social supports to ‘high-risk offenders’. A final but important part of this programme logic that differentiates it from some of the other therapeutic diversionary models (Model 2 and 3) is the notion that only high-risk offenders should be referred to treatment: either based on age, or number of times they have been seen, or assessment of offender’s needs by independent panels (Portugal). This thus offers the potential to avoid any potential increase in drug use that may occur after removing criminal penalties albeit in a more targeted way.
Table 20: Programme logic - decriminalisation with targeted diversion to health/social services

<table>
<thead>
<tr>
<th>Problem statement</th>
<th>Inputs</th>
<th>Process</th>
<th>Outputs</th>
<th>Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminalising people for drug possession alone is disproportionate and costly. It also exacerbates harms amongst the minority of people who are problematic drug users. But referring all offenders to the drug treatment system is also not required. We need therefore a targeted response.</td>
<td>New law (civil or administrative)</td>
<td>Low risk offenders receive non-criminal response (civil penalties or suspended sanctions etc.)</td>
<td>Low risk offenders avoid convictions</td>
<td>Holistic response</td>
</tr>
<tr>
<td></td>
<td>Screening and assessment procedures for high risk offenders</td>
<td>High-risk offenders are referred to AOD assessment and treatment</td>
<td>High risk offenders avoid convictions and have AOD needs met</td>
<td>Offenders have increased access to AOD/other services (if and when required)</td>
</tr>
<tr>
<td></td>
<td>Alcohol and other drug (AOD) treatment</td>
<td></td>
<td>Agencies (e.g. AOD treatment agencies) are not burdened</td>
<td>Avoid collateral consequences of convictions (e.g. on employment)</td>
</tr>
<tr>
<td></td>
<td>Other services as relevant through brokerage (e.g. employment services)</td>
<td></td>
<td></td>
<td>Improve social integration</td>
</tr>
</tbody>
</table>

**Advantages and disadvantages**

As outlined in Table 21 studies have found that decriminalisation with targeted diversion to health/social services are associated with lower rates of regular or problematic drug use. For example, Gruca et al. (2018) showed that post reform both Maryland and Connecticut had lower rates of regular use, defined as 10 or more times in the past 30 days: 8.1% and 8.9% respectively, compared to 10.3% to 11.1% for decriminalisation states employing civil penalties alone. Moreover, the prevalence of any cannabis use in the last 30 days in Maryland were similar to non-decriminalised states: 20.5% compared to 19.5% for non-decriminalised states and 23-25.8% for the decriminalised states employing civil penalties only. Moreover, the Portuguese decriminalisation was followed by reduced illicit drug use among problematic drug users and adolescents, as well as significant reductions in drug-related harms including opiate-related deaths and infectious diseases (Hughes & Stevens, 2010; Hughes & Stevens, 2015b). The evaluation of the Portuguese model by Pombo and da costa (2016) showed that drug treatment engagement increased by 94% from pre to post reform and that drug injection had decreased with heroin users smoking heroin rather than injecting it. HIV infection decreased, too from 28.0% to 19.6%. It is important, however, to consider the contribution of more general changes to welfare and healthcare systems in contributing to these improvements (Hughes & Stevens, 2010).

Studies have also shown that such reforms tend to lead to a decrease in the burden on the CJS. For example, Gruca et al (2018) showed that post reform the arrest rate in Maryland fell 42% for youth (aged 18 and under) and 35% for adults. The trend was less than in non-therapeutic decriminalisation states, where there was an average reduction of 75% in decriminalisation states for youth and 78% for adults. This was attributed to Maryland having the lowest threshold amount for the lowest level of possession offence (10 grams, compared to 28 grams). Nevertheless, the significant declines were
very much in line with the intended programme logic. Connecticut also observed declines in arrest rates for cannabis possession, specifically a 51% reduction for youth and 70% for adults (Grucza et al., 2018). Moreover, Portugal saw significant reductions in burden of drug offenders on the CJS, with falls in arrests, imprisonment and prison overcrowding (Hughes & Stevens, 2010).

More generally, analysis of the Portuguese reform has shown increased access to specialised services for high-risk offenders, although most offenders are dealt with through more minor methods (suspended proceedings). For example, evaluation of the CDTs found that about a quarter of the participants were referred to specialised services in addictive behaviours, mainly treatment structures, and for half of them this was the first contact with these structures (Carapinha et al., 2017).

Moreover, Portugal saw significant reductions in burden of drug offenders on the CJS, with falls in arrests, imprisonment and prison overcrowding (Hughes & Stevens, 2010).

However, in relation to the Nebraska reform, Sugg (1981) concluded that there was a small but insignificant increase in the number of adults arrested each month and a small but insignificant decrease in the number of minors arrested each month. For adults the mean number of charges filed increased after the new law went into effect (from 26.7 to 36.2) but not significantly. Sugg (1981, p. 64) concluded:

On the whole, it appears that the decriminalisation law per se has not significantly lessened enforcement efforts of the legal actors involved with the law. The actual frequency of arrests and citations by police officers has not decreased, nor has the frequency of judge’s ruling defendants not guilty increased. And while there is some evidence from the police survey that a minority of officers feel that they have reduced their enforcement efforts in this area, this possible reduction is offset by a very large increase in the enforcement efforts on the part of the prosecuting attorney. That is to say, more of the cases brought to the county attorney’s office are actually prosecuted. In this sense it can be said that decriminalisation has had an overall effect of enhancing the enforcement of the law against marijuana possession.

More recently Nebraska has one of the highest marijuana arrest rates in the USA. This suggests that decriminalisation with targeted diversion will have limited capacity to reduce the burden on the CJS or increase offender access or reduce drug-related harm if it remains within a framework of coercive control. Requisite elements for good implementation include: an administrative or civil legal basis; streamlined / non-resource intensive referral pathway; efficacious treatment options; police training about new procedures; public education about the new law; and well designed eligibility criteria e.g. threshold quantities that are established high enough to fit typical patterns of possession in Ireland.

Table 21: Advantages and disadvantages from decriminalisation with diversion to health/social services

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Holistic response system based on need: “low” versus “high-risk”</td>
<td>Requires new infrastructure including new administrative legal basis and new referral pathways</td>
</tr>
<tr>
<td>Increases access of high-risk offenders to treatment/mental health/social services</td>
<td>Some increased costs for other services (but much lower than in Model 3)</td>
</tr>
<tr>
<td>Reduces problematic drug use</td>
<td></td>
</tr>
<tr>
<td>Reduces drug-related harms e.g. overdose, HIV and Hepatitis C</td>
<td></td>
</tr>
<tr>
<td>Reduces burden on the CJS</td>
<td></td>
</tr>
<tr>
<td>Reduces costs</td>
<td></td>
</tr>
<tr>
<td>Increases social reintegration</td>
<td></td>
</tr>
</tbody>
</table>
Blended models
A final consideration is that a jurisdiction may adopt multiple different models. These could then be applied in different areas or by different police agencies, to different drugs, or to different target groups (e.g. children/adults, occasional/frequent users). For example, in the USA there is depenalisation in LA County, diversion in Seattle and Baltimore and decriminalisation with civil penalties in Ohio, Mississippi and Rhode Island. In the UK, Scotland has a different approach to depenalisation (e.g. cannabis warnings) to that in England and Wales, where different police force areas place different priorities on the enforcement of laws against drug possession. And some areas in England (e.g. Durham, Bristol, and the West Midlands) have introduced diversion schemes, while others have not.

Different models can also be applied within the same area as shown in the Netherlands and many states of Australia as well as in some parts of England and Wales. Examples are summarised in Table 22. For example, across the Netherlands there are dual models of depenalisation of cannabis and *de facto* police diversion for other illicit drugs. Moreover, in Australia, five states/territories employ two models. The types differ. For example, Victoria has two *de facto* police diversion programmes targeting different drug types, with a less intense programme for cannabis than for other illicit drugs. Moreover, three states/territories have decriminalisation with civil penalties for cannabis, but *de facto* or *de jure* police diversion for other illicit drugs (or cannabis and other illicit drugs), which allows different mechanisms of response for different drug types. A further Australian example is that of Tasmania, which provides multiple models within the one programme: first time cannabis use/possession leads to a warning, whereas a third-time cannabis use/possession offence or first time other illicit drug use/possession leads to a therapeutic intervention and treatment. Finally, England and Wales offer yet another example of dual models, as while depenalisation of cannabis is offered across all regions, some regions such as Durham and Avon in Bristol also have *de facto* police diversion for other drugs.

Table 22: Countries/regions operating two models within the same geographic area

<table>
<thead>
<tr>
<th>Location</th>
<th>Model 1</th>
<th>Model 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Netherlands</td>
<td>Depenalisation (cannabis)</td>
<td>Police diversion (<em>de facto</em>) (other</td>
</tr>
<tr>
<td></td>
<td></td>
<td>illicit drugs)</td>
</tr>
<tr>
<td>England &amp; Wales</td>
<td>Depenalisation (cannabis)</td>
<td>Police diversion (<em>de facto</em>) (other</td>
</tr>
<tr>
<td></td>
<td></td>
<td>illicit drugs (in a few areas e.g.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Durham and Avon)</td>
</tr>
<tr>
<td>Portugal</td>
<td>Decriminalisation with targeted</td>
<td>[includes diversion to health/social</td>
</tr>
<tr>
<td></td>
<td>diversion to health/social services</td>
<td>services within the model]</td>
</tr>
<tr>
<td>Australian</td>
<td>Decriminalisation with civil penalties</td>
<td>Police diversion (<em>de facto</em>) (other</td>
</tr>
<tr>
<td>Capital Territory</td>
<td>(cannabis)</td>
<td>illicit drugs)</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>Decriminalisation with civil penalties</td>
<td>Police diversion (<em>de facto</em>) (cannabis</td>
</tr>
<tr>
<td></td>
<td>(cannabis)</td>
<td>and other illicit drugs)</td>
</tr>
<tr>
<td>South Australia</td>
<td>Decriminalisation with civil penalties</td>
<td>Police diversion (<em>de facto</em>) (other</td>
</tr>
<tr>
<td></td>
<td>(cannabis)</td>
<td>illicit drugs)</td>
</tr>
<tr>
<td>Victoria</td>
<td>Police diversion (<em>de facto</em>) (cannabis)</td>
<td>Police diversion (<em>de facto</em>) (other</td>
</tr>
<tr>
<td></td>
<td></td>
<td>illicit drugs)</td>
</tr>
<tr>
<td>Western Australia</td>
<td>Police diversion (<em>de jure</em>) (cannabis)</td>
<td>Police diversion (<em>de facto</em>) (other</td>
</tr>
<tr>
<td></td>
<td></td>
<td>illicit drugs)</td>
</tr>
</tbody>
</table>

Importantly, the Dutch and Australian approaches have now operated for many years. This shows that adopting a dual model can enable different objectives to be achieved at the same time, such as targeting different groups, or reserving scarce resources for those who most need it (high-needs offenders). As such it can offer a more comprehensive system but also a more cost-effective system. For example, in the ACT Hughes et al. (2014) showed that police use of a civil fine (*de jure* decriminalisation with civil penalties) was cheaper than referral for an alcohol and other drug assessment and brief intervention. Combining two models of *de jure* decriminalisation with civil penalties for cannabis possession with a therapeutic programme of police diversion for possession of cannabis or other illicit drugs improves the cost-effectiveness of the system, over and above sending
everyone to treatment. It also affords people who use cannabis the choice in this case over what system they prefer: alcohol and other drug assessment or payment of a civil penalty.

As outlined above the Portuguese model of decriminalisation with diversion includes processes for combining different approaches within the same approach. The *de jure* decriminalisation applies to all types of illicit drugs. Everyone who is found to be in possession of small quantities is referred to a local CDT (commission for the dissuasion of addiction). The CDTs act as a mechanism of triage; assessing the needs of each person and deciding on appropriate intervention. For occasional users of cannabis, there is usually no sanction or intervention (suspension of proceedings). For repeat offences by people who are considered not to be dependent on drugs, the CDT can impose a fine. For people who are considered to have a drug problem, the CDT can refer to local treatment agencies.

Lessons on ‘best practice’ approaches when multiple models are applied include the following. First, if different programmes are offered it is important to have a clear understanding about the goals of each. Second, rather than having very different rules for different programmes, clear and harmonised eligibility criteria and systems can make it easier for police. One example of a non-streamlined system is Western Australia, where police are required to carry two different books to use the different programmes and where eligibility criteria have differed between the two programmes. An advantage of the Portuguese approach or indeed the Tasmanian diversionary response is that it incorporates streamlining and harmonisation across types of drugs and people who use drugs within the one system.

**Concluding remarks**

In summary, this report has outlined an array of policy options that could be taken be Ireland, each of which offers potential benefits: including for people who possess drugs, for the CJS, for taxpayers and for other service providers. Given what is known about the drug problem in Ireland, including relatively high levels of both cannabis and heroin use, with an interrelationship between unemployment and problematic drug use, a mixed approach (combining a few of the models outlined) may be the preferred approach. The Irish government could, for example, reduce the burden of criminalisation on people who use drugs by applying both depenalisation of the most minor drug possession offences and decriminalisation with targeted diversion for those offenders who are more likely to need it. On the basis of the available evidence, this would pose a minimal risk of increasing drug use (and so may have little effect on serious organised crime or drug driving), would reduce costs in the CJS, and would provide additional pathways into treatment for people who need it (while not overburdening the treatment system with people who do not need it).

Any alternative approach to dealing with simple drug possession comes with risks. The research in this area is complex, incomplete and not capable of providing definitive answers about what the outcome of any given approach will be in the Irish context. The current approach also entails risk, including that costs and burdens are placed on citizens (taxpayers and people who use drugs) that are not justified by effects in reducing social and health harms. We hope this report will help to inform discussion in Ireland on how the best balance of risks and burdens can be achieved.
References


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493–506.


Appendix A: Reference list for studies coded, by country (n = 158)

**International (cross-country) (12)**


Chatwin, C. (2016). Five steps towards a more effective global drug policy *What is to Be Done About Crime and Punishment?: Towards a ‘Public Criminology’* (pp. 197-221).


**Australia (29)**


---

**Czech Republic (13)**


**Denmark (6)**

EMCDDA. (2004). *Denmark: New development, trends and in-depth information on selected issues*. Retrieved from Lisbon:


**Germany (5)**

Bollinger, L. (2002). German country report *Prosecution of drug users in Europe: varying pathways to similar objectives* EMCDDA.


**Jamaica (3)**


**Netherlands**


**Portugal (20)**


Hughes, C. E., & Stevens, A. (2010). What can we learn from the Portuguese decriminalization of illicit drugs? *British Journal of Criminology, 50*(6), 999-1022. doi:10.1093/bjc/azq038


Quintas, J., & Arana, X. (2017). Decriminalization: Different models in Portugal and Spain *Dual Markets: Comparative Approaches to Regulation* (pp. 121-143).


**United Kingdom (11)**


United States (46)


Kim, D. (2017). Does marijuana decriminalization Make the roads more dangerous?


Working Group to Consider Alternative Approaches to the Possession of Drugs for Personal Use

Report of the Public Consultation

March 2019
The report has been prepared for the use of the Working Group that was established by the Government of Ireland to consider the approaches taken in other jurisdictions to the possession of small quantities of drugs for personal use with a view to making recommendations on policy options to the relevant Ministers.

The Department of Health accepts no responsibility for any information supplied as part of the consultation process and no legal liability arising from the use by others of opinions or data contained in this report. It is expressly stated that no independent verification of any information supplied by others has been made. The Department of Health has used reasonable skill, care and diligence in compiling this report and no warranty is provided as to the report's accuracy.
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Executive Summary

Strategic action 3.1.35 of the national drug and alcohol strategy ‘Reducing Harm, Supporting Recovery: A health-led response to drug and alcohol use in Ireland 2017-2025’ committed to establishing a Working Group to consider the approaches taken in other jurisdictions to the possession of small quantities of drugs for personal use. The Working Group was established in November 2017. To inform its work a consultation process on the possession of illegal drugs for personal use (simple possession) in Ireland was undertaken. This report provides an overview of the findings from that consultation process. It draws on the information received from an online questionnaire open to the public, focus groups with people who have been prosecuted for a simple possession offence, and an open policy debate with stakeholder organisations.

Online questionnaire

Over 20,000 submissions were made through an online questionnaire over a six week period between 31 May and 13 July 2018. This was the highest response to any public consultation in the Department of Health.

The sample was self-selected and therefore is not a representative sample of Irish society. The overall finding was that the vast majority of respondents would support the removal of criminal penalties for the offence of simple possession which is contained within Section 3 of the Misuse of Drugs Act (1977). Eighty eight per cent of respondents did not agree with the current approach that people found in possession of illegal drugs for personal use can be prosecuted before the courts and, if convicted, receive a criminal conviction. A further 6% were not sure if they agreed with current approach and only 6% agreed with the current system. Nearly 90% of respondents indicated that they would be in favour of removing these criminal penalties.

In examining people’s views of the current approach, it was found that:

- 97% agreed that it can affect a person’s future chances of getting a job;
- 96% agreed that it can affect a person’s chances of travelling to certain countries;

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2 Throughout the report the term ‘illegal drugs’ is used to refer to substances that are scheduled under the Misuse of Drugs Act, 1977. Under this Act simple possession of a scheduled substance is a criminal offence. Simple possession is not a crime under the Criminal Justice (Psychoactive Substances) Act, 2010.
• 9% agreed that the current approach of criminal penalties prevents or reduces drug use.

If an alternative approach which removed criminal penalties were to be introduced:
• 94% agreed that it would save time and resources for the Gardaí and Courts;
• 81% agreed that it would encourage people to seek treatment for drug addiction.

Although there were some differences observed by gender and previous exposure to illegal drugs, this strong support for the removal of criminal penalties was evident across all groupings.

Respondents thought that different drug types warranted different responses. This was reflected in the proportion of respondents who thought that ‘no action’ should be taken when a person is found in possession of a particular drug for personal use: 56% for cannabis; 23% for Ecstasy/MDMA; 13% for cocaine, and 5% for heroin. The range of actions considered appropriate tended to involve a higher level of intervention as they moved through the drugs from cannabis to heroin. For example, referral to a drug treatment service was considered appropriate by: 3% for cannabis; 8% for Ecstasy/MDMA; 16% for cocaine; and 32% for heroin.

The online questionnaire concluded with an open-ended question that invited participants to provide “any other feedback” - 5,353 respondents did so. Responses covered a wide range of issues including: the form and structure of the questionnaire; the public consultation process itself; issues related to drug use in general and the people who use them; and views and experiences related to the possession of drugs for personal use. The range and content of the feedback reflected the diverse views on how best to address the associated issues. Responses supported the view that criminalising people who use drugs causes harm to the individual, their families and their communities. It was associated with stigmatising and marginalising people who were in need of help and support not punishment. Decriminalisation, legalisation and regulation were identified as alternative approaches. In some cases respondents did not want personal possession decriminalized because it was felt that it could make the drug situation in Ireland worse.

Views of people who have been prosecuted for possession

There was strong consensus among those who had been prosecuted for simple possession offences that the current approach should be changed. It was felt that the current system had a negative impact on their psychological wellbeing, their families, and their long-term life chances. The nature of drug use was complex and criminalising those found in possession
was not considered helpful. Where use was not perceived to be causing any problems for the person, they did not believe that the substance they chose to consume to relax or to socialise should result in them being prosecuted and/or receiving a criminal conviction. It was felt that a substantial proportion of Irish society use illegal drugs in this way and it is not sensible to categorise all of them as criminals. Where drug use was seen as problematic or a person is addicted to drugs, they were perceived to need support rather than punishment. Prosecuting for drug possession can compound some of the underlying factors that lead to using drugs in the first place.

There was a perception that not everyone is treated equally under the current approach and social class was perceived to be a factor in the likelihood of being found in possession and prosecuted. Decriminalisation was seen as a positive alternative, with participants drawing on the experiences of other jurisdictions. However, some believed that the approach adopted should not differ substantially from how alcohol, tobacco and medicines are treated and that all drugs should be legalised and regulated. There was consensus that the response to drugs should always be based on increasing awareness and health interventions and that criminal penalties have little impact on the pervasiveness of drugs through society. The overall message was that people experiencing problems with their drug use who had not committed any crime, other than being in possession of an illegal drug, needed support and not punishment.

**Outcome of the open policy debate**

The purpose of the open policy debate was to explore how an alternative health-led approach could operate in practice. Seventeen representatives from stakeholder organisations and individuals participated in roundtable discussions. The majority of participants felt that the decision on an appropriate referral should take into consideration the circumstances of the individual concerned and should not be determined by the specific substance which they were found to possess. Gardaí should remain the first point of intervention, after which the individual would be referred for an assessment where they can be referred onward to an appropriate treatment when required. This assessment should be made by a trained health professional or interdisciplinary panel and should occur as close to the local community as possible. Although treatment should always remain an option, it should never be coerced. Some participants were of the view that subsequent civil or administrative penalties may be applied if people do not comply with the referral or advice that they receive. A minority of participants were in favour of retaining criminal penalties for people who are repeatedly found to be in possession of illegal drugs and refuse to comply with the referral or recommendations.
Summary

In summary, throughout the different strands of consultation that fed into this process, there was strong support for a change in the approach to simple possession offences in Ireland. Although there was some variation as to how participants thought a decriminalised approach could be implemented, there was overwhelming support for removing criminal penalties. A majority of those who participated in the consultation process were of the view that criminalising drug use does not prevent or reduce drug use, and they supported a more health-centred approach which would encourage people to seek treatment for addiction. Those participating in the online questionnaire were of the view that different drugs required different approaches: they thought that the appropriate response to possession of cannabis was no action, whereas a referral to drug treatment was appropriate for possession of heroin. The participants of both the focus groups and the open policy debate thought that the response should be determined by the circumstances of the individual and not by the type of drug consumed.
1 Introduction

This report provides an overview of the findings from the consultation process on the possession of illegal drugs for personal use. It draws upon the views of members of the public, people who have been prosecuted for simple possession offences and representatives of stakeholder organisations.

1.1 Consultation Process

‘Reducing Harm, Supporting Recovery: A health-led response to drug and alcohol use in Ireland 2017-2025’ is Ireland’s national strategy on drug and alcohol misuse. It is an integrated public health approach to the harmful or hazardous use of psychoactive substances, including alcohol and illegal drugs. The strategy embraces a partnership approach among a range of Government departments and agencies, along with the community and voluntary sectors.

In light of the 2015 Report of the Joint Committee on Justice, Defence and Equality on a Harm Reducing and Rehabilitative approach to possession of small amounts of illegal drugs, strategic action 3.1.35 of ‘Reducing Harm, Supporting Recovery’ committed to establish a Working Group to consider the approaches taken in other jurisdictions to the possession of small quantities of drugs for personal use. Minister of State for Health Promotion and the National Drugs Strategy, Catherine Byrne T.D., announced the establishment of this Working Group in November of 2017.

To inform the Working Group’s deliberations, a wide-ranging and comprehensive public consultation was undertaken by the Drugs Policy Unit at the Department of Health to engage with the public, service users (including people who use drugs and may avail of services in the future), families, communities, representative groups and organisations, elected representatives and other interested parties. There were three strands to the consultation process: an online questionnaire, focus groups with people who had been prosecuted for the possession of drugs for personal use, and an open policy debate with relevant stakeholder organisations.

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4 Throughout the report the term ‘illegal drugs’ is used to refer to substances that are scheduled under the Misuse of Drugs Act, 1977. Under this Act simple possession of a scheduled substance is a criminal offence. Simple possession is not a crime under the Criminal Justice (Psychoactive Substances) Act, 2010.


The online questionnaire was open from 31st May - 13th July 2018 inclusive and was promoted widely through national and social media platforms and received substantial attention across media channels and in public discourse. The sample is self-selected and therefore is not a representative sample of Irish society. Across the six week period, a total of 20,813 submissions were received that included a response to at least one of the consultation questions. This was a record-breaking consultation for the Department of Health. The quantitative findings from this questionnaire are reported on in Chapter 2 and the qualitative data in Chapter 3.

Once the online questionnaire had closed, two focus groups were held to consult further with people who had been prosecuted for the possession of illegal drugs for personal use. These focus groups allowed for qualitative information to be gathered regarding the experiences of people who had been affected by the current system, including the context surrounding their arrest and the impact that the prosecution had on their lives. Participants for the first focus group were recruited with the assistance of stakeholder groups that work with people who use illegal drugs. Participants for the second focus group were identified through submissions received via the online questionnaire. In all, fifteen people participated in these focus group discussions. The findings from the focus groups are reported in Chapter 4.

The third and final strand of the consultation process was an Open Policy Debate that was held in order to get a better understanding of the views of relevant stakeholder organisations regarding how an alternative approach should work in practice within the Irish context. Representatives from organisations who work in the area of substance misuse were invited to participate in the discussion, as well as individuals who had requested a meeting with the Working Group. In all, 40 were invited and 17 participated in the event. The roundtable discussion format allowed for a diversity of views and suggestions to be put forward. The findings are reported in Chapter 5.

Chapter 6 summarises the main findings of the three strands of consultation.

1.2 The Current Approach

In advance of reporting the findings it is important that the reader be aware of the current approach and understand the definition of decriminalisation. A description of Ireland’s current approach to possession for personal use accompanied the online questionnaire element of the consultation:

In Ireland, people found in possession of illegal drugs for personal use can be prosecuted before the courts and, if convicted, receive a criminal conviction. Depending on the nature of the drug and other factors, the sentence may consist of a fine or a term of imprisonment, although the offender may also be given the benefit of the Probation
Act (1907). In the Misuse of Drugs Act (1977), there is a difference between ‘possession for personal use’ and possession with ‘intent to supply’. However, the Act does not specify, in terms of either weight or monetary value, how much of a particular drug must be found in a person’s possession before it will be assumed to have been for sale or supply, as opposed to being for personal use only. A court will have regard to the amount of the drug seized and the surrounding circumstances.

As context for respondents, a description of what is meant by decriminalisation was also made available:

Although there is no universal agreement on terms, the approaches can be understood as different levels of offence. The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) define decriminalisation as when the status of offence is reclassified as noncriminal so that although it is still prohibited and will be stopped by police and punished, it is no longer considered criminal. They also describe depenalisation, which results in less penalisation of the criminal offence than before. Both depenalisation and decriminalisation refer to changes in the legal status and are often used to describe possible options for changing a country’s response to offences related to drug use.
2 Public Consultation- Quantitative Findings

2.1 Context

The purpose of the online questionnaire was to engage with the public, individuals and organisations to obtain their views on the current and alternative approaches to the possession of illegal drugs for personal use in Ireland. In order to maximise the number of people who could provide their views whilst still ensuring that the information received could be collated in an efficient and effective manner, the online questionnaire was designed so that multiple submissions could be made from the same computer. This meant that addiction services, and other people or organisations were able to facilitate others to make a submission if they were unable to do so themselves, for reasons such as a lack of internet connectivity or literacy problems.

All interested people were invited to make a submission using this method, and due to the sensitive nature of the topic, respondents were able to answer the questions anonymously. This method of sampling means that the responses received should in no way be considered representative of Irish society, but rather reflects the views of people who took an interest in the issues raised and wanted to make their views known to the Working Group. Across a six week period, there was a total of 22,149 responses to the questionnaire, of which over a thousand provided no response to any of the consultation questions. Therefore, a dataset of 20,813 responses or submissions have been included in the analysis.

In all, there were six sections to the online questionnaire (see Appendix 1). The first section provided information on the purposes of the public consultation and sought informed consent before respondents could proceed to the substantive questions. Section 2 included two questions that were designed to elicit respondents’ views on the current approach to the possession of illegal drugs for personal use in Ireland. Section 3 focused on alternative approaches. Section 4 focused on what interventions respondents thought would be appropriate for a person found in possession of illegal drugs, presenting a series of options from which the respondents could select. The fifth section asked about the respondents’ gender, age, and the use of illegal drugs in their personal network. Categories were provided to capture their own experiences in relation to drugs, including whether they had ever used them; if they worked in an organisation that addresses drugs-related issues; if they had been prosecuted for simple possession offences; or if they were a member of a family that had been affected by drugs. The final part of this section enabled respondents to provide qualitative data in the form of an open text box for further feedback and comment. The final section of the online questionnaire thanked respondents for their participation and informed them that the Working Group may wish to consult further as part of their deliberations. If respondents wished to be considered for further consultation, they were asked to provide contact details and were assured that all information provided would remain confidential.
2.2 Respondents Profile

There was a diverse range of respondents to the online questionnaire; two-thirds were male and one-third female. Graph 1 shows the wide range of ages of respondents; the average age was 22.

![Graph 1: Age of respondents](image)

Respondents were asked about their history of using illegal drugs and 17,710 respondents answered this question: 37% had used drugs on many occasions; 45% had used drugs on only a few occasions while 18% indicated that they had never used illegal drugs.

While data was not collected on respondents’ occupations, some chose to report it in the open-ended question. Feedback was received from: third level students, social workers, those working in schools, the healthcare sector, An Garda Síochána, the criminal justice system and other industries and sectors.

2.3 Current Approach in Ireland

In the first question, respondents were asked whether they agreed with the current approach that can prosecute people before the courts if they are found to possess illegal drugs for personal use (see section 1.3 for explanation of the current approach). Of the 20,768 responses to this question, only 6% indicated that they were in agreement, 6% were unsure and the remaining 88% indicated that they did not agree with the current approach in Ireland.
Graph 2: Do you agree with the current approach that can prosecute people before the courts if they are found to possess illegal drugs for personal use?

Respondents were then asked to consider some of the main reasons that have been put forward about the current approach that can prosecute people before the courts if they are found in possession of illegal drugs and to indicate their level of agreement to five statements ranging from ‘strongly agree’ to ‘strongly disagree’ (see graph 3 below).

The statement that received the most agreement was that “it can affect a person's future chances of getting a job” to which 97% of respondents either strongly or slightly agreed. This was followed closely by “it can affect a person's future chances of travelling to certain countries” with 96% of responses agreeing. Ninety-one per cent agreed that “it stigmatises people who use drugs”, and 85% agreed that it “ignores health and addiction issues”. The only statement that did not receive widespread support was that “it prevents or reduces drug use”, with only 9% of responses either strongly agreeing, or slightly agreeing.
In all, the submissions received to these questions regarding the current approach indicate that a majority of those who responded to the online questionnaire are not in favour of the current approach that can prosecute people who are found in possession of illegal drugs for personal use.

2.4 Alternative Approaches to Simple Possession Offences

The third section of the questionnaire focused on alternative approaches for simple possession offences. A brief summary of alternative approaches such as ‘decriminalisation’ and ‘depenalisation’ was provided (see section 1.3 of this report), and then respondents were asked whether they would be in favour of not prosecuting people before the courts for possessing illegal drugs for personal use.

Eighty nine per cent of the 20,349 responses to this question indicated that they would be in favour of removing criminal penalties for possessing illegal drugs for personal use. Of the remaining responses, 5% were not sure, and 6% indicated that they would not be in favour of removing criminal penalties for the possession of illegal drugs for personal use (see graph 4 below).
Graph 4: Are you in favour of removing criminal penalties for possessing illegal drugs for personal use?

Following this, respondents were then prompted to consider some of the main arguments surrounding the removal of criminal penalties for possessing illegal drugs for personal use and to consider the likelihood of a range of outcomes. The statement that received the most agreement was that it “would save time and resources for Gardai and the Courts” with 94% of responses agreeing either strongly or slightly. This was followed by 81% of responses agreeing that it “would encourage people to seek treatment for drug addiction”. Most responses did not agree with the remaining three statements. Just over a quarter of responses (27%) agreed that removing criminal penalties “would lead to more people experimenting with drugs”, with 54% disagreeing, and a sizeable 20% neither agreeing nor disagreeing.

Graph 5: If Ireland removed criminal penalties for possessing illegal drugs for personal use, do you agree or disagree with the following possible outcomes?
In relation to whether there “would be more drugs in the community”, or that removing criminal penalties “would make it easier for drug dealers to go undetected”, 65% of responses disagreed that there would be more drugs in the community, and 71% disagreed that it would make it easier for drug dealers to go undetected.

In all, the responses received to these questions regarding the removal of criminal penalties for the possession of illegal drugs in Ireland indicate that a strong majority of those who responded to the online questionnaire would be in favour of such action. In particular, respondents are of the view that it would save time and resources for the criminal justice system, specifically for Gardaí and the Courts and that removing criminal penalties would encourage more people to seek treatment.

2.5 Other Approaches for Different Kinds of Drugs

The next section of the questionnaire asked respondents to consider appropriate responses for people found in possession of illegal drugs for personal use. There were five questions in total, each of which referred to a different type of substance. Respondents could select all options they thought would be appropriate for each type of substance, and therefore there were more responses selected than overall number of respondents.

2.5.1 CANNABIS

When respondents were asked what they thought should happen to a person found in possession of cannabis for personal use, over half of the responses (56%), indicated that there should be no action (table 1 below). The next most commonly selected action at 14% was ‘referral to a drug education and awareness programme’. ‘A caution or warning’ was the third most commonly selected option with 11% of responses. All of the remaining options received far less support, ranging from 1% thinking that people found in possession of cannabis for personal use should be prosecuted before the courts, to 5% thinking that they should receive an on-the-spot fine that would be similar to a minor driving offence.

Respondents also had the option of proposing ‘Some other action’, and an open textbox was provided for them to submit their views. In all, 670 responses selected this option and opinion varied substantially in the suggestions proposed. Many suggested that cannabis should be legalised, and some were of the view that those found in possession for personal use should receive a much harsher sentence than they do currently, with a small number advocating violence. Although there is some variation of opinion, it is clear that most respondents believe the penalty for the possession of cannabis should be substantially reduced if not eliminated.
### Table 1: What do you think should happen to a person found in possession of Cannabis for personal use?

<table>
<thead>
<tr>
<th>Answer</th>
<th>Count</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>No action</td>
<td>15,673</td>
<td>55.8%</td>
</tr>
<tr>
<td>A caution or warning</td>
<td>2980</td>
<td>10.6%</td>
</tr>
<tr>
<td>Referral to a drug education and awareness programme</td>
<td>4012</td>
<td>14.3%</td>
</tr>
<tr>
<td>Referral to a drug treatment service</td>
<td>969</td>
<td>3.4%</td>
</tr>
<tr>
<td>Participate in a community engagement programme</td>
<td>1038</td>
<td>3.7%</td>
</tr>
<tr>
<td>An on-the-spot fine (similar to a minor driving offence)</td>
<td>1360</td>
<td>4.8%</td>
</tr>
<tr>
<td>Increasing penalties for repeated offences</td>
<td>1089</td>
<td>3.9%</td>
</tr>
<tr>
<td>Prosecuted before the courts</td>
<td>252</td>
<td>0.9%</td>
</tr>
<tr>
<td>Don't know</td>
<td>59</td>
<td>0.2%</td>
</tr>
<tr>
<td>Some other action (please name this)</td>
<td>670</td>
<td>2.4%</td>
</tr>
<tr>
<td>Total</td>
<td>28,102</td>
<td>100%</td>
</tr>
</tbody>
</table>

### 2.5.2 ECSTASY OR MDMA

In relation to a person found in possession of ecstasy or MDMA, the most frequently occurring response, at 27%, was that they should be referred to a drug education and awareness programme. The next most selected option at 23% was that there should be no action taken. A caution or warning was the third most commonly selected option, with 17% (table 2 below).

Opinion varied substantially in the suggestions proposed under 'some other action', with many people suggesting harm reduction information or educating people on the risks. A number of responses suggested that the drugs should be tested in order to determine the purity and strength of the substance. Others thought that there should be no penalty if they provide details of who supplied them with the drugs. There was a wide range of opinion expressed through the submissions.

<table>
<thead>
<tr>
<th>Answer</th>
<th>Count</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>No action</td>
<td>8060</td>
<td>23.2%</td>
</tr>
<tr>
<td>A caution or warning</td>
<td>5957</td>
<td>17.2%</td>
</tr>
<tr>
<td>Referral to a drug education and awareness programme</td>
<td>9214</td>
<td>26.6%</td>
</tr>
<tr>
<td>Referral to a drug treatment service</td>
<td>2802</td>
<td>8.1%</td>
</tr>
<tr>
<td>Participate in a community engagement programme</td>
<td>1721</td>
<td>5.0%</td>
</tr>
<tr>
<td>An on-the-spot fine (similar to a minor driving offence)</td>
<td>2673</td>
<td>7.7%</td>
</tr>
<tr>
<td>Increasing penalties for repeated offences</td>
<td>2585</td>
<td>7.5%</td>
</tr>
<tr>
<td>Prosecuted before the courts</td>
<td>903</td>
<td>2.6%</td>
</tr>
<tr>
<td>Don't know</td>
<td>111</td>
<td>0.3%</td>
</tr>
<tr>
<td>Some other action (please name this)</td>
<td>662</td>
<td>1.9%</td>
</tr>
<tr>
<td>Total</td>
<td>34,688</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table 2: What do you think should happen to a person found in possession of Ecstasy/MDMA for personal use?
2.5.3 COCAINE

In relation to what respondents thought should happen if a person is found in possession of cocaine for personal use, the most commonly selected option was for referral to a drug education and awareness programme, at 28% of all selected options. Following this, referral to a drug treatment service was selected the most at 16%, followed closely by a caution or warning at 14% and no action at 13% (table 3).

In relation to the suggestions put forth through the selection of ‘some other action’, as with the other substances responses varied substantially in the severity of responses. Several people stated that the drug should be confiscated; with others suggesting that they should be able to avail of drug-testing in order to determine the strength and purity. A few respondents called for more severe penalties such as a mandatory prison or death sentence. Others thought that the person should be subject to a fine, the amount of which should be calculated in proportion to their income. Others thought that similarly to alcohol, consumption in public should be banned, but there should be no action if people are not consuming it in private.

<table>
<thead>
<tr>
<th>Answer</th>
<th>Count</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>No action</td>
<td>5238</td>
<td>12.8%</td>
</tr>
<tr>
<td>A caution or warning</td>
<td>5645</td>
<td>13.8%</td>
</tr>
<tr>
<td>Referral to a drug education and awareness programme</td>
<td>11,215</td>
<td>27.5%</td>
</tr>
<tr>
<td>Referral to a drug treatment service</td>
<td>6542</td>
<td>16.0%</td>
</tr>
<tr>
<td>Participate in a community engagement programme</td>
<td>2624</td>
<td>6.4%</td>
</tr>
<tr>
<td>An on-the-spot fine (similar to a minor driving offence)</td>
<td>3571</td>
<td>8.8%</td>
</tr>
<tr>
<td>Increasing penalties for repeated offences</td>
<td>3777</td>
<td>9.3%</td>
</tr>
<tr>
<td>Prosecuted before the courts</td>
<td>1491</td>
<td>3.7%</td>
</tr>
<tr>
<td>Don’t know</td>
<td>148</td>
<td>0.4%</td>
</tr>
<tr>
<td>Some other action (please name this)</td>
<td>549</td>
<td>1.3%</td>
</tr>
<tr>
<td>Total</td>
<td>40,800</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Table 3: What do you think should happen to a person found in possession of Cocaine for personal use?

2.5.4 HEROIN

For those found in possession of heroin for personal use, the most commonly selected option, at 32% of all selections was referral to a drug treatment service. Following this, referral to a drug education and awareness programme received 25% of all selected options. The third most commonly selected option, at 11% was to participate in a community engagement programme. Only 5% of all options selected to this question thought that ‘no action’ would be appropriate.
Suggestions put forth under ‘some other action’ included that personal development and mental health supports would be beneficial. There were a few suggestions that a GP-led service should supply users with prescribed heroin while encouraging them into rehabilitation, which would remove the need for crime to support their habit. Others believed that those found in possession of heroin should be referred to a supervised drug consumption facility. Some were of the view that social welfare payments should be cut for anybody found in possession of heroin. There was a minority of respondents who suggested life imprisonment or the death penalty.

<table>
<thead>
<tr>
<th>Answer</th>
<th>Count</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>No action</td>
<td>2254</td>
<td>4.8%</td>
</tr>
<tr>
<td>A caution or warning</td>
<td>2954</td>
<td>6.3%</td>
</tr>
<tr>
<td>Referral to a drug education and awareness programme</td>
<td>11,778</td>
<td>25.1%</td>
</tr>
<tr>
<td>Referral to a drug treatment service</td>
<td>15,218</td>
<td>32.4%</td>
</tr>
<tr>
<td>Participate in a community engagement programme</td>
<td>5235</td>
<td>11.1%</td>
</tr>
<tr>
<td>An on-the-spot fine (similar to a minor driving offence)</td>
<td>2331</td>
<td>5.0%</td>
</tr>
<tr>
<td>Increasing penalties for repeated offences</td>
<td>3990</td>
<td>8.5%</td>
</tr>
<tr>
<td>Prosecuted before the courts</td>
<td>2452</td>
<td>5.2%</td>
</tr>
<tr>
<td>Don’t know</td>
<td>133</td>
<td>0.3%</td>
</tr>
<tr>
<td>Some other action (please name this)</td>
<td>645</td>
<td>1.4%</td>
</tr>
<tr>
<td>Total</td>
<td>46,990</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Table 4: What do you think should happen to a person found in possession of Heroin for personal use?

2.5.5 OTHER ILLEGAL OR CONTROLLED DRUGS

In relation to other illegal or controlled drugs, the most commonly selected option at 27% was for referral to a drug education and awareness programme with referral to a drug treatment service being the second most frequently selected option at 18%.

Of those who selected ‘some other action’, many stated that it depended on the drug. For example, some expressed the view that there should be no action taken for those found in possession of magic mushrooms, whereas possession of Rohypnol or other so-called ‘date rape’ drugs or lethal substances should be prosecuted before the courts. Similarly, many respondents highlighted the importance of considering the effects of substances prior to determining the appropriate response, with particular regard for the potential for harms to be caused. For example, many people thought that drugs that are perceived to be highly addictive and cause substantial health harms such as crack cocaine and crystal meth should be handled in a similar way to heroin, while synthetic drugs such as LSD and ketamine should be handled similarly to MDMA, and naturally occurring drugs such as magic mushrooms should be addressed similarly to cannabis.
<table>
<thead>
<tr>
<th>Answer</th>
<th>Count</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>No action</td>
<td>5493</td>
<td>13.1%</td>
</tr>
<tr>
<td>A caution or warning</td>
<td>5976</td>
<td>14.2%</td>
</tr>
<tr>
<td>Referral to a drug education and awareness programme</td>
<td>11,154</td>
<td>26.5%</td>
</tr>
<tr>
<td>Referral to a drug treatment service</td>
<td>7433</td>
<td>17.7%</td>
</tr>
<tr>
<td>Participate in a community engagement programme</td>
<td>3212</td>
<td>7.6%</td>
</tr>
<tr>
<td>An on-the-spot fine (similar to a minor driving offence)</td>
<td>2584</td>
<td>6.1%</td>
</tr>
<tr>
<td>Increasing penalties for repeated offences</td>
<td>1214</td>
<td>2.9%</td>
</tr>
<tr>
<td>Prosecuted before the courts</td>
<td>2669</td>
<td>6.3%</td>
</tr>
<tr>
<td>Don't know</td>
<td>1330</td>
<td>3.2%</td>
</tr>
<tr>
<td>Some other action (please name this)</td>
<td>1013</td>
<td>2.4%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>42,078</strong></td>
<td><strong>100.0%</strong></td>
</tr>
</tbody>
</table>

Table 5: What do you think should happen to a person found in possession of Other Illegal or Controlled Drugs for personal use?

### 2.5.6 COMPARING RESPONSES TO DIFFERENT TYPES OF DRUGS

In graph six below, the options that were selected for the four named substances (cannabis, ecstasy/MDMA, cocaine and heroin) are combined in order to provide an overview of how they compare to each other. It is clear that a wider range of responses were considered appropriate for heroin, particularly when compared to cannabis. In contrast, less options were selected for cannabis, suggesting that more respondents were of the view that no action should be taken if a person is found in possession of this substance (as indicated by the dark blue colour at the base of the graph’s columns).

![Graph 6: Comparison of Selected Responses to the Different Drug Types](image-url)
It is clear from the comparison that most respondents were of the view that different drugs may require different responses. Referral to a drug education and awareness programme was considered an appropriate response for most drugs; however, less people saw the value of a community engagement programme, irrespective of the type of drug. The graph also highlights that referral to a drug treatment service is deemed more appropriate for substances that many people perceive to be more harmful (as indicated by the colour yellow getting larger as one moves from cannabis to heroin). Cannabis was the only drug identified as requiring no response by the majority of respondents.

The implication of these results is that the respondents did not identify a ‘one size fits all’ response or intervention for the possession of illegal drugs for personal use.

### 2.6 Differences among Respondents

Analysis was carried out to explore whether respondents’ views differed by their age, sex or previous exposure to drugs.

#### 2.6.1 Comparing Views by Age of Respondent

As previously highlighted, there was a wide age range of respondents to the online questionnaire. When respondents were grouped according to whether they were in favour of removing criminal penalties, only slight differences in the age profile of respondents became apparent as can be observed in the following boxplot.

![Graph 7: 'Are you in Favour of Removing Criminal Penalties' and 'Age'](image)
The age of those in favour of removing criminal penalties was not remarkably different to those against or not sure. The average age was around 30 for all the groups, demonstrating that age did not seem to be a marker of attitudes towards the proposed removal of criminal penalties for the possession of illegal drugs for personal use.

2.6.2 COMPARING VIEWS BY GENDER OF RESPONDENT
When respondents were grouped according to their stated gender, there were some differences in whether they would be in favour of removing criminal penalties for the possession of illegal drugs for personal use.

![Graph 8](image)

Graph 8: ‘Are you in Favour of Removing Criminal Penalties’ and ‘Gender’

As graph 8 demonstrates, although a clear majority of females, at 83%, stated that they would be in favour of the removal of criminal penalties, there were an even greater proportion of males (93%) who held the same view.

2.6.3 COMPARING VIEWS BY RESPONDENT’S PREVIOUS EXPERIENCE OF DRUGS
Section 5 of the online questionnaire included a question with a number of options and respondents were asked to select all that applied to them. Included in these options were categories that described experience of using illegal drugs and whether they were a member of a family that had been affected by drugs. Respondents’ experience of drugs was compared to whether they were in favour of removing criminal penalties for drug possession (see table 6 below).
Table 6: ‘Are you in Favour of Removing Criminal Penalties’ and Experience of Drugs

This data shows that all groups of respondents had a majority that were in favour of removing criminal penalties. The greatest support was amongst the group of respondents that indicated that they had been prosecuted for the possession of illegal drugs for personal use, closely followed by those who had indicated that they had used illegal drugs before. It is noteworthy though that 72% of those stated that they had never used illegal drugs before were also in support of removing criminal penalties.

2.6.3 Comparing Views by Respondent’s Exposure to Drugs

Respondents were also asked to estimate the proportion of their family, friends and acquaintances who have used illegal drugs. This question was included to provide an additional estimate of the level of exposure to illegal drugs that the respondent had. Over 90% stated that at least a few of their social network have used illegal drugs, with the vast majority indicating that the proportion was somewhere between ‘a few’ and ‘most’.

Table 7: ‘Are you in Favour of Removing Criminal Penalties’ and Exposure to Drugs

Those who indicated that none of their friends, family or acquaintances used illegal drugs were the least likely to be in favour of the removal of criminal penalties, although a clear majority of this grouping at nearly 70% still thought that they should be removed. These
findings demonstrate that there is strong support for a changed approach to the possession of illegal drugs for personal use, regardless of the respondents’ exposure to illegal drugs through their social and personal networks.

2.7 Concluding Comment

The overall finding from the quantitative element of the questionnaire was that the vast majority of respondents do not agree with Ireland’s current approach to dealing with the possession of illegal drugs for personal use and would support the removal of criminal penalties for the offence. For most respondents, the current approach was not thought to have any impact on levels of drug use, however it was deemed to have a negative impact on a person’s chances of getting a job. An approach that removed criminal penalties for simple possession was perceived to have the benefit of saving time and resources for the Gardaí and courts, as well as potentially encouraging people to access treatment. The findings also reinforce the view that not all drug use is the same. This is reflected in the responses to the actions selected as most appropriate for the different types of drugs. Drugs that are generally perceived to be less problematic (i.e. cannabis) were perceived to require less action than those associated with more harmful use (i.e. heroin).
Public Consultation – Qualitative Findings

3.1 Context

The final part of the online questionnaire was an open-ended question that invited participants to provide “any other feedback” that they might like to add and 5,353 respondents did so. The profile of those who responded to this question is consistent with the overall profile of respondents to the questionnaire in relation to their views on removing criminal penalties for the possession of illegal drugs for personal use: of those who answered this question, 92% were in favour of removing criminal penalties; 4% were against; and a further 4% were unsure.

Responses covered a wide range of issues, including: the form and structure of the questionnaire, the public consultation process itself; issues related to drug use in general and the people who use them; and views and experiences related to the possession of drugs for personal use. The range and content of these reflect the complex nature of drug use and the diverse views on how best to address the associated issues.

This question generated a large amount of data. Analysing such a large and varied qualitative data set is challenging. Two strands of analysis were carried out and are reported on here: first, an analysis of frequently occurring words; second, an overview of some of the key themes raised.

3.2 Word Frequency

To illustrate the most frequently occurring words across the responses to this question a frequency table and ‘word cloud’ are presented below. It should be noted that words such as ‘drug’, ‘drugs’, ‘use’, and ‘the’ were excluded from this part of the analysis.

Diagram 1: Word Cloud of Key Terms in Responses to the Open-Ended Question
3.3 Thematic Overview

A top-level analysis of key themes within the responses was carried out. While the focus of this chapter is on those responses that addressed the key question of the best approach to dealing with possession of small quantities of drugs, it begins with a list of some of the broader topics raised by the public.

3.3.1 BROAD TOPICS RELATED TO DRUG USE
The consultation process highlighted a number of wide ranging issues related to drug use and the people who use them. While not an exhaustive list, these included:

- Individuals, families and communities have experienced devastation as a result of drug use and addiction.
- Drugs are perceived to have positive and negative effects for people who use them.
- Drug use is widespread across Irish society and exists along a continuum of that which is perceived to be ‘unproblematic’ or ‘recreational’ to that which is ‘problematic’.
- The activities of the ‘drug gangs’ and the associated drug trade has had a hugely negative impact on individuals, families and communities.
- A broader range of harm reduction strategies are called for. For example, introducing access to drug testing services.
- There was a call to make medicinal cannabis available to those who need it.
- Prevention activities should be improved and made more widely available. Those activities noted ranged from education and awareness programmes, through increased availability of counselling services for people to be able to deal with childhood trauma and other issues.
- Drug treatment services need to be better funded and more widely available.
- Certain areas are more affected by drug use than others. These areas need extra support.
- Ireland has a problem with substances, irrespective of their legal status - those noted in particular were alcohol, tobacco and prescription drugs.

3.3.2 DEALING WITH POSSESSION FOR PERSONAL USE
As mentioned above, the vast majority of respondents (92%) were in favour of removing criminal penalties for possession for personal use. Responses illustrated the range of views on whether a change should be made or not, how best to proceed with any such change and
the issues that might need to be taken into consideration when doing so. The following sections look at three broad themes:

- Problems with current approach
- Changing Ireland’s approach: decriminalising; legalising
- Not changing Ireland’s approach

It should be noted that given the volume and range of responses, the following sections are in no way exhaustive of what was covered. Direct quotes are used to illustrate some key points.

### 3.3.2.1 The current approach is not the right one

The vast majority of responses to the open-ended question (92%) came from people who thought that criminal penalties for possession for personal use should be changed. A range of reasons were given for not considering Ireland’s current approach to possession as the right one. Some of these are outlined below.

**All illegal drugs are not the same**

As illustrated in the last chapter many respondents thought there should be different types of responses for different types of drugs. However, there was a belief that having substances treated differently under the law did not reflect the levels of harm they could cause. Illegal drugs, particularly cannabis, were sometimes perceived to be less harmful to the individual and society than alcohol. For example, it was highlighted that people can become aggressive or violent after consuming alcohol, but that this rarely happens with cannabis. It was highlighted that some substances that are currently regulated such as tobacco, alcohol and some prescription medicines can be far more harmful to health and cause more deaths than some illegal drugs. It was also noted that some legal drugs are used to cause harm to others, for example the so-called date rape drug Rohypnol. Among drugs that were illegal, cannabis was seen as the least and heroin the most harmful. Heroin was heavily associated with addiction.

“Cannabis is safer than alcohol - and has definite medicinal benefits - , yet cannabis users are vilified, whereas alcohol drinkers are seen as heroes. Alcohol breaks up many more families and destroys more lives than cannabis ever has. No deaths have ever been attributed to cannabis, yet alcohol is highly dangerous. The hypocrisy of it all is highly unfair.”

**Criminalising drug use is ineffective and can be harmful**

Many people expressed the view that the so-called ‘War on Drugs’ has not worked, and that the criminalisation of people who use drugs causes unnecessary harm to individuals, families, communities and wider society. It was highlighted that people have always tended
to consume psychoactive substances, and that criminalising the use of drugs has done little
to reduce use or address the associated harms. While some thought that an arrest for the
possession of drugs may act as a deterrent from future drug use, overall criminalising people
who use drugs was perceived to be at best pointless and, at worst, cause unnecessary
harms. Many submissions highlighted how the prosecution of simple possession offences
can compound difficulties experienced by individuals and their families.

“Mankind has always explored the effects of substances - many of which were used in
sacred ceremony, celebration, community, healing, self-exploration and development. The
present system has ostracised vast swathes of society, created a societal, judicial
and healthcare nightmare. Prohibition will NEVER work. Decriminalise ALL drugs.
Educate. Ensure quality. Treat and care for those with issues.”

“As a parent of a teenager that smokes cannabis and has been prosecuted I am a
nervous wreck every time my son leaves the house, waiting for him to be arrested for
possession or waiting for guards to call with summonses. I have paid, as many other
parents have, the court poor box sums up to €750 for small amounts of cannabis in
possession for personal use. My son along with most other users will continue to smoke
cannabis whether it’s illegal or not. The sooner the better it’s decriminalised.”

**Adults should be allowed to choose which substances they use**
The findings reinforce the view that a diverse range of people consume illegal drugs in
Ireland. Respondents reported drug use happening across Irish society and that the nature
of its use varied. It ranged from sporadic or ‘recreational’ to problematic and associated with
addiction. Either way criminalising the user was not seen by many as an appropriate
response.
Respondents argued for the right to make their own decisions in relation to both their body
and their lifestyle choices. It was claimed that there has been a ‘moral panic’ about drug-
taking, and that people should be free to choose to use drugs and not be criminalised for it.

“I don’t use alcohol or cigarettes. I’m a hard-working, happy, healthy and active man. I
use cannabis sometime with a vaporiser and in the summer might take MDMA at a
festival. I really don’t understand how the current approach is ok with criminalising me,
it is crazy, I’m an adult.”

“I am an otherwise law-abiding citizen, and I really dislike the fact that using drugs on
occasion has essentially made me a criminal. I pay my taxes, would never, ever drive
under the influence, etc, but live in fear of being prosecuted as a criminal if caught in
possession of a small amount of cannabis (which is all I would use now). I have never
used cocaine or heroin, but I know several people who do/have done and instead of
going in and out of prison I would prefer if they could be treated.”
Those with problematic drug use require help

Respondents tended to be sympathetic to the needs of people who were engaged in problematic drug use. It was understood that people often use drugs to help them cope with adverse childhood experiences such as abuse or neglect. In these and many other instances, there were calls for a more compassionate response that does not harm individuals further. It was highlighted that more treatment centres were needed in addition to wrap-around services, including those that can adopt a holistic approach to life skills.

“Prosecution of people who use illegal drugs creates a downward spiral of unemployment and only encourages the person to further disengage with society and rarely discourages drug use. The problems in society that drug use stems from need to be addressed; prosecution is never the answer.”

“I really think care and compassion is key when dealing with drug users/addicts. Quite often, those who use or become dependent on drugs have a deeper psychological reason for turning to drug abuse. Wrap-around services and dual diagnosis need to be in place.”

Impact of stigma

Closely linked to the previous points, people highlighted the stigma and marginalisation that results from drug use being criminalised and that having a criminal record can impact a person’s rehabilitation and recovery journey. For example, it was highlighted that when drug possession cases are prosecuted before the courts, local media often report on the proceedings which can result in shaming of the individual and their family within the local community. The stigma experienced by people who use more broadly can act as a barrier to accessing services.

“I lost my son to drugs. If my son had had access to treatment, or maybe even if he didn’t feel so ashamed of his problem he could have been helped. What happened was he suffered in silence, he was shunned by some of his family, and he ended up taking his own life. Please change your approach.”

“I was locked up on several occasions for shoplifting which was a direct result of my addiction. I also have a conviction for possession of a small amount of cannabis. I have not committed a crime since I got clean but I found it very difficult to get a decent job because of my criminal past. There is also a huge stigma attached to all of that which has sometimes followed me to this day.”

The system perpetuates inequality

The current system was also seen to exacerbate class inequalities. Those who were from communities characterised by socio-economic deprivation were perceived to be most likely to be prosecuted for the possession of illegal drugs, not professional workers from more affluent areas.
“I feel that the current regime unfairly targets the working class and that by criminalising drug use we are further marginalising the people who most need our support. I have seen first-hand how the current archaic drug prosecution system further stigmatises and prevents addicts from seeking help. Furthermore, as a person from a lower socioeconomic grouping, I have seen how the current laws are classist - I have friends from the flats who have been prosecuted over personal amounts of cannabis, and affluent friends who have gotten off scot free despite being found with large amounts of drugs. The current law unfairly targets the most vulnerable and is unjust!”

**Ambiguity about message of changing approach**

Underpinning many of the views on making a change to the current approach was a concern about making a bad situation worse. Even where respondents were in favour of removing criminal penalties, they often expressed concerns about doing so. Some people thought that having criminal penalties acts as a deterrent to people trying drugs and that any softening of prosecution would give the wrong message and suggest that it is acceptable to use drugs.

“I believe that we should move to legalising cannabis for medical and recreational use. The current situation where synthetic cannabinoids are available and being used is extremely dangerous to public health. There are no easy decisions and I acknowledge that the message decriminalising drugs will send to young people will not be without impact. To maintain the current criminalising position is not realistic, practical or fair.”

There was also ambiguity underpinned by a concern that decriminalising, legalising or regulating drugs would result in an increase in their use. Some respondents highlighted the mental and physical harms that drug use can cause as well as the associated criminal activity. While they thought the current approach needed to change, they were sometimes conflicted as they were unclear about whether the costs would outweigh the benefits of such a change. Examples of Ireland’s excessive alcohol consumption or the problems that the ‘headshops’ presented were used as examples of the risks of having a more relaxed approach in Ireland.

“Drug use is a complex issue but I personally think that decriminalisation is not the answer as it is likely to increase demand and fuel increased criminal involvement in what is a very lucrative business. On the other hand a draconian approach to possession of drugs is likely to waste Garda and court time with little effect on overall drug consumption and addiction. A carrot and stick approach strikes me as the best option with no prosecution but a warning for small amounts of soft drugs.”

This ambiguity emphasised the need for decisions to be evidence based.

**Alternative approaches that worked in other jurisdictions**

A commonly occurring reason given for removing criminal penalties was the view that alternative approaches that favoured interventions which were outside of the criminal justice system had worked in other jurisdictions. Portugal, the Netherlands, Colorado, California, Canada and the Czech Republic were all frequently cited. These are places where either
decriminalisation or legalisation and regulation had been implemented and these options were identified in responses.

“All the evidence points to current approach to the war on drugs as a failure. Take examples from Portugal, or the vast success in tourism and tax revenue generated for schools and drug treatment programs in Colorado. Substance abuse is a physical and mental health issue not a criminal one.”

Some of the responses illustrated a lack of understanding among members of the public about the distinction between decriminalisation of possession and legalisation. Where a misunderstanding existed it tended to be that they were perceived to be the same thing. For example, that drugs that are currently controlled under legislation would be available in a similar way to alcohol and tobacco if decriminalisation were introduced. While respondents were not always clear, an effort has been made to distinguish between these below.

3.3.2.2a An alternative approach: Decriminalisation

There was no one clear model of decriminalisation favoured by respondents. While some thought there should be no action taken after being found in possession of an illegal drug, others identified a need for some sort of response or intervention.

Deciding on responses- drugs and the nature of use

As illustrated in other sections (see for example sections 2.5.6 and the first bullet of 3.3.2.1) of this report, it was suggested that some drugs should be treated differently to others. Overall the response for different drugs was linked to perceptions of how harmful or addictive they were. Repeatedly, cannabis was singled out as requiring the lowest level of intervention, if any.

“I think cannabis should be made legal for recreational use it’s harmless we sell drink and cigarettes and that kills people. All other drugs should be decriminalised for personal use if you get caught with drugs you should be given mandatory drug counselling instead of a criminal record.”

While other drugs were seen as more harmful, what became apparent in some of these responses was how important the nature of the person’s use was perceived to be when deciding on an appropriate response to possession. For example, where people’s use was not perceived to be problematic then it was suggested that they receive either no intervention or an education and drug awareness intervention. Where people had an addiction or were experiencing problems as a result of their drug use then they should be given access to a range of treatment and other services to meet their needs.

“I think some of these questions are circumstantial. If someone is in possession of MDMA or ecstasy or cocaine on their way to a night out or at a festival it’s more than likely solely for that purpose. If someone is found in possession of these same drugs and
using at home then that could mean addiction and could need help or treatment. In neither case do I think a prison sentence or fine is the right treatment for personal use.”

**Actions**

Where respondents thought there should be an intervention for those found in possession these included: drug education, drug awareness, treatment and other wraparound services. In general the views were that the interventions should aim to incentivise people into stopping their use or reduce the harms. There were some suggestions as to how this could be done, with community engagement and job schemes being mentioned. Other submissions emphasised that a nuanced approach that combines education, rehabilitation supports and penalties depending on an individual’s circumstance would be best.

**Voluntary vs mandatory**

People varied as to whether they thought those found in possession should be compelled to attend the interventions considered appropriate, or if all referrals to an intervention should be made voluntary. The main advantage to making it voluntary was a perception that people needed to want help for it to be effective; making it mandatory would waste service providers’ time and resources.

“Possession for personal use of recreational or "weekend" drugs should be met with warnings, fines, and referral to online drug education for the users. Possession of more destructive drugs (heroin, meth) should be met with involuntary rehab for the users. All dealers of all drugs should be prosecuted. Punish the suppliers, not the users.”

**A need for improved access to treatment services**

In considering the best approach to deal with drugs, a need for increased and improved treatment and support services was identified. It was argued that irrespective of the approach or model chosen, more services would be needed. For example, it was suggested that a move to decriminalisation would require increased access to a variety of services and the funding necessary to do so.

**3.3.2.2b An alternative approach: Legalisation or regulation**

Some respondents favoured legalisation and/or regulation, while others described it as a step too far. Four perceived benefits to these approaches were identified. First, regulation would generate a new stream of tax revenue for the government. Second, it would generate employment and economic growth through agri-business ventures to produce substances. Third, substances would be safer as consumers would know the strength and purity of drugs that they chose to take. For example, there was concern about a trend towards increasingly high levels of THC content within cannabis. Regulation could lessen the associated harms by regulating purity. Fourth, unless legalised it was argued that the drug market would continue to benefit criminal gangs and perpetuate the associated negative consequences for
Irish society. Gang-related violence and drug-related intimidation were perceived to be exacerbated by the illegality of drugs.

“If people were allowed to grow a plant or 2 for themselves - it would truly be a victimless crime. As it stands we are forced to contact sometimes unsavoury individuals to purchase cannabis, all under the fear of being arrested. It’s unacceptable.”

“I grew up in the 70s and 80s and seen people take drugs and took drugs myself. I realised then that having drugs illegal was a waste of everyone’s time and effort and would not succeed. I believe all drugs should be legal and sold through Pharmacy shops like all other drugs are. We should have proper quality control on all substances where possible and should tax the sale of them. People should only be arrested if they are causing trouble to others or property etc.”

3.3.2.3 Not changing Ireland’s approach

Only 4% of respondents to the open-ended question were against the removal of criminal penalties for simple possession. They gave a range of reasons for this view, including:

- Some argued that Irish people already have a problematic relationship with substances that are legal (in particular alcohol), and that making other substances more widely available would just add to the problem.

- There was a perception that legalisation and decriminalisation would increase levels of drug use. It was argued that this would increase the associated problems and make more demands on an already pressurised health system, which is currently struggling to cope with the problems associated with alcohol and tobacco use.

- It was suggested that the social harm that decriminalisation might cause, could offset any benefits that may accrue to individuals who are found in possession.

- Changing the approach was not perceived as a solution for the problems associated with drug use and for the people most affected. For example, it was argued that while decriminalisation would mean people would no longer be restricted in travel, this would only benefit people who use who are affluent.

- A small number of responses reflected very negative views towards people who use drugs. They used pejorative language and in some cases called for more severe action against them. For example, longer prison sentences, restrictions on their access to social welfare and housing.

“I would not like to live in a society that decriminalised drugs. I find even as it is the anti social nature associated with alcohol use bad enough. I think it would be detrimental to communities and businesses to have to deal with more widespread drug use.”
“My real concern in the increasing intimidation associated with drug supply. We only hear of the big gangs e.g. Hutch / Kinahan violence but ignore the increasing violence perpetrated in local estates by lower level gangs. If personal use is allowed this will lead to greater demand and supply and larger amounts of money involved which will lead to greater heartache for relatives and communities in which these drugs will be dealt.”

3.4 Concluding Comment

There was some polarisation of views in the responses to the open question of this consultation. However, the overwhelming message is that there is support for a change to the current approach to possession. For the majority of respondents, the current approach was not perceived to be the best one, was considered unfair and was associated with causing problems for the individual, their families and communities. Decriminalisation and in some cases legalisation and regulation were recommended as alternatives. However, the ambiguity that characterised some of the responses reflects the complexities involved in addressing the drug issues.

This ambiguity reinforces the view expressed by some that decisions need to be based on evidence. It was suggested that discussion on the topic can often be emotive and that there was a need for policy makers to base decisions on the best evidence available and the experience of other jurisdictions.
4 Views of People Prosecuted for Possession

The second stage of this consultation explored the views and experiences of people who had been prosecuted for the possession of illegal drugs for personal use. Participants were not asked about whether they had any other criminal conviction. Two focus groups were carried out which were semi-structured and focused on the context and outcome of participants’ prosecution and their views on alternative responses to possession of small amounts of drugs. The purpose of these focus groups was to provide the Working Group with a better understanding of how the current approach to simple possession offences impacts people who have had direct experience of being prosecuted in the current system.

4.1 Methods

Two focus groups were recruited for consultation:

- Participants for the first group were recruited with the assistance of the Ana Liffey Drug Project, Merchants Quay Ireland and UISCE, all of which are NGOs that work with people who use illegal drugs or have direct experience of addiction to illegal substances. Nine people participated in this focus group which was held in July 2018.

- Participants for the second group were identified through the online questionnaire by cross-referencing respondents who indicated that they had been prosecuted for simple possession offences and who also provided contact information to be considered for further consultation. Participants were selected purposively so that there was a mix of age and gender in the group. They were invited to participate by email, with some also receiving a follow-up call. Six people participated in the focus group which was held in August 2018.

Both groups were facilitated using a semi-structured topic guide. The session was tape recorded with the respondents’ consent. Data was analysed thematically, the findings of which are reported below. The information received from both focus groups is combined, but where there was divergence between the views of the two focus groups, or participants, these differences are highlighted.
4.2 Being Found in Possession of Illegal Drugs for Personal Use

4.2.1 Profile
Participants varied in the nature of their drug use and the circumstances under which they were found in possession of an illegal drug:

- Some had been using drugs for a considerable amount of time and had developed a dependency, whilst others stated that they only used drugs recreationally, often as an alternative to alcohol, when socialising or attending certain types of music events.
- The drugs that the Gardaí had found them in possession of included: cannabis, heroin, cocaine, LSD, amphetamines and ecstasy/MDMA.
- There was a range of settings or environments in which they were found in possession, including: music and dance events, on the street, in a motor vehicle and outside of their house.

This profile illustrates the diversity of contexts that prosecution for the possession of illegal drugs for personal use entails.

4.2.2 Immediate Impact of Being Found in Possession
Participants identified four ways in which their experience of being found in possession had impacted on them:

**Stress:** Being found in possession was a stressful experience and participants described how it had led to emotional difficulties and distress. Many described the experience as having had a negative impact on their mental health. They described how they had cried and experienced panic attacks at the thought of being prosecuted and potentially going to prison. Many described a sense of shock and fear about how a criminal conviction would impact on their lives. At the extreme end of emotional distress, a participant attributed their arrest to them getting ‘so low that I tried to kill myself’.

**Taking health risks:** Some had engaged in high risk behaviour in an attempt to minimise the charges that they would face. In more than one instance, participants described how only some of the illegal drugs they were holding had been found and confiscated by Gardaí. To minimise the likelihood they would be found with more illegal substances in their possession upon arriving at the Garda station, they ingested whatever else they were holding on their person. In one case, this was a number of pills, far in excess of what they had previously taken at the one time. The person acknowledged that this was very risky and potentially harmful behaviour.

**Humiliation:** More than one participant who had been searched on a busy street described feeling humiliated when they were searched in view of passers, some of whom video-recorded the scene and uploaded it to the internet.
**Impact on families:** Being searched or found in possession could have a negative impact on people’s families. For example, where participants lived with their parents the prosecution caused their parents stress and worry. Children were also affected. For example, a participant’s young child had been with them when they were searched on the street. Another’s house had been searched, and all their family-members were separated from each other which caused the children and their spouse a lot of distress.

### 4.2.3 BEING PROSECUTED FOR THE POSSESSION OF ILLEGAL DRUGS

**Outcome of prosecution**
In both focus groups, various outcomes of being prosecuted for simple possession only were described. Some had received community service, and a few availed of the Probation Act and a few avoided a criminal record by making a donation to a charity. One participant said that his/her case was dismissed because the Garda did not appear in court.

**Impact of being prosecuted**

**Stress:** The distress participants described was not limited to the immediate aftermath of being found in possession of illegal drugs. Several participants spoke about worry and stress that they experienced leading up to and following their prosecution in court. Needing to present to the court to comply with the summons can be very stressful. Some felt they could not tell their employer why they needed a day off work for fear of ruining their career and future prospects. Even those who did not receive a conviction and accompanying criminal record for the offence found the experience to be very stressful with long-term consequences. The often lengthy period of time that elapsed between being found in possession and the court case can cause extreme stress for the individual, particularly if they were already experiencing difficulties with their mental health or in their personal life.

**Stigma:** Being prosecuted for possession can stigmatise the person involved. One participant stated that prosecution results in a ‘stain on their character’ that lasts a lifetime, others agreed with this view. This has been compounded with the advance of digital media as reports about court cases can result in people being identified in online news publications that can easily be found through an internet search for years afterwards. It was argued that this results in their long-term stigmatisation, even where people progress to a drug-free life of recovery. This was seen as particularly so in relation to heroin use, with participants emphasising that there is a particular stigma associated with being addicted to heroin.

**Job/Educational opportunities:** People described how even after years of being sober and abstaining from all drugs, they still felt anxious and fearful when applying for jobs or educational opportunities that require Garda vetting. As mentioned above, disclosing an upcoming prosecution or a resulting travel restriction to an employer were also seen as problematic.

**Travel:** Several participants highlighted the difficulty a conviction for possession poses if wanting to travel to certain countries, whether to attend a business conference, visit relatives, or other reasons. Some participants stated that they would not even try as they know that their drug charges would prevent them from entering certain countries. Others
said that they had lied about their convictions on official documentation in order to travel to certain places. Many agreed that with a conviction it was better not to disclose it.

**Homelessness:** A prosecution and/or conviction for possession had also been seen to make people more vulnerable to homelessness and housing instability. For example one participant was asked to leave their home when their court summons arrived, rendering him homeless.

**Impact of being given a prison sentence**
None of the participants had received a prison sentence for simple possession only. However, some had spent time in prison for convictions related to their drug use and reflected on these experiences as the possible outcome of a prosecution for personal use. Prison had been a negative experience. Participants explained that going to prison can expose individuals to people and substances that they may never have encountered before. One man stated that being in prison had a direct role in him becoming addicted to heroin. Another said he was more likely to engage in criminal behaviour after a custodial sentence. He had received advice from other inmates about ways to benefit from criminal activity and through the contacts he made in prison he became integrated into criminal social networks. Many other participants agreed with this view, Prison was described as a “university of sorts” through which criminal activity is escalated. It was argued that over time, people start to adapt and become accustomed to prison and criminal life, and the likelihood of them being able to ‘turn their life around’ is lessened.

There was however one exception to the overall view that prison had a negative impact on drug use and criminal activity. A participant believed that being in prison for sale and supply had helped him to get on to a path of recovery. He had been imprisoned on more than one occasion (as a result of selling drugs rather than just possession for personal use) and described himself as having been addicted to heroin. He was homeless prior to re-entry to prison, he was surrounded by ‘all that cesspit stuff’ and he had a realisation that if he did not change his behaviours, the negative cycles of addiction, homelessness and incarceration would continue - “If I had not gotten nicked (arrested), I don’t know what I’d be at today… being inside the wall, it helped me to wake up and have a moment of clarity”, but he also recognised that his experience was not commonplace. Upon hearing the man’s story, another participant in the group commented that it was “a sad state of affairs when someone has to go to prison to save their life when support was not there before they go to prison”. The other participants agreed with this view.
4.2.4 CURRENT APPROACH
There was an overall consensus that the current approach should be changed. Underpinning this position was a number of themes:

- Not everyone is treated equally under the current approach
- The nature of drug use is complex and punishing possession does not help
- Drug use requires a health-led response

Each of these is explored below.

4.2.4.1 Not everyone is treated equally under the current approach
A recurring view was that not all people are treated equally under the current law for possession. Social class was perceived to be a factor in the likelihood of being found in possession and prosecuted. There was general agreement among the participants of both focus groups that a person's address, accent and general appearance could influence the likelihood of them being found in possession of illegal drugs and subsequently prosecuted. Participants perceived these markers of social class to influence whether somebody was searched by the Gardaí in the first instance, whether they would be prosecuted and the outcome of their court appearance. For example, it was mentioned that those without the financial means would not be in a position to make a donation to charity and thereby avoid a criminal conviction. A number of individuals avoided a conviction by availing of the Probation Act stated that this was due to them knowing somebody working within the criminal justice system who was able to advise them of their best course of action. A participant who did not avail of this said that he had not realised the implications of pleading guilty to the possession of illegal drugs and the negative impact that it would have on his future life chances.

4.2.4.2 The nature of drug use is complex and punishing possession does not help
Underpinning the overall view of the current approach was an understanding of the nature of drug use as complex. Essentially that it is not necessarily the drug itself that is the problem, rather the way in which it is used. In this context, perceptions of use fell into two broad categories, neither of which were perceived to be best addressed through prosecution for possession.

First, participants did not view all drug use as problematic. They argued that a substantial proportion of Irish society use illegal drugs and it is not sensible to categorise all of them as criminals. A recurring view was that many people who take illegal drugs are 'normal', 'hard-working', lead 'productive' lives and are doing nothing to harm others directly. They did not believe that the substance they chose to consume to relax or to socialise should result in them being prosecuted and/or receiving a criminal conviction. Some argued that people should be allowed to choose to take drugs without fear of entering the criminal justice
system. Several participants argued that alcohol and some prescription medicines can be more harmful to individuals and wider society than illegal drugs but that they are more socially acceptable due to their legal status. For example, a participant stated that she had a lot of friends and associates who take illegal drugs recreationally and that they all agree that it should not be categorised as a criminal activity. She enjoys taking drugs, particularly in comparison to drinking alcohol which she has experienced to have a more negative effect on her. It was emphasised that people are going to continue to take drugs and that the important thing is how society and ultimately government decide to deal with it in order to make the situation better for all involved.

Second, where drug use was seen as problematic or a person is addicted to drugs, they need support rather than punishment. Participants spoke about the causes and recurring nature of addiction. Prosecuting for drug possession can compound some of the underlying factors that lead to using drugs in the first place. Some participants spoke about difficulties that they had experienced prior to using drugs. Drug use provided a temporary escape from negative feelings and circumstances often caused by adverse childhood events such as parental abuse, neglect or other traumatic experiences. For example, a participant who had been in recovery for a number of years thought that if he had somebody to talk to when he was growing up, such as a counsellor, then he would not have developed a habit of taking drugs and his life would have worked out very differently. However, taking drugs helped him cope. Similarly, drug-taking and homelessness were viewed as a negative cycle as people need to leave many emergency shelters in the morning and they take drugs to get through the day. A criminal prosecution would make this person’s situation worse. The overall message was that people experiencing problems with their drug use who had not committed any crime other than being in possession of an illegal drug needed support not punishment.

4.2.4.3 Drug use requires a health-led response
Cutting across both the categories outlined above there was agreement that drug use requires a health-led approach. While the consequences of consuming a small bit of cannabis were perceived to be far less harmful than from injecting heroin, both were viewed as health-related and should not be handled within the criminal justice system. One participant mentioned that they had friends who had developed drug-induced psychosis from consuming cannabis. She argued that where they were found behaving erratically on the street, it should prompt a health-led response and not a criminal justice led response. In the discussion that followed, all participants agreed that the appropriate response would depend on the individual and their circumstances, and not the substance in their possession.
4.2.5 ALTERNATIVE APPROACHES
While participants varied in what they thought the best approach to simple possession should be, they tended to be of the view that being prosecuted before the courts is never an appropriate response. It was argued that everyone deserves a chance to better themselves and their life-chances and that being a person who uses drugs should not be a reason for them to receive a criminal record. For example, a participant highlighted all of the costs that had been put into their prosecution - the Gardaí, the judges, the court system, the barristers and the probation service. He felt that it would have been better if those resources had been put into treating his addiction rather than prosecuting it. It was also argued that in many cases, the repercussions from being found in possession and subsequently prosecuted are often more damaging to the individual than taking the drug itself. Broadly speaking three alternative approaches were discussed:

➢ More alternatives to prosecution in the current system
➢ Decriminalisation
➢ Legalisation and regulation

4.2.5.1 More alternatives to prosecution in the current system
While participants did not support maintaining the current approach, if it were to prevail they favoured more choice in terms of outcome options. For example, some thought that when they were found in possession a better approach would have been to give them the choice between prosecution before the courts and another option, such as treatment. Being provided with a choice could have lessened their feelings of helplessness and other negative emotions.

4.2.5.2 Decriminalisation
Decriminalisation was seen as a positive alternative in both groups. Several participants believed that other countries apply more effective approaches and there was frequent mention of the Portuguese system of decriminalisation. It was suggested that a similar approach would be good in Ireland, with a panel or dissuasion officer operating within each Garda district. The discussions within the groups reflected the complexities involved in defining the parameters of such a system and how it should be applied. Two key issues were identified:

- How ‘possession for personal use’ should be defined.
- What the appropriate response should be for people coming into contact with any such panel or dissuasion officer.
What constitutes personal use?
Defining ‘personal use’ was seen as a complex issue and was raised as problematic by participants in both focus groups. There was discussion about what should be considered ‘personal’ use and what constitutes ‘sale or supply’. Broadly speaking two issues were discussed - first the varying quantity people use, second the nature of the drug market and the way people purchase drugs.

It was highlighted that every individual consumes different quantities of drugs based on their personal tolerance levels. It was argued that what they use in a day could be over a given threshold and considered enough for a supply charge. The second issue had two elements which related to the way people buy drugs. Participants explained that it was sometimes possible to get a discount by buying a more plentiful amount of a particular drug. This means that they may be found in possession of a few ‘packages’ which could still leave them vulnerable to being charged with sale and supply despite the drugs being for personal consumption only. In addition, it was described as commonplace with ‘recreational’ users for friends to purchase drugs together, or for somebody to source the substances on behalf of a group of friends. They would then socialise and use them together. It was argued that this should not be considered drug-dealing or a ‘sale or supply’ offence.

Defining an appropriate response
There was variation both between and within groups about how best to implement a dissuasion-type system and, in particular what the appropriate response should be for those appearing in front of any panel or officer. Broadly speaking it was suggested that the response should be made on a case-by-case basis, be voluntary and should be driven by the nature of the person’s use.

Non-problematic or recreational use: Although the groups expressed the view that cannabis and other ‘soft’ drugs can be a gateway to more harmful substances and patterns of use, they agreed that those who are not daily users and are only found with small amounts should not be brought to court or referred to residential treatment as it would be a waste of both time and resources. There was consensus in one of the groups that all people found in possession should receive an intervention. It was suggested that “enough for a joint could easily escalate to cocaine”. Where people were not dependent, education on the impact that drugs can have on your body, life and family would be beneficial. While the other group did not necessarily think all cases required an intervention, there was agreement that somebody who uses drugs on a weekly basis or less for ‘recreational’ purposes could benefit from education or awareness programmes on the effects of drugs, in a similar way to alcohol awareness campaigns.

Problematic use: Where those found in possession were addicted to drugs then they should be given access to treatment and other support services. While the focus of
interventions was on treatment or education and awareness building, broader interventions were also discussed. Some participants, who described themselves as having had an addiction, said that they would have benefited from support in learning how to cope with difficult emotions which often worsen when one is facing prosecution for criminal offences. Delivering support to get on a better lifepath was also suggested. A participant said that ideally people wanting to recover should be assessed with a sort of aptitude test to determine what they could potentially be good at and supported to develop skills to help them gain employment and keep busy.

Irrespective of the nature of people’s use, there was a recurring view that participation in any kind of treatment intervention had to be voluntary. The general consensus was that there would be no point in insisting on an intervention unless that person wanted to make a change to their drug-taking behaviour. Although treatment and rehabilitation supports were seen as more effective than criminal penalties for overcoming the harms that drugs can cause, it was highlighted in both groups that entering treatment needs to be motivated by the right reasons. For example, a participant spoke about entering treatment as an order of the court. He did not believe this to be the ‘right’ motivation for entering treatment and he took action that jeopardised the chances of recovery for other people in the treatment centre. He argued that coerced treatment can cause more harm to a community or other individuals than no intervention at all. It was only in later years when he sought help himself that he was successful in becoming ‘sober’, and he put this down to having the right motivation for accessing treatment at that time.

4.2.5.3 Legalisation and regulation

Some participants favoured legalisation and regulation as the alternative approach for Ireland to take. One of the groups identified three benefits to legalising drugs. First, drugs would no longer fund violent criminal gangs. Second, the harms associated with drug use would be substantially lessened for individuals, families, communities and wider society. Third, it would potentially generate additional tax revenue. A participant who felt that decriminalisation would not go far enough preferred legalisation and regulation, particularly in the context of Ireland being a country where excessive alcohol consumption is widespread. It was suggested that people should have the right to take drugs, even if this path leads to addiction, but they should also have the right to receive the help and recovery supports that they need. This was likened to how society treats alcohol, in that people have a right to purchase and consume it even though many people develop problematic relationships with it. Some participants believed that they should have the right to choose to consume drugs instead of alcohol and that steps should be taken to ensure that this is as safe as possible.
4.3 Concluding Comment

People who have been prosecuted for possession for personal use under Ireland’s current approach have identified it as having a number of problems. There was consensus that the current approach should be changed. It was found to have a negative impact on the psychological wellbeing of individuals and their families, in addition to affecting their long-term life chances. It was perceived to be unfairly implemented and ineffective in addressing the problems associated with drug use. Instead the findings suggest a need to move to a decriminalised approach where people who use illegal drugs are individually assessed and, where appropriate, referred to services that can support them in addressing their use and minimising the associated harms. The overall message was that people experiencing problems with their drug use who had not committed any crime other than being in possession of an illegal drug needed support, not punishment.
5 Stakeholder Organisations

In October 2018 an open policy debate allowed for a targeted consultation with 17 representatives from relevant stakeholder organisations and individuals who had looked to engage with the Working Group (see Appendix 2). There were three presentations at beginning of the event outlining the consultation process, the current legal approach for personal possession and the health implications of drug use (see Appendix 2). Participants were assigned to five different tables (each of which had its own facilitator and note-taker) and they were asked a number of questions designed to explore how an alternative health-led approach could operate in practice.

In the first roundtable discussion, participants were asked to explore the advantages and disadvantages of two possible alternative responses for someone found in possession of illegal drugs for personal use - referral to a drug education and awareness programme and referral to a drug treatment service.

The second set of questions looked at issues about implementing an alternative approach; whether there should be a different response for different drugs, and whether there should be a different response for subsequent incidents of being found in possession. Other related topics were also discussed.

5.1 Referral to a Drug Education and Awareness Programme

The participants identified advantages of an individual being referred to a drug education and awareness programme, which included the public health approach, whereby education and awareness aimed at communities where drug use may be normalised can help to change the culture. Such a referral could also provide clear, consistent messages about drugs and debunk myths. Some participants argued that this type of alternative response could lead to cost-savings for the criminal justice system, while providing an opportunity for people to engage with treatment services. The participants highlighted the need for high quality and targeted education that include harm reduction information. They did, however, caution about the effectiveness of generalised education and awareness programmes in decreasing drug prevalence or use, especially as they may require significant resources. Some participants queried whether attendance would be mandatory and the ethical implications of this.
5.2 Referral to a Drug Treatment Service

The participants felt there were many advantages to a referral to a drug treatment service such as the opportunity to intervene with treatment as early as possible. It was acknowledged that this type of referral could help somebody with addiction issues on to a path to recovery. Drug treatment services were said to be individualised and more client-centred than the previous example of an education or awareness programme. Some participants highlighted the need for follow-on services such as step-down care to tackle other issues that an individual may have along with their addiction issue. Participants did, however, acknowledge that mandatory treatment would not be effective and that an assessment would be necessary first as many people who use drugs do not have addiction issues. There were many comments about the resources that would be required for this type of referral and the funding shortages within the system at present.

5.3 Responses for Different Types of Drugs

Participants were asked whether they would recommend different responses for different drugs, so that for example there should be a different intervention for those found in possession of cannabis when compared to someone found in possession of heroin.

Most of the participants did not recommend such an approach. Instead they posited that the focus should be on the person and their particular circumstances, and not the drug that they are found in possession of. The participants who favoured a personal approach highlighted the importance of proper assessment which would identify the appropriate treatment option. They reiterated that the response should be tailored to the individual situation as reactions to drugs and outcomes from drug use differ by person and not necessarily by drug type. The issue of polydrug use was highlighted to reinforce the need to respond to the person and not the drug.

Only one of the five tables felt that there should be a different response for different types of drugs. This table did agree that responses should also be tailored to the individual. They also highlighted poly-substance use and recommended that any response would be capable of dealing with these newer patterns of drug use.

5.4 Responses for Subsequent Simple Possession Offences

The third question asked was whether the participants would recommend different responses for someone on second, third or subsequent offences.
Most of the participants were of the view that no matter how many times a person is found in possession of illegal drugs for personal use, they should never receive a criminal sanction. These participants were of the view that a health-led response needs to continue to provide supports for people with addiction and they highlighted the difficulty to move out of chronic addiction and how a person may be found in possession of drugs on multiple occasions within the same week. They thought that each individual should be assessed based on their current situation. The participants advised against a ‘three strikes’ approach and stated that it should depend on how the person has engaged with services rather than the number of times that they have been found in possession of illegal drugs for personal use.

One table thought that it might be appropriate to introduce a sanction such as a fine after the first offence, or another mechanism such as community service, but that the length of time that had elapsed since the previous incident should also be taken into account.

5.5 Implementing Alternative Approaches in Ireland

Participants were asked to explore how an alternative approach could be implemented in practice. They were first asked who should decide on the appropriate intervention when somebody is found in the possession of illegal drugs for personal use.

The main view was that Gardaí should be the first point of intervention, after which the individual would be referred for a treatment assessment by a health professional or interdisciplinary team where they can be referred onward to an appropriate intervention when required. There were differences in the proposed make-up of these interdisciplinary teams; some suggested a panel that includes a drugs worker, psychologist and social worker while others suggested a model similar to Portugal of police, health and legal professionals. The need for an interface with community-based services was also identified. One table highlighted the importance of Gardaí retaining the power to process individuals through the courts who are engaged in the sale or supply of drugs.

After exploring who should make the decision regarding interventions, participants were asked to discuss how the decision should be made in terms of the type of training required by the person(s) or whether the decisions should be based on objective criteria such as threshold amounts or types of drugs.

It was deemed that specific criteria would not be necessary as the team would have the appropriate knowledge and expertise to carry out the health assessment. Some participants highlighted the need for the team or panel of professionals to be drawn from a diverse range of backgrounds but who are all trained appropriately. One table recommended the SAOR7

7 See https://www.hse.ie/eng/about/who/primarycare/socialinclusion/homelessness-and-addiction/alcohol-and-substance-use-saor/ for further information
model of screening and brief intervention as an appropriate training for those making an assessment. If there were criteria or guidelines, it was felt that they should have some flexibility and that thresholds should be avoided.

Thirdly, participants were asked where the decision should be made. Suggestions included on the street by Gardaí or in a health/primary care centre. Some participants were clear that the assessment should take place as close to the community as possible, and there were concerns about individuals having to travel great distances for assessments.

Finally, participants were asked whether there should be a sanction if the person who was found in possession does not adhere to the advice, or comply with the decision of a diversionary referral.

Most of the tables felt that criminal sanctions would not help address the health-based issue of drug use and they doubted whether a sanction would be in anyway helpful. Therefore, they were of the view that a sanction should not be an option. However, one table did suggest that the option of criminal sanctions should be retained. They suggested that a fine may be appropriate if the individual was not taking the health-led process seriously.

5.6 Concluding Comment

The purpose of this element of the consultation was to explore how an alternative health-led approach should operate in practice. Most participants felt that the decision on an appropriate referral should depend on the circumstances of the individual concerned and should not be determined by the specific substance which they were found to possess. Primarily it was the nature of their use as problematic or not that should be the basis for any decision-making about responses. Gardaí should remain the first point of intervention, after which the individual would be referred for a treatment assessment where they can be referred onward to an appropriate treatment when required. The assessment should be made by a trained health professional or interdisciplinary panel and should occur as close to their local community as possible. Treatment should always remain an option, it should never be coerced. A minority of participants were in favour of retaining criminal penalties for people who are repeatedly found to be in possession of illegal drugs or who refuse to comply with the referral or recommendations.

In other discussions on the day, it was emphasised that the dangers of drug use and the illegality of drugs is not in question, but the focus should be on the best way to address drug use.
6 Conclusions

The findings from this consultation suggest support for the Government’s health-led approach to drug use and for this to be reflected in a change to Ireland’s current approach to the possession of drugs for personal use. There were a number of key messages from the consultation:

- Across the three strands of the consultation there was overall support for the removal of criminal penalties for those found in possession of illegal drugs for personal use.
- Criminalising drug use tended to be viewed as ineffective in reducing or preventing drug use. Instead it was generally perceived to stigmatise and further marginalise people affected by drug use and have a negative impact on their future life chances.
- The findings suggest a lack of clarity among members of the public about the distinction between decriminalisation on the one hand and legalisation on the other.
- It was widely thought that the harm caused by different substances was not necessarily reflected in their legal status. The harm caused by alcohol in Irish society was a recurring theme and cannabis was generally viewed as much less harmful than other illegal drugs, and in some cases alcohol.
- Within an alternative model where drug use was not subject to criminal sanctions but people would be subject to some sort of assessment process, it was repeatedly suggested that any referral should be based on the circumstances of the individual, and not simply the specific substance of which they were found in possession. The more problematic a person’s use, the higher the level of response required. For example, ‘recreational’ cannabis use may require either no intervention or possibly drug awareness/education, whereas problematic heroin use may require a referral to treatment services.
- The consultation highlighted the complexities involved in both the causes and the responses needed to drug use. While there was overall support for moving away from a model that criminalises drug use, there was some ambiguity about how to do so. People expressed caution that this would need to be done in a way that would not ‘send the wrong message’ to young people in particular about the harms of drug use. Also, while only 8.5% thought that the current approach prevents or reduces drug use, concerns were expressed that changing it might result in an increase in drug use. This finding highlights the need for the government to take an evidence based approach to addressing this complex issue.
- Any change in the approach would require additional resources to ensure that appropriate services were available. Improved access to treatment services was mentioned in particular.
Appendix 1

Public consultation on personal possession of illegal drugs

Section 1: Information and consent

The Government has established a Working Group to examine approaches other than criminal penalty for personal possession of illegal drugs.

This is an action in the national drug strategy ‘Reducing Harm, Supporting Recovery – a health-led response to drug and alcohol use in Ireland 2017-2025’. Further information on the Working Group is available here.

The Working Group is looking for your opinion to be included in the recommendations they make to Ministers. You can give your views by completing the online questionnaire before 30 June 2018. You can find information on the current approach in Ireland and alternative approaches in other countries here.

Any personal details that you provide will remain confidential (in line with data protection legislation). This means that we will not share your name, email address or contact number with any third party. However, all other information and opinions you give will be subject to the Freedom of Information Act (2014) and may be released in response to a Freedom of Information request.

This consultation is about illegal drugs only. It is not about alcohol or prescription drugs such as medicinal cannabis.

The online questionnaire can be filled in on personal computers (PCs), Tablets, and Smartphones. It should take no more than 15 minutes to complete.

Please tick if you understand the purpose of this online questionnaire and wish to continue.

☐ I understand the purpose and wish to continue
Section 2: Current approach in Ireland

Do you agree with the current approach that can prosecute people before the courts if they are found to possess illegal drugs for personal use?

- Yes
- No
- Not sure

When thinking about the CURRENT approach (described above) do you agree or disagree with the following statements?

<table>
<thead>
<tr>
<th></th>
<th>Strongly Agree</th>
<th>Slightly Agree</th>
<th>Neither Agree nor Disagree</th>
<th>Slightly Disagree</th>
<th>Strongly Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>It stigmatises people who use drugs.</td>
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<td>It can affect a person’s future chances of getting a job.</td>
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<td>It can affect a person’s future chances of travelling to certain countries.</td>
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<td>It prevents or reduces drug use.</td>
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<td>It ignores health and addiction issues.</td>
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</tbody>
</table>
Section 3: Alternative approaches

Are you in favour of removing criminal penalties for possessing illegal drugs for personal use?

- Yes
- No
- Not sure

If Ireland removed criminal penalties for possessing illegal drugs for personal use, do you agree or disagree with these possible outcomes?

<table>
<thead>
<tr>
<th></th>
<th>Strongly Agree</th>
<th>Slightly Agree</th>
<th>Neither Agree nor Disagree</th>
<th>Slightly Disagree</th>
<th>Strongly Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>There would be more drugs in the community.</td>
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<td>It would encourage people to seek treatment for drug addiction.</td>
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<td>It would make it easier for drug dealers to go undetected.</td>
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<td>It would lead to more people experimenting with drugs.</td>
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<td>It would save time and resources for Gardaí and the Courts.</td>
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</tbody>
</table>
Section 4: Other approaches for different kinds of drugs

What do you think should happen to a person found in possession of CANNABIS for personal use?

(you can tick more than one)

☐ No action
☐ A caution or warning
☐ Referral to a drug education and awareness programme
☐ Referral to a drug treatment service
☐ Participate in a community engagement programme
☐ An on-the-spot fine (similar to a minor driving offence)
☐ Increasing penalties for repeated offences
☐ Prosecuted before the courts
☐ Don't know
☐ Some other action (please name this)
What do you think should happen to a person found in possession of ECSTASY or MDMA for personal use?

(you can tick more than one)

☐ No action
☐ A caution or warning
☐ Referral to a drug education and awareness programme
☐ Referral to a drug treatment service
☐ Participate in a community engagement programme
☐ An on-the-spot fine (similar to a minor driving offence)
☐ Increasing penalties for repeated offences
☐ Prosecuted before the courts
☐ Don't know
☐ Some other action (please name this)

________________________________________________
What do you think should happen to a person found in possession of COCAINE for personal use?

(you can tick more than one)

☐ No action

☐ A caution or warning

☐ Referral to a drug education and awareness programme

☐ Referral to a drug treatment service

☐ Participate in a community engagement programme

☐ An on-the-spot fine (similar to a minor driving offence)

☐ Increasing penalties for repeated offences

☐ Prosecuted before the courts

☐ Don't know

☐ Some other action (please name this)
What do you think should happen to a person found in possession of HEROIN for personal use?

(you can tick more than one)

☐ No action

☐ A caution or warning

☐ Referral to a drug education and awareness programme

☐ Referral to a drug treatment service

☐ Participate in a community engagement programme

☐ An on-the-spot fine (similar to a minor driving offence)

☐ Increasing penalties for repeated offences

☐ Prosecuted before the courts

☐ Don't know

☐ Some other action (please name this)

________________________________________________
What do you think should happen to a person found in possession of OTHER ILLEGAL OR CONTROLLED DRUGS for personal use?

(you can tick more than one)

☐ No action

☐ A caution or warning

☐ Referral to a drug education and awareness programme

☐ Referral to a drug treatment service

☐ Participate in a community engagement programme

☐ An on-the-spot fine (similar to a minor driving offence)

☐ Increasing penalties for repeated offences

☐ Prosecuted before the courts

☐ Don't know

☐ Some other action (please name this)

________________________________________________
Section 5: Respondent Information

What is your sex?

- Male
- Female
- Rather not respond

What age are you?

________________________________________________________________

About what proportion of your family, friends and acquaintances have used illegal drugs?

- All
- Most
- About half
- A few
- None
- Don't know
Please tick the relevant boxes that best describe you. You are responding:

☐ On behalf of an organisation (please enter name of organisation you are responding on behalf of) ________________________________________________

☐ As an individual who is involved in an organisation that helps people affected by drugs or that advocates on behalf of people who use drugs

☐ As an individual who has never used illegal drugs

☐ As an individual who has used illegal drugs on only a few occasions

☐ As an individual who has used illegal drugs on many occasions

☐ As a member of a family affected by drugs

☐ As a person who has been prosecuted for possession of drugs for personal use

☐ Other, please specify ________________________________________________

We welcome any other feedback that you would like to add, please use this space (max 500 characters)

________________________________________________________________

Thank you for completing this questionnaire.

We will present all views received during the public consultation in a report to the Working Group to help them make recommendations to the relevant Minister(s).
Section 6: Options for Further Consultation

The Working Group may wish to consult further as part of its work. If you are happy to be considered for this, please provide your contact details below.

(This is OPTIONAL)

- Name ________________________________
- Organisation (if relevant) ________________________________
- Email address ________________________________
- Telephone number ________________________________

Please be aware that any personal information you provide will remain confidential and will only be used for the purpose of the Working Group’s recommendations.
Appendix 2

The Open Policy Debate

Moderator:

- Mr John Carr

Presentations:

- Jane-Ann O’Connell, Department of Health
- Dr. Gerry McCarney, HSE
- Garnett Orange, SC, The Law Library

Organisations that participated in the Open Policy Debate:

- College of Psychiatry
- Citywide Drugs Crisis Campaign
- Pavee Point
- National Family Support Network
- Safer Blanchardstown
- Local Drug and Alcohol Task Forces
- Irish Medical Organisation
- Irish Council for Civil Liberties
- UISCE (The Union for Improved Services, Communication and Education)
- Community Awareness of Drugs
- Regional Drug and Alcohol Task Forces
- Ana Liffey Drug Project
- National Voluntary Drug and Alcohol Sector
- Spunout.ie
Costings of an alternative approach to personal drug possession

Disclaimer

This paper has been prepared by the IGEES unit of the Department of Justice and Equality. The views presented in this paper are those of the authors alone and do not represent the official views of the Department of Justice and Equality or the Minister for Justice and Equality. Analytical research papers are prepared on an ongoing basis and reflect the data available at the time. Please do not cite without permission.
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Background

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

Introduction

According to the National Advisory Committee on Drugs and Alcohol (2016), 26.4% of Irish adults aged 15 years or older report using an illegal drug\(^1\) in their lifetime. However, the prevalence of drug use differs depending on the specific age group under consideration. Some 43.8% of people between the ages of 25 and 34 have used illegal drugs during their lifetime. The latest figures from the European Centre for Monitoring Drugs and Drug Addiction (EMCDDA) suggest that drug use among people in Ireland is relatively high and the most common illicit drugs used are cannabis, opiates, cocaine and amphetamines\(^2\). In 2017, almost 8% of all adults and 14% of young adults (15 to 34-years old) used cannabis.

According to the Health Research Board, 9,227 people entered drug treatment as part of the health service programme in 2016, with 38% of these entering treatment for the first time. This is a rise of 4.8% from 8,806 in 2010. The number of people who died due to an overdose in 2016 was 354 with approximately 73% due to illicit drug use according to the National Drug-Related Deaths Index\(^3\). Ireland’s drug-induced mortality rate is amongst the highest in the EU, sitting fourth behind Estonia, Sweden and Norway per head of population in 2014. According to the Department of Health this figure may be higher compared to other jurisdictions due to the very

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

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

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

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

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

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

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

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

---

4 Calculated based on analysis from PQ 03/07/2018 220.
possession charges, which reflects the fact that prison is reserved for the most serious offenders. Still, the repercussions of a personal possession offence can be long-standing for the individual and recent debate has sought alternative policies to manage people who use controlled drugs.

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

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

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

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

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

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

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

**Demographic profiles**

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

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

**Figure 1**

---

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

It is noteworthy that opiates is reported as the most prevalent drug for the majority of people who avail of treatment services. Cannabis is the second most prevalent problem drug, while cocaine is the third.
Table 2 below describes the main problem drug as a share of all cases seeking treatment in 2016.

<table>
<thead>
<tr>
<th>Main problem drug reported, % of all cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opiates</td>
</tr>
<tr>
<td>Cannabis</td>
</tr>
<tr>
<td>Cocaine</td>
</tr>
<tr>
<td>Benzodiazepines</td>
</tr>
<tr>
<td>Other(^8)</td>
</tr>
</tbody>
</table>

Sources: HRB, IGEES Unit DOJE

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

Breakdown of Personal Possession Offences

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

\(^8\) Other includes Z drugs, amphetamines, new psychoactive substances and MDMA.
### Table 3

<table>
<thead>
<tr>
<th>Drug/Equipment Type</th>
<th>As a share of all cases:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cannabis</td>
<td>72%</td>
</tr>
<tr>
<td>Heroin</td>
<td>9%</td>
</tr>
<tr>
<td>Cocaine</td>
<td>9%</td>
</tr>
<tr>
<td>Amphetamine</td>
<td>4%</td>
</tr>
<tr>
<td>Other</td>
<td>4%</td>
</tr>
<tr>
<td>Benzodiazepines</td>
<td>1%</td>
</tr>
<tr>
<td>Not specified</td>
<td>1%</td>
</tr>
<tr>
<td>Crack cocaine</td>
<td>0.4%</td>
</tr>
<tr>
<td>Steroids</td>
<td>0.2%</td>
</tr>
<tr>
<td>Equipment</td>
<td>0.1%</td>
</tr>
</tbody>
</table>

Source: Garda Analysis Service

### Methodology

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

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

Please note that these cost estimations are preliminary results based on the data available to us through each relevant body and they should be regarded as indicative only. Given this, it is
worth paying more attention to the proportionate change in spending associated with each scenario, rather than the absolute values.

**Current Policy**

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

**1.0 Criminal Justice system**

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

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

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

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

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

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

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

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

15 As explained above, the number sent forward for trial overwhelmingly involves multiple offences and would therefore be inappropriate to include in this analysis.
number of past offences against the offender and the type of drug they were caught with. On any given day, there is an estimated 30 people in prison on unlawful possession charges.16

1.1 Justice intervention programmes

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

In the case of the Diversion Programme, it is estimated that around 51% of young people are further referred to a GYDP.17 This means there were around 490 referrals to a GYDP in 2017 for personal possession offences. The estimated cost per participant is determined to be €2,342 based on the total funding for the projects divided by the maximum number of referrals. This price was uprated by inflation for the years 2015 to 2017. Multiplying the cost per participant by the number of estimated referrals put the cost of personal possession to the GYDP at nearly €1.15m.

In the case of adults with non-violent drug-related offences, the District Court can direct them to the DTC rather than issuing them with a conviction. These interventions are therefore a useful place to start in assessing the costs of the current policy around personal drug use. An individual would not usually be referred to the DTC for a single personal possession offence. Typically, it is only when they face their third offence and may be subject to a custodial sentence that they will be considered for the programme.18 They will also have additional non-drug offences against them and so it is not possible to isolate the costs due to personal possession only. However, the programme is aimed at people with problematic drug use who are non-violent. In this way, the total cost of the DTC can still be viewed as primarily due to simple possession, albeit people with problematic drug use are most likely involved.

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

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

Table 4

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

Source: IGEES Unit DOJE

1.2 An Garda Síochána

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

¹⁹ Based on data from the Garda Analysis Service. The proportion of incidents that did not go to court is estimated by subtracting ‘total court outcomes’ from ‘total incidents’ for the years 2015 to 2017, excluding cases involving multiple offences.
Figures from England and Wales suggest that about 16 hours are spent on an arrest leading to court, which translates into around 12 hours of Gardaí time and four hours for a sergeant. By comparison, a warning would require about two hours of Gardaí time. Using average Garda, sergeant and inspector pay across years one to eight, it was possible to estimate an hourly rate for each type of officer. The unit cost of an action was then calculated by multiplying the estimated number of hours required for that action by the respective hourly rates. The total administrative cost to the Gardaí was estimated by multiplying the unit cost for each type of action by the total number of offences.

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

<table>
<thead>
<tr>
<th></th>
<th>Garda</th>
<th>Sergeant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrest leading to court</td>
<td>12</td>
<td>4</td>
</tr>
<tr>
<td>Arrest leading to caution</td>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>Warning/penalty notice</td>
<td>2</td>
<td>0</td>
</tr>
</tbody>
</table>

The Gardaí will also incur costs due to the demand on Juvenile Liaison Officers (JLOs), who are specially trained to work with young offenders under the Juvenile Diversion Programme. The programme is aimed at keeping young people out of the criminal justice system upon the admission of involvement in a crime. The duration of involvement of a JLO will depend on the severity of the crime, as well as whether or not the offender is referred to a community-based
diversion project (GYDP). If the young person is deemed unsuitable for the programme because, for example, they deny involvement in the crime, their case may be referred back to a local District Officer who will consider initiating a prosecution or forwarding the file to the DPP.

The cost to the Juvenile Diversion Programme is based on the total average annual salaries of 114 JLOs working across the country, multiplied by the share of offences they deal with due to simple possession (4.5%), to reach a figure of €180,505. Dividing this by the number of simple possession offences accounted for by young people in a single year produces a unit cost of €227. Multiplying this by the estimated number of youths in the Diversion Programme for simple possession puts the total cost to JLOs at about €218,849.

1.3 District Court and judges

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

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

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

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22 As of 30/09/2018 (8 sergeants, 106 Garda)
23 The ‘unit cost’ was preferred to the ‘proportionate cost’ because it accounts for the fact that while the majority of JLOs are Gardaí, there are also JLOs at sergeant level who are paid higher salaries.
for judges of €54,980 based on 2017 data. The combined cost to the District Court due to personal possession was therefore estimated at a total of €185,330.

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

**Table 6**

<table>
<thead>
<tr>
<th>Judicial cost per</th>
<th>Cost per offence at District Court, €</th>
<th>Number of cases</th>
<th>Total cost, €</th>
</tr>
</thead>
<tbody>
<tr>
<td>€25</td>
<td>€58</td>
<td>2,230</td>
<td>185,333</td>
</tr>
</tbody>
</table>

*Source: Courts Service of Ireland, IGEES Unit DOJE*

**1.4 Probation Service**

Total budget provision for the Probation Service was almost €46.25m in 2017, while the total number of offenders on probation was 15,269. Dividing the budget by the number of participants produces a cost per person of €3,029 per year\(^{25}\). Total court referrals\(^{26}\) (across all level courts) to the probation service totalled 9,005 in 2017, with all drug offences (not just those relating to personal possession) accounting for 15.5% of referrals to the service. If we take that as the proportion of all new participants for drugs, that would put the estimated number at 1,396. And, noting that approximately 72% of all drug offences relate to simple possession as per CSO, it is estimated that the number of new participants for personal use offences was around 1,011 in 2017. Multiplying this by the cost per participant results in a total cost to the probation service due to personal possession of €3.1m, or 6.7% of the total

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

\(^{26}\) Court referral figures would differ from individual referral figures bearing in mind the same individual may be referred by the courts more than once
probation budget. Table 7 below describes the estimated cost to the probation service due to personal possession.

### Table 7

<table>
<thead>
<tr>
<th>Estimated cost of personal possession offences to Probation service</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017 Budget, €</td>
</tr>
<tr>
<td>----</td>
</tr>
<tr>
<td>46,245,000</td>
</tr>
</tbody>
</table>

*Source: Irish Probation Service, IGEES Unit DOJE*

1.5 Prison Service

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

The annual cost of an available, staffed prison space was €68,635 in 2017\(^{27}\), putting the average daily cost of a prisoner at €188. Figures from Courts Service suggest that 6% of outcomes for summary drug offences at District Court result in imprisonment or detention\(^{28}\). The median sentence for a personal possession charge is around seven days\(^{29}\), implying that offenders are frequently entering and exiting prison for the offence. Multiplying the median sentence by the average daily cost produces an average unit cost for personal possession of around €1,316. Multiplying this by an estimated number of prisoners on personal possession charges of 144\(^{30}\) results in a total cost of just over €189,500 - 0.01% of the prison budget. Table 8 below describes the estimated cost to the prison service due to personal possession.

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

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

\(^{30}\) Based on court outcomes and proportion sentenced to prison
1.6 Total criminal justice costs

Combining the costs across the various intervention programmes, An Garda Síochána, the District Court, the Probation Service and the Irish Prison Service, produces a total cost of personal possession to the criminal justice system of around €7m in the current policy approach. Personal possession represents around 5.87% of all crimes and about 0.28% of the total budget for the Justice Vote Group\textsuperscript{31}. It is expected that personal possession takes a smaller share of the budget than of all crime, so this estimate appears reasonable. Table 9 below provides a summary of the costs to the criminal justice system, with the probation service accounting for almost half of the total.

### Table 9

<table>
<thead>
<tr>
<th>Estimated individual and total cost (€ m) of personal possession interventions to the Justice* sector</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GYDP</strong></td>
</tr>
<tr>
<td><strong>DTC</strong></td>
</tr>
<tr>
<td><strong>Gardaí</strong></td>
</tr>
<tr>
<td><strong>District Court</strong></td>
</tr>
<tr>
<td><strong>Probation Service</strong></td>
</tr>
<tr>
<td><strong>Prison Service</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

*Source: IGESS Unit, DOJE*

\textsuperscript{31} Expenditure for the Justice Vote was €2.54bn in 2017, covering An Garda Síochána; Courts Service; Prisons; Department of Justice and Equality; Irish Human Rights and Equality Commission; Policing Authority; Valuation Office and the Property Registration Authority - [http://www.justice.ie/en/JELR/Pages/SP16000287](http://www.justice.ie/en/JELR/Pages/SP16000287).
2.0 Scenario Analysis
The next section describes the economic estimates of three recommended scenarios considered appropriate in an Irish context by the high level working group. Once again, it is important to highlight that these estimates are limited by the availability of relevant data and are high level estimates. Moreover, any costs that have been inestimable in the case of a change in enforcement procedures have been held constant for the purposes of comparison. The scenarios are an adult caution, multiple adult cautions and a diversion to health services based on estimates from the Health Service Executive (HSE). For comparison purposes under all of the scenarios the focus is on the total number of recorded offences assuming no other available intervention has been availed of. It is also assumed that the number of possession charges remains the same as 2017 at 12,589 which gives us the estimated number of people who will be arrested for personal possession in a year.

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

ACS came into effect in the Irish justice system on 1 February 2006 after receiving the approval of the Director of Public Prosecutions (DPP)\(^{32}\). It must be taken into account whether or not the offence is appropriate for a caution and if the offender is deemed to be appropriate for consideration when deciding to administer a caution. The main purpose of the scheme is to divert people who are unlikely to re-offend away from prosecution. Crimes that are currently covered by the cautioning scheme include public order and criminal damage offences but not personal drug possessions. Discussions on extending the ACS to minor personal possession offences are ongoing\(^{33}\).

The unit cost of an action was then calculated by multiplying the estimated number of hours required for that action by the respective hourly rates (see Table 5 above). An addition of an ACS would add costs to the Gardaí in place of administrative costs leading to a court appearance. In Ireland an adult caution\(^{34}\) requires the input of a Garda Inspector which would increase the

\(^{32}\) [https://www.garda.ie/en/About-Us/Publications/Policy-Documents/Adult-Cautioning-Scheme.pdf](https://www.garda.ie/en/About-Us/Publications/Policy-Documents/Adult-Cautioning-Scheme.pdf)


\(^{34}\) Adult Cautioning Scheme [https://www.garda.ie/en/About-Us/Publications/Policy-Documents/Adult-Cautioning-Scheme.pdf](https://www.garda.ie/en/About-Us/Publications/Policy-Documents/Adult-Cautioning-Scheme.pdf)
workload on Gardaí. Assuming all offences are administered with an ACS and accounting for hours in terms of an Inspector, Sergeant and Garda this generates a cost of €4.29 million and would replace the €1.17 million in costs to the Gardaí in the current system. This would lead to an additional €3.13 million in costs to the Gardaí. Therefore the addition of this intervention to the current estimated costs would increase costs by 45%.

<table>
<thead>
<tr>
<th>Estimated Cost of Adult Cautions for Personal Possession €m</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult Caution Scheme (ACS)*</td>
</tr>
<tr>
<td>Change in Gardaí costs**</td>
</tr>
</tbody>
</table>

Source: IGESS Unit, DOJ

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

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

2.2 Multiple Adult Cautions

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

If it was decided that the person did not qualify for exceptional circumstances, they would be charged by the Gardaí and prosecuted. At present, a caution is usually only applied once to an offender, but there are provisions under "exceptional circumstances" to allow a subsequent caution if the second offence is trivial or where there has been a significant lapse in time since the first caution, subject to the consent of the DPP. This intervention would act similar to the above adult caution option except with further adult cautions for recidivism. In this scenario a person would get a second adult caution for personal possession for a second offence and an additional adult caution for a third offence. Under the assumption that an adult caution would be applied to all offences with 10% reoffending a second time and a subsequent 10% reoffending on a third occasion this scenario would cost an additional €5.15 million replacing the €1.17 million in costs to the Gardaí in the current system. Therefore this scenario adds an
additional €3.99 million or 57% rise in costs compared to the current model, while compared to one ACS this intervention adds almost €860,000.

**TABLE 11**

<table>
<thead>
<tr>
<th>Estimated Cost of Multiple Adult Caution for Personal Possession €m</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult Caution Scheme (ACS)*</td>
</tr>
<tr>
<td>Change in Gardaí costs**</td>
</tr>
</tbody>
</table>

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

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

2.3 Diversion to Health Services

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

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

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

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

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

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

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

**TABLE 12**

<table>
<thead>
<tr>
<th>Estimated Cost of Health Diversion €m</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Gardaí Referral Cost*</td>
<td>€2.24</td>
</tr>
<tr>
<td>SAOR Brief Intervention **</td>
<td>€0.78</td>
</tr>
<tr>
<td>Costs of Treatment **</td>
<td>€4.09</td>
</tr>
<tr>
<td>Health Costs</td>
<td>€4.87</td>
</tr>
<tr>
<td>Total Costs</td>
<td>€7.11</td>
</tr>
<tr>
<td>Change in costs***</td>
<td>+€5.95</td>
</tr>
</tbody>
</table>

Source: IGIES DOJE Estimates based on HSE costs

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

**Provided by HSE

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

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

**Figure 2 Comparison of Costs in Different Scenarios** (€’m)

![Cost Comparison Diagram]

Sources: IGEES Unit DOJE

* Assuming no other intervention

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

Table 13 summarises the costs included across the different sectors, the additional costs involved and the percentage change when compared with the costs included in the current system. For the introduction of an adult caution, multiple adult cautions and a health diversion the Gardaí would have the burden of higher costs. The net change in total benefits is hard to determine in the absence of available data in relation to health expenditure but intuitively, it seems reasonable to assume that an effective treatment and education service would help to reduce problematic drug use and drug-induced mortalities in the long term – albeit, the measurable economic costs involved may be substantial.
Overall, the findings are very high-level estimates and based on a limited availability of data. There is a clear indication of additional costs to the Gardaí and the health services depending on the selected approach. It should be recalled that no health costs have been included in the costs associated with the current system although there is substantial interaction (e.g. supported referrals) between the justice sector and the health sector. Furthermore there is no indication of a reduction in workload or staff suggesting no clear savings. It was not possible to capture the potential social and welfare gains of any possible improvements under the above scenarios due to issues discussed in the annex below. There is also the potential for a significant improvement in net gains if there was more information available on the costs of problematic and non-problematic drug use to the health system. Indeed, any positive reduction in substance misuse and drug-induced mortality owed to a health-led approach would likely result in a net gain to society.

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

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

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

Annex B.
Simple caution scheme for England and Wales

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

Annex C.
Evidence on drug tourism

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

38 Young holidaymakers were defined as those who appeared to be between the ages of 16 and 35 and who were travelling without children or other relatives.
people's drug behaviours remained much the same when they were home or abroad – that is, if they typically used drugs at home, they would use drugs abroad, and vice versa.

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

According to a report from the United Nations Office on Drugs and Crime\(^39\), lost output due to premature death or illness accounts for the largest share of the costs associated with problematic drug use. The study also highlighted the detrimental effect on educational outcomes, as well as on family stability. However, it noted that while problematic drug use can lead to family breakdown, the reverse is also true – confounding the direction of causality. It also raised awareness of the costs of problematic drug use to businesses due to workplace absences, drug testing and accidents (as well as compensation claims), but did not provide an explicit cost for these issues.

Separate research by Collins and Lapsley\(^40\) found that illicit drug use accounted for almost 15% of the social costs due to substance misuse, compared to 56% for tobacco and 27% for alcohol. Within the drugs category, intangibles made up about 30% of the costs, compared to 70% for tangibles such as crime, health, productivity and road accidents. The Australian study also highlighted the production costs of premature mortality and suggested subtracting these losses from the total health costs to determine a net figure. In discussing welfare costs, the paper observed the difference between real and pecuniary costs. Real costs involved accommodation and the administrative cost of providing services, and may be accounted for. However, it was explained that pecuniary costs referred to welfare benefits that were a transfer of wealth rather than a cost and should therefore be excluded from the analysis. In any case, the study concluded that it was not possible to estimate the welfare costs attributable to illicit drug use.

The Scottish government estimated\(^41\) that non-problematic drug use accounted for only 4% of the total social and economic costs associated with illicit drug use. Similar to the studies cited above, the research accounted for lost output due to mortality, and incorporated drug poisonings and mental health issues into its health estimates. The study also considered the social care costs involved in caring for children whose parents were problematic drug users, as well as estimating that almost 37,000 people were not in employment due to problematic drug

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

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

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

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

It is extremely difficult and sensitive to try and put a price on the premature death of an individual and this analysis is not seeking to place a value on life. Ultimately, life is priceless and there is no accounting for the externalities incurred by family, friends and loved ones due to a bereavement. However, the literature analysing the cost of drug use regularly includes a figure for lost output. The Scottish government explains that this is an attempt to account for the loss to the economy due to premature mortality\(^{42}\). As such, although not included in any of the scenarios this annex has provided a high-level estimate of the value of the lost productivity associated with drug-induced death, which is based on the forgone annual salary of the individual.

The drug-induced mortality rate in 2014 was 71 per million\(^{43}\), or 0.01% of the population aged 15 to 64. This puts the estimated number of premature deaths due to drugs at 218 in 2017, with 86% of deaths including the presence of opioids. Given the demographic profile of people who use drug treatment services described above, it is

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\(^{43}\) EMCDDA 2017 report.
assumed that a median wage would be the best estimate of potential earnings. Median weekly earnings in 2014 were €528.81\textsuperscript{44}. That would put median annual earnings in 2017 prices at around €27,655\textsuperscript{45}. Multiplying that by the total number of premature deaths provides an annual estimate for lost output of €6.04m.

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

\begin{table}
\centering
\begin{tabular}{|l|c|c|c|}
\hline
Drug-induced mortalities & Median weekly earnings, € & Annual earnings, € & Total lost output, € \\
\hline
218 & 529 & 27,655 & 6,039,456 \\
\hline
\end{tabular}
\caption{Estimated cost of lost output}
\end{table}

\textit{Source: IGEES Unit DOJE based on EMCDDA, CSO & Eurostat}

Annex F.
Education Programme

In terms of education programmes, it is worth highlighting the cost of the QUIT Campaign by the Health Service Executive in 2017, which came to €1.67m\textsuperscript{46}. The campaign is aimed at encouraging smoking cessation and may serve as a useful proxy for the cost of any health education programme to discourage cannabis or other drug use.

\textsuperscript{44} CSO, \textit{Earnings Analysis Using Administrative Data Sources, 2011-2014} - \url{https://pdf.cso.ie/www/pdf/20180727120642_Earnings_Analysis_using_Administrative_Data_Sources_20112014_full.pdf}
\textsuperscript{45} The annual figure for mean earnings would be almost €35,000.