



Merchants Quay Ireland
Homeless & Drugs Services

Decriminalisation of small amounts of drugs for personal use

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1.Responsibility for approval of policy	<i>The Executive</i>
2.Responsibility for implementation	<i>Head of Services, Managers, Team Leaders, Coordinators, and Supervisors</i>
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For and on behalf of Merchants Quay Ireland				
Rev.	Description of Changes	Prepared by	Approved by	Date
A	Initial Issue	Andrew Rooney	The Executive	13/07/2018

Introduction

Ireland has been in midst of a drug epidemic since the late '70s, following the explosion of trafficked heroin from Europe. A prevalence study showed that during the '90s, Ireland had roughly 13,460 people using heroin, while the latest studies show that figure currently stands at 18,000 – 21,000.^{1 2} Drug use amongst younger people has also been on the rise in recent years, and with new data emerging, it is clear that Ireland has a worsening drugs crisis.

New evidence published around the benefits of adopting a health-led response to addressing drug use has seen a significant shift in Irish policy moving away from a criminal justice route to a more public health-led response. The publication of Ireland's new national drugs strategy 'Reducing Harm, Supporting Recovery' 2017-2025 sees a commitment to adopt a health-led approach by the current Irish Government. As part of this, there is an ongoing debate around the decriminalisation of small amounts of drugs for personal use and how it may benefit an Irish effort to reduce the high number of people using drugs, drug-related deaths, and the incidence of drug-related diseases.

The European Centre for Monitoring Drugs and Drug Addiction (ECMDDA) reported that in 2016 there were 16,119 drug offences in Ireland. A total of 11,486 of these drug convictions were deemed to be for personal use, with 3,982 being for supply³. Depending on the substance being carried, there are different penalties for possession of drugs in Ireland, ranging from a fine to seven years imprisonment.

There are also arguments that by criminalising the possession of drugs for personal use, countries have fuelled HIV, Hepatitis C and drug overdose rates.⁴ Data from the Health Protection Surveillance Centre has shown that the number of people newly diagnosed with HIV in Ireland has increased 5% between 2015 and 2016.⁵ In Ireland, from 2006-2016 there have been 359 diagnoses of HIV attributed to drug injecting.⁶ The EMCDDA

¹ Comiskey, CM. and Barry, JM. (2001). A capture-recapture study of the prevalence and implications of opiate use in Dublin. [online] *The European Journal of Public Health*, 11(2), pp.198-200. Available at: <https://www.ncbi.nlm.nih.gov/pubmed/11420811>

² 18,000-21,000 – National Advisory Committee on Drugs & Alcohol. (2016). *Estimating the Prevalence of Problematic Opiate Use in Ireland Using Indirect Statistical Methods*. [online] Liverpool: Public Health Institute, p.3. Available at: https://www.drugsandalcohol.ie/27233/1/nacda_estimating_ireland_opiate_use%20final.pdf

³ European Monitoring Centre for Drugs and Drug Addiction (2018). *Ireland Country Drug Report*. Lisbon: EMCDDA, p.6.

⁴ Global Commission on Drug Policy (2012). *How the Criminalization of Drug Use Fuels the Global Pandemic*. [online] Geneva: Global Commission on Drug Policy, p.11. Available at: https://globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/GCDP_HIV-AIDS_2012_REFERENCE.pdf [Accessed 15 Jun. 2018].

⁵ Health Protection Surveillance Centre (2016). *HIV in Ireland 2016 Report*. [online] Dublin: Health Protection Surveillance Centre, p.4. Available at: http://www.hpsc.ie/a-z/hivstis/hivandaids/hivdataandreports/HIVIreland_2016.pdf [Accessed 10 Jun. 2018].

⁶ European Monitoring Centre for Drugs and Drug Addiction. (2018). *Ireland, Country Drug Report 2018*. Lisbon: European Monitoring Centre for Drugs and Drug Addiction, p.4. Available at: <http://www.emcdda.europa.eu/system/files/publications/8874/ireland-cdr-2018-with-numbers.pdf>

also reported that in 2016 more than one third of Hepatitis C cases were due to injecting drug users.⁷ The use of criminal sanctions for possession of small amounts of drugs can increase the likelihood of people using drugs in environments where they are more likely to contract or transmit blood-borne viruses like HIV and Hepatitis C, while also moving people away from environments where they have access to treatment and prevention services⁸.

Ireland currently ranks fourth highest in Europe for drug overdose deaths⁹, and in 2015 there were 348 drug overdoses.¹⁰ The criminalisation of possession may fuel drug overdose deaths, due to a person being fearful of contacting emergency services.¹¹

Despite the prohibitionist approach in Ireland's drug laws, drug use continues to rise, particularly among younger people¹². A conviction for possession of drugs, resulting in a criminal record, can act as a barrier for people seeking to travel to certain countries or gain employment. Such convictions remain with the person for life. The criminal justice approach to possession of drugs is widely regarded as having had little impact on crime rates for possession of drugs for personal use¹³. Furthermore, evidence indicates that the level of drug use is not directly related to a country's criminal sanctions, regardless of how strictly those sanctions are enforced.¹⁴

The idea of decriminalisation of drugs for personal use is not a new concept, having first been implemented by Portugal in 2001. Since then, Portugal has seen a number of positive outcomes, such as reduction in lifetime drug use and an increase in people seeking treatment.

To address the drugs crisis in Ireland, the new National Drugs Strategy, 'Reducing Harm, Supporting Recovery' 2017-2025, set out a number of initiatives to promote harm reduction. One such initiative being the establishment of a working group to explore alternative approaches to the possession of controlled drugs for personal use. The Working Group is to report to the Minister with their recommendations in late 2018.

⁷ European Monitoring Centre for Drugs and Drug Addiction (2018). *Ireland Country Drug Report 2018*. Lisbon: European Monitoring Centre for Drugs and Drug Addiction, p.10

⁸ Kerr, T., Small, W. and Wood, E. (2005). The public health and social impacts of drug market enforcement: A review of the evidence. *International Journal of Drug Policy*, 16(4), pp.210-220.

⁹ O'Keeffe, C. (2017). Ireland fourth highest in Europe for drug deaths. *Irish Examiner*. [online] Available at: <https://www.irishexaminer.com/ireland/ireland-fourth-highest-in-europe-for-drug-deaths-461955.html> [Accessed 6 Jun 2018].

¹⁰ Health Research Board (2017). *National Drug-Related Deaths Index 2004 to 2015 data*. Dublin: Health Research Board, p.2.

¹¹ Drug Policy Alliance (2016). *911 Good Samaritan Fatal Overdose Prevention Law*. New York: Drug Policy Alliance <http://www.drugpolicy.org/issues/911-good-samaritan-fatal-overdose-prevention-law>

¹² European Monitoring Centre for Drugs and Drug Addiction. (2018). *Ireland Country Drug Report 2018*. [online] Lisbon: European Monitoring Centre for Drugs and Drug Addiction, p.9. Available at: <http://www.emcdda.europa.eu/system/files/publications/8874/ireland-cdr-2018-with-numbers.pdf>

¹³ Werb, D., Rowell, G., Guyatt, G., Kerr, T., Moontaner, J. and Wood, E. (2011). Effect of drug law enforcement on drug market violence: A systematic review. *International Journal of Drug Policy*, 22(2), pp.87-94.

¹⁴ United Kingdom Home Office(2014). *Drugs: International Comparators*. London: United Kingdom Home Office, p. 51.

Irish Policy

Within Irish legislation, the law sets out to differentiate between possession for personal use and intent to supply. Sentencing can be different for possession of drugs for personal use and intent to supply, and can also vary depending on the class of drug. It is up to the person being charged to convince the court that the possession was intended for immediate personal consumption, with the courts taking into consideration the amount of drugs seized. However, the law does not specify an amount of drugs that can be deemed for personal use, only that the amount must be “tangible and visible.”¹⁵ As a result, a person can be charged for any amount of drugs on their person.

In recent years, there has been a significant shift towards a more health-led response to addressing drug use in Ireland. For instance, in 2015 the Health Service Executive launched the Naloxone Demonstration Project, aimed at curbing the number of drug overdoses in Ireland by testing the viability of making Naloxone available for use by people who use opioids. The results of the Demonstration Project showed that Naloxone had been administered in five cases and potentially prevented these overdoses¹⁶. In 2018, following legislation by the Irish Government, the HSE also announced a preferred bidder for a pilot Medically Supervised Injecting Facility. International evidence shows that Medically Supervised Injecting Facilities have seen positive results in reducing the number of overdose deaths, reducing the spread of blood-borne viruses and increasing the uptake of drug treatment.

The decriminalisation of the possession of small amounts of drugs for personal use was subject to a report by the Joint Committee on Justice, Defence and Equality in 2015. In the report, the Committee recommended that Ireland adopt a similar model to Portugal, stating that “... *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 rather than via the criminal justice route.*”¹⁷ The report highlighted that the evidence presented created a general consensus amongst the Committee members that the application of criminal sanctions to some people who use drugs could be counter-productive.¹⁸ It was also noted that such criminal sanctions stigmatise people, creating difficulties in gaining employment and accessing services.¹⁹

International Perspectives on Decriminalisation

¹⁵ Drugs.ie. (n.d.). *Drugs and the law - Drug and Alcohol Information and Support in Ireland - Drugs.ie.* [online] Available at: http://www.drugs.ie/drugs_info/about_drugs/drugs_and_the_law/ [Accessed 18 Jun. 2018].

¹⁶ HSE National Social Inclusion Office. (2015). *Evaluation of the HSE Naloxone Demonstration Project.* Dublin: Health Service Executive, p.3.

¹⁷ Joint Committee on Justice, Defence and Equality (2015). *Report of the Committee on a Harm Reducing and Rehabilitative approach to possession of small amounts of illegal drugs.* Dublin: House of Oireachtas, p.10.

¹⁸ Joint Committee on Justice, Defence and Equality (2015). *Report of the Committee on a Harm Reducing and Rehabilitative approach to possession of small amounts of illegal drugs.* . Dublin: House of Oireachtas, p.12.

¹⁹ Joint Committee on Justice, Defence and Equality (2015). *Report of the Committee on a Harm Reducing and Rehabilitative approach to possession of small amounts of illegal drugs.* . Dublin: House of Oireachtas, p.12.

The Human Rights Watch have come out in support of decriminalisation, stating that “*drug control policies that impose criminal penalties for personal drug use undermine basic human rights... Subjecting people to criminal sanctions for the personal use of drugs, or for possession of drugs for personal use, infringes on their autonomy and right to privacy.*”²⁰ The argument adopted by the Human Rights Watch is one of the most fundamental human rights, and is enshrined in a number of international and European conventions, such as the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966, and the European Convention on Human Rights 1953. This approach was taken by a number of countries, including Argentina when the Supreme Court in 2009 ruled that the criminalisation of possession of drugs for personal use was unconstitutional and violated a person’s right to privacy.²¹

There have been a number of calls to adopt a more harm reduction and rehabilitation approach to addressing drug use, with international bodies such as the World Health Organisation noting that “*countries should work toward developing policies and laws that decriminalise injection and other use of drugs and, thereby, reduce incarceration.*” and the Human Rights Watch stating that “*... the criminalisation of drug use has undermined the right to health... Governments should rely instead on non-penal regulatory and public health policies.*”

It is important to be clear that decriminalisation does not mean legalisation of drugs. Decriminalisation means the removal of criminal sanctions and prohibition, whereby drugs use can still be regulated with legislation.²² In the Portuguese model, drugs still remain illegal, however the offence for being in possession changed from a criminal sanction to an administrative one, moving from a criminal justice approach to a health-led approach. Additionally, the sale, manufacturing, and importation of drugs are still illegal in Portugal. A person can only be in possession of a small amount of drugs (10 days’ supply of a substance), and if found in possession the drugs are confiscated and the person referred to a Commission for the Dissuasion of Drug Addiction (CDT).

These CDTs consist of a panel of three people, including social workers, legal advisors and medical professionals supported by technical experts. The CDT can use civil sanctions such as community service, fines, suspension of a professional license and bans on attending certain locations for people in possession of drugs. The primary aim of these CDTs is to dissuade new drug users and to encourage those already using into treatment²³, further highlighting the health-led approach adopted by decriminalisation.

²⁰ Human Rights Watch. (2013). *Americas: Decriminalize Personal Use of Drugs*. [online] Available at: <https://www.hrw.org/news/2013/06/04/americas-decriminalize-personal-use-drugs> [Accessed 15 Jun. 2018].

²¹ BBC (2009). Argentina rules on marijuana use. [online] Available at: <http://news.bbc.co.uk/2/hi/americas/8221599.stm> [Accessed on 15 Jun. 2018].

²² European Monitoring Centre for Drugs and Drug Addiction (2001). *Decriminalisation in Europe? Recent developments in legal approaches to drug use*. Lisbon: European Monitoring Centre for Drugs and Drug Addiction, p.2.

²³ Hughes, C. and Stevens, A. (2007). *The effects of the decriminalization of drug use in Portugal*.

In 2009, the Cato Institute issued a report on the Portuguese model, noting that the reforms made by Portugal have “*been a resounding success.*”²⁴ Since Portugal decriminalised drugs for personal use, there have been a number of positive outcomes such as:

- No major increase in drug use²⁵
- Reduced problematic drug use²⁶
- Reduced drug use amongst younger people²⁷
- Reduced drug-related deaths²⁸
- Reduced the incidence HIV/AIDs cases²⁹
- Increase in the number of people seeking treatment³⁰

The above outcomes however should not be attributed solely to Portugal’s move to decriminalisation³¹. Coinciding with decriminalisation, Portugal initiated a number of harm reduction and rehabilitative measures, such as providing people who use drugs with rehabilitation and increasing investment in drug treatment units. The EMCDDA have contributed to this position, noting, “*the decriminalisation of drug use should be understood as only one element of a larger policy change that...might be best described as a public health policy founded on values such as humanism, pragmatism and participation.*”³². Therefore, the positive results seen by Portugal should be attributed to the expansion harm reduction measures, as well decriminalisation.

Recommendations

²⁴ Cato Institute (2009). *Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies*. [online] Cato Institute, p.1. Available at: https://object.cato.org/sites/cato.org/files/pubs/pdf/greenwald_whitepaper.pdf [Accessed 15 Jun. 2018].

²⁴ Hughes, C. and Stevens, A. (2010). What can we learn from the Portuguese Decriminalization of Illicit Drugs? *British Journal of Criminology*, 50(6), pp.999-1022.

²⁵ Ferreira, M., Matos, M. and Diniz, J. (2011). Risk Behaviour: Substance Use among Portuguese adolescents. *Procedia – Social and Behavioural Sciences*, 29, pp.486-492.

²⁶ Vuolo, M. (2013). National-level drug policy and young people’s illicit drug use: A multilevel analysis of the European Union. *D*

²⁸ Hughes, C. and Stevens, A. (2012). A resounding success or a disastrous failure: Re-examining the interpretation of evidence on the Portuguese decriminalisation of illicit drugs. *Drug and Alcohol Review*, 31(1), pp.101-113.

³⁰ Hughes, C. and Stevens, A. (2010). What can we learn from the Portuguese Decriminalization of Illicit Drugs? *British Journal of Criminology*, 50(6), pp.999-1022.

³¹ Drug Policy Alliance (2015). *Drug Decriminalization in Portugal: A Health-Centred Approach*. [online] New York: Drug Policy Alliance, p.2. Available at: https://www.drugpolicy.org/sites/default/files/DPA_Fact_Sheet_Portugal_Decriminalization_Feb2015.pdf [Accessed 15 June 2018].

³² European Monitoring Centre for Drugs and Drug Addiction (2011) Drug policy profiles - Portugal. EMCDDA Ppaers. [online] Portugal: Publications Office of the European Union, p.24. Available at: http://www.emcdda.europa.eu/system/files/publications/642/PolicyProfile_Portugal_WEB_Final_289201.pdf

Ireland is in the midst of a major homeless and drugs crisis, and as more people fall into homelessness, the likelihood of people falling into addiction also increases.

Having reviewed international evidence, Merchants Quay Ireland supports decriminalisation of drugs for personal use. The current approach in Ireland criminalises and stigmatises vulnerable people, denying people a chance at rebuilding their life by burdening them with a criminal record.

Merchants Quay Ireland believe that decriminalisation must be coupled with increased investment in harm reduction measures, such as wider access to Naloxone, more community detox programmes, more medically supervised detox and rehabilitation programmes and supported accommodation for people leaving rehabilitation.