

Submission to the Committee on Justice, Defence and Equality on its review of Ireland's approach to the possession of limited quantities of certain drugs

This is a joint submission to the Justice, Defence and Equality Committee of the Houses of the Oireachtas on behalf of [Harm Reduction International](#) ('HRI'), the [International Drug Policy Consortium](#) ('IDPC'), [Release](#), and [Transform Drug Policy Foundation](#) (hereinafter 'Transform'). All four organisations advocate for evidence-based drug policies based on the principles of harm reduction, human rights and public health.

Founded in 1996, Harm Reduction International (HRI) is a leading non-governmental organisation working to reduce the negative health, social and human rights impacts of drug use and drug policy by promoting evidence-based public health policies and practices, and human rights based approaches to drugs.

IDPC is a global network of 134 NGOs that focus on issues related to drug production, trafficking and use. IDPC promotes objective and open debate on the effectiveness, direction and content of drug policies at the national and international level, and supports evidence-based policies that are effective at reducing drug-related harm. Our global membership has expertise and experience on the wide spectrum of drug policy issues. IDPC also runs the global "[Support Don't Punish](#)" campaign, which calls for drug policy reform and the scale-up of harm reduction services for people who use drugs.

Release is the UK's centre of expertise on drugs and drug laws, providing free and confidential legal and drug services to people who use drugs and/or those caught up in the criminal justice system. The organisation also campaigns for reform of the UK's current drug policy, with a specific call for the end of criminal sanctions for possession offences. As part of our campaigning work we produced '[A Quiet Revolution: Drug Decriminalisation Models Across the Globe](#)', which looks at 21 jurisdictions that have adopted a non-criminal justice approach to possession of drugs. As a result of this research Release is considered to be one of the leading experts on decriminalisation.

Transform is a UK-based charity and think tank producing policy analysis on, and advocating for, an end to the failed, enforcement-based 'war on drugs' for almost 20 years. Transform operates in the UK and internationally and has been awarded Consultative Status with the UN Economic and Social Council. It is regularly called upon to support parliamentary committees, carries out high-level advisory work for governments around the world, and serves as a key technical coordinator and advisor for the Global Commission on Drug Policy.

We thank the Committee for the opportunity to provide evidence in support of the Government's proposals to end criminal sanctions for drug possession offences. We would also like the Committee to note that we support the submission of our colleagues at CityWide in Dublin.

Clarifying the differences between decriminalisation and legalisation

There has historically been conflation of the terms *decriminalisation* and *legalisation* which can hinder productive debates on the matter. Therefore, it is important to clarify the differences between the two:

- **Decriminalisation** – has usefully been defined as ‘the removal of sanctions under the criminal law, with optional use of administrative sanctions’.¹ These administrative penalties can include fines and compulsory education about the harms of drug use. Under decriminalisation models, the personal possession and use of small amounts of drugs are still unlawful, but not criminal; some models allow cultivation of cannabis for personal use.² All activities associated with the production and supply of a controlled drug remain subject to the criminal law.
- **Legalisation is technically the process by which a product becomes legal and is often conflated with regulation. Regulation is the legislative framework for the operation of the legal production, supply, and purchase of a product.** Ultimately, under such a model all drug-related offences are no longer controlled within the sphere of criminal law, but production, supply and use are regulated through administrative laws, as is the case for tobacco or alcohol.³

Fundamentally, under a decriminalisation model, drug possession and use do not result in a criminal record or arrest as the matter is treated as a public health issue rather than a criminal justice one. Decriminalisation in no way implies that drug use is not a serious issue, or one that should be ignored or allowed to proliferate in society.

The jurisdictions that have decriminalised either all drugs or cannabis are not confined to any one region. A number of countries in Europe and Latin America have taken the decision not to treat drug use as a criminal justice issue, whilst states in Australia and the United States of America have a long history of decriminalising cannabis for personal use.⁴

The evidence in favour of ending criminal sanctions for possession of controlled drugs

Major national and international bodies have found no link between the severity of punishment and the level of drug use in society:

- Release launched a report in 2012 looking at 21 jurisdictions that had decriminalised possession of all, or some, drugs and found no increase in prevalence of drug use.⁵
- The World Health Organisation (‘WHO’) agreed: “*there is no clear link between punitive enforcement and lower levels of drug use ... moves towards decriminalisation are **not** associated with increased use,*” while the United Nations Development Program (‘UNDP’)

¹ Hughes CE, Stevens A. *What can we learn from the Portuguese decriminalization of illicit drugs?* British Journal of Criminology, 2010; 50:999–1022

² Rosmarin A & Eastwood N, ‘*A Quiet Revolution – Drug Decriminalisation Policies in Practice Across the Globe*’, Release, United Kingdom, 2012, www.release.org.uk/sites/default/files/pdf/publications/Release_Quiet_Revolution_2013.pdf

³ Ibid.

⁴ Rosmarin A & Eastwood N, ‘*A Quiet Revolution – Drug Decriminalisation Policies in Practice Across the Globe*’, Release, United Kingdom, 2012, www.release.org.uk/sites/default/files/pdf/publications/Release_Quiet_Revolution_2013.pdf

⁵ Ibid

states: *'longitudinal and comparative analyses suggest that there is no clear link between more punitive enforcement and lower levels of drug use.'*^{6 7}

- In its 2014 policy paper *Drugs: International Comparators*, the UK Home Office found that, *"Looking across different countries, there is no apparent correlation between the 'toughness' of a country's approach and the prevalence of adult drug use"*.⁸
- Irish drugs law have failed to impact on elevated levels of national drug use; between 2002/03 and 2010/11 lifetime prevalence of illicit drug use rose nearly 50%, while past year prevalence also increased over the same period.⁹
- Portugal decriminalised the possession for personal use of all drugs in 2001 while at the same time significantly increasing investment in health and harm reduction programmes. In Portugal, lifetime use for cocaine, ecstasy, amphetamine and cannabis now sits significantly below the EU average, and well below the levels seen in Ireland, which are above the EU average for each substance.¹⁰

Bans on harmful substances are created with the intention of reducing their use and therefore protecting people from their harms. Given that no link exists between criminalisation and lowered levels of drug use, the current criminalised status of drug possession could be seen as a serious and unnecessary infringement on the personal liberties of Irish citizens.

Recent amendments to Ireland's drug laws also support findings that criminalisation does not impact on use:

- After introducing a blanket ban on new psychoactive substances (NPS) in 2010, lifetime NPS use in Ireland amongst 15 to 24 year olds rose from 16% in 2011 to 22% in 2014.¹¹

Release, IDPC, HRI and Transform support Ireland's exploration of decriminalising the possession and use of all drugs on the basis that ending the use of criminal sanctions for such activity has shown to have better health, social and environmental outcomes:

- Punishing people who use drugs, both recreational users and those with serious addiction issues, is neither just nor proportionate. Criminalisation has a significant negative impact on the individuals who are targeted and fails to produce improved public health outcomes, lowering neither drug use nor its attendant harms. A comparative study of Western Australia's policy of criminalisation and South Australia's regime of administrative penalties for cannabis

⁶ WHO. *Consolidated Guidelines on HIV prevention, diagnosis, treatment and care for key populations*. World Health Organisation, July 2014, p.6

www.unodc.org/documents/ungass2016/Contributions/UN/UNDP/UNDP_paper_for_CND_March_2015.pdf

⁷ United Nations Development Programme. *Perspectives on the development dimensions of drug control policies*. UNDP: Vienna, March 2015. p.6

www.unodc.org/documents/ungass2016/Contributions/UN/UNDP/UNDP_paper_for_CND_March_2015.pdf

⁸ Home Office. *Drugs: International Comparators* 30th October 2014, p.51, www.gov.uk/government/publications/drugs-international-comparators

⁹ Drug Use in Ireland and Northern Ireland - Drug Prevalence Survey 2010/11: Regional Drug Task Force (Ireland) and Health and Social Care Trust (Northern Ireland) Results pg. 60-61 http://www.dhsspsni.gov.uk/bulletin_2.pdf

¹⁰ European Monitoring Centre for Drugs and Drug Addiction. *European Drug Report 2015: Trends and Developments*, pp. 76-79 <http://www.emcdda.europa.eu/publications/edr/trends-developments/2015>

¹¹ Flash Eurobarometer 330 – TNS Political and Social. Youth attitudes on drugs: an analytical report. TNS Political and Social commissioned by the European Commission, July 2011. P.85

http://ec.europa.eu/public_opinion/flash/fl_330_en.pdf and Flash Eurobarometer 401 – TNS Political and Social. Young people and drugs: a report. TNS Political and Social commissioned by the European Commission. p.T6 http://ec.europa.eu/public_opinion/flash/fl_401_en.pdf

possession, found that individuals given criminal penalties were more likely to suffer negative employment, relationship, and accommodation issues as a result of their cannabis conviction. People given criminal sanctions were also more likely to come into further contact with law enforcement than people who faced administrative penalties, potentially contributing to recidivism rates.¹²

- In the UK, the scarring impact of a conviction for cannabis possession has been shown to reduce lifetime average annual earnings by 19%.¹³
- Previous drug possession convictions act as a barrier to employment for individuals, and for those who have a history of problematic drug use it can also prevent reintegration into society. A UK study carried out in 2008 by the *UK Drug Policy Commission* found that almost two-thirds of employers believed those with a history of drug use to be untrustworthy, and expressed concerns about safety in the workplace if they were to hire them.¹⁴
- In spite of this, 27.2% of Irish citizens aged 16-54 have used drugs in their lifetime, resulting in a lottery effect where more than a quarter of citizens violate drug laws and an unlucky minority, often those who are poor and/or young, are punished.¹⁵ Unpublished research by Release has shown that 93% of those found in possession of drugs by the Metropolitan Police were from lower socioeconomic groups.¹⁶

The stigma of criminalisation prevents vulnerable drug users from accessing required services. Drug use is a public health issue and should not be subject to criminal sanctions:

- Multiple studies have shown the negative impact of stigma attached to drug use in preventing access and engagement with harm reduction and treatment services.^{17 18}
- Ireland has a drug-induced death rate of 58.5 cases per million, more than triple the EU average of 17.3 cases per million and more than sixteen times greater than Portugal's 3.0 cases per million.¹⁹ Decriminalisation has allowed Portugal to address drug use outside the criminal justice system and operate a pragmatic approach rooted in harm reduction and the needs of vulnerable drug users; deaths due to drug use have decreased significantly – from approximately 80 in 2001, to 16 in 2012.²⁰

¹² McLaren J, Mattick RP. *Cannabis in Australia: use, supply, harms and responses*. Sydney: National Drug and Alcohol Research Centre, University of South Wales, 2007; p.560.

¹³ Bryan M. et al. *Licensing and Regulation of the Cannabis Market in England and Wales: Towards a Cost-Benefit Analysis*. Institute for Social and Economic Research, University of Essex, November, 2013, pp.92-93

¹⁴ UK Drug Policy Commission. *Working Towards Recovery: getting problem drug users into jobs*. London: UK Drug Policy Commission, 2008, www.ukdpc.org.uk/resources/Working_Towards_Recovery.pdf

¹⁵ Drug Use in Ireland and Northern Ireland - Drug Prevalence Survey 2010/11: Regional Drug Task Force (Ireland) and Health and Social Care Trust (Northern Ireland) Results pg. 60
http://www.dhsspsni.gov.uk/bulletin_2.pdf

¹⁶ Daly. M, 'Rich People Are Officially Less likely to be Busted For Drugs', 2014, https://www.vice.com/en_uk/read/class-drugs-release

¹⁷ Radcliffe, P. and Stevens, A. Are drug treatment services only for 'thieving junky scumbags'? Drug use and the management of stigmatised identities. *Journal of Social Science and Medicine*, October 2008; 68 (7): 1065-1073.
<http://www.sciencedirect.com/science/article/pii/S0277953608002980>

¹⁸ UK Drug Policy Commission, *Dealing with the stigma of drugs: A guide for journalists*, London: UK Drug Policy Commission, 2012

¹⁹ European Monitoring Centre for Drugs and Drug Addiction. *European Drug Report 2015*, p. 80

²⁰ Data for year 2001 taken from Hughes, C. E. and Stevens, A., 2012, op. cit., p. 107; data for year 2012 taken from Instituto da Droga e da Toxicodependência, 2013, op. cit., p. 64.

- Portugal has reduced the rate of new HIV infections among injecting drug users from 1,497 new cases in 2000 to 78 in 2013, with a fall *every single year* since decriminalisation.²¹

Decriminalisation reduces criminal justice costs and can help divert law enforcement expenditure towards more serious criminal activity:

- Portugal has reduced the number of criminal drug offences from approximately 14,000 per year in 2000 to an average of 5,000 to 5,500 per year after decriminalisation.²² This has led to a significant reduction in the proportion of individuals with drug-related offences in Portuguese prisons -- in 1999, 44% of prisoners were incarcerated for drug-related offences; by 2008, that figure had reduced to 21%.²³ This has resulted in a major reduction in prison overcrowding in Portugal.
- Expenditure on low-level drug busts could be more cost-effective if re-routed towards treatment. The UK's National Treatment Agency (NTA) estimated that every £1 spent on drug treatment saves society £9.50 through crime reduction, economic and social reintegration and reduced health expenditure. The NTA also estimated that 4.9 million crimes were prevented in 2010-2011 by drug treatment.^{24 25}
- Cannabis decriminalisation in the state of South Australia has been shown to result in savings, with conservative estimates from 1995 putting the figure at between AU\$500,000 and AU\$1 million despite the fact there was low adherence to fine payments. This does not take into account the potential extra tax revenue generated through people engaging in employment as a result of not being damaged by a criminal record.²⁶
- When California introduced decriminalisation of cannabis possession in 1976, it estimated that criminal justice savings in the first six months of the policy being implemented was over \$12 million, compared to the same period of the previous year.²⁷ Today that equates to \$50 million when inflation is taken into account.

The decriminalisation of drugs possession and use is endorsed by numerous international bodies

Decriminalising drugs is increasingly recognised as a pragmatic policy response that effectively begins to manage drug use where punitive measures have failed:

- A growing number of UN bodies have voiced their support for decriminalising the possession and use of all drugs, with both the Joint UN Programme on HIV/AIDS (UNAIDS) and the WHO doing so in 2014.^{28 29}

²¹ European Monitoring Centre for Drugs and Drug Addiction. *Data and Statistics: Infectious diseases – HIV*. <http://www.emcdda.europa.eu/data/stats2015#displayTable:DRD-33> (last consulted 22/06/15)

²² Hughes CE, Stevens A. What can we learn from the Portuguese decriminalization of illicit drugs? *British Journal of Criminology* 2010;50:1008.

²³ Ibid: p.1010.

²⁴ National Treatment Agency for Substance Misuse. *Treat addiction, cut crime: how treatment and recovery services reduce drug-related offending*. NHS, 2012. p.6 <http://www.nta.nhs.uk/uploads/vfm-crimepresentationvfinal.pdf>

²⁵ <http://www.fead.org.uk/docs/storyofdrugtreatment0809.pdf>

²⁶ Single E, Christie P, Ali R. The impact of cannabis decriminalisation in Australia and the United States. *Journal of Public Health Policy* 2000;21(2):167

²⁷ Ibid

²⁸ World Health Organisation. *Consolidated Guidelines on HIV prevention, diagnosis, treatment and care for key populations*. World Health Organisation, July 2014. p.91.

²⁹ UNAIDS. *The GAP Report*. UNAIDS: Vienna, 2014. P.71

http://www.unaids.org/sites/default/files/en/media/unaids/contentassets/documents/unaidspublication/2014/UNAIDS_Gap_report_en.pdf

- The UNDP has stated that member states should “*address abuses that interfere with access to comprehensive harm reduction services, including laws criminalizing drug use and possession of small amounts of drugs for personal use and drug paraphernalia ... tak[ing] advantage of flexibilities available in the drug conventions on penalization of possession and use of controlled substances, including decriminalization of drug use and possession of small amounts of drugs for personal use*”.³⁰
- The UN General Secretary, Ban Ki-Moon, declared in 2015 that countries should “*consider alternatives to criminalization and incarceration of people who use drugs and focus criminal justice efforts on those involved in supply. We should increase the focus on public health, prevention, treatment and care, as well as on economic, social and cultural strategies*”.³¹
- The head of the United Nations Office on Drugs and Crime (UNODC) has stated: “*we must ensure that drug users are treated with respect, not marginalized or discriminated against,*” and that, “*drug users should be treated as patients and not criminals*”.³²
- UN Women has stated, “*member states should avoid ... criminalizing the most vulnerable in the chain of drug production and drug trafficking, including the possibility of decriminalizing drug use and low-level, non-violent drug offenses*”.³³

Recommendations for the development of an effective model of decriminalisation

As stated, our organisations support Ireland’s exploration of a non-criminal justice response to drug use and possession for personal use. In the development of any such model there are numerous key variables to consider in order to ensure that the policy achieves its fundamental aim of diverting people away from the criminal justice system, with a view to improving health and social outcomes for communities, including people who use drugs. Appropriate thresholds and sanctions should be rigorously explored to ensure the decriminalisation model has the intended effect. The points raised below are a brief consideration of the key factors:

- Many, though not all, decriminalisation models use maximum-quantity thresholds to distinguish between possession and trafficking offenses. In practice, these thresholds should be meaningful and encapsulate what is a realistic amount for personal use; for example, Mexico’s decriminalisation model allows for possession of just over 5 grams of cannabis, while Jamaica’s allows for over 56 grams. When the threshold is too low, as in the case of Mexico, the policy has little practical effect and is considered to be a ‘hollow’ model of decriminalisation as people routinely carry greater amounts for their personal use. Thresholds should take into consideration and include the different types of consumption levels for personal use, including problematic use or those who buy larger quantities to limit their contact with the black market.

³⁰ “Addressing the Development Dimensions of Drug Policy’. United Nations Development Programme. *Perspectives on the development dimensions of drug control policies*. UNDP: Vienna, 2015. p.34.
<http://www.undp.org/content/dam/undp/library/HIV-AIDS/Discussion-Paper--Addressing-the-Development-Dimensions-of-Drug-Policy.pdf>

³¹ United Nations Office on Drugs and Crime. Secretary General Ban Ki-Moon’s Message for 26th June 2015. UNODC, 26th June 2015, www.unodc.org/drugs/en/sg/secretary-general-message-2015.html

³² Fedotov, Yury. *Addressing the global scourge of illicit drugs*. Reuters, March 11th 2013, <http://blogs.reuters.com/great-debate/2013/03/11/addressing-global-scourge-of-illicit-drugs/>

³³UN Women, ‘A Gender Perspective On The Impact Of Drug Use, The Drug Trade, And Drug Control Regimes’, 2014
https://www.unodc.org/documents/ungass2016//Contributions/UN/Gender_and_Drugs_-_UN_Women_Policy_Brief.pdf

- Where the threshold has been set, there should be continual evaluation as to whether it is sufficient for the intended purposes of decriminalising possession for personal use. In the Australian Capital Territory, a 2013 amendment was passed that increased the threshold for cannabis possession from 25 grams to 50 grams. Though the legislation did not state a rationale for this change, in practice the old law meant that people who bought 1 ounce (28 grams) of cannabis – a common purchase unit – were handed a criminal sanction, despite the amount being for personal use.³⁴
- It is worth noting that the evidence from countries that have adopted thresholds indicates that the threshold levels put in place do not have any correlation to levels of consumption, and so should not be used as a tool of deterrence i.e. imposing a lower threshold will not encourage lower prevalence rates.
- Thresholds should not be the sole determinative factor in deciding whether an individual is in possession of drugs for their own personal use or in possession with the intention to supply. As is currently the case, police should be able to look at all the evidence to assist them in making the correct determination.
- Different decriminalisation models have different non-criminal sanctions. These include: fines; community-service orders; warnings; education classes; suspension of a driver's or professional licence; travel bans; property confiscation; associational bans; mandatory reporting; termination of public benefits; administrative arrest; or no penalty at all. From the experience of other jurisdictions, the sanction in place appears to have very little or no correlation to levels of use.
- We would advise against having street fines as a sanction as there is a real risk of 'net widening' whereby more people get caught up under the new scheme than under the old criminal justice model. This is largely driven by the fact that there is a financial incentive for forces to issue fines, or it is an easy mechanism for police officers to demonstrate their effectiveness. In this scenario, more police time and money is dedicated to low-level offences.
- A more effective health-based approach to sanctions should be adopted for those caught in possession of drugs for personal use. For example, a brief education intervention providing harm reduction advice and highlighting drug risks (similar to the driving awareness courses offered to a speeding driver in the UK as a way of avoiding points on your license) could be offered, whilst those whose use is considered problematic could be encouraged to engage in a more in-depth intervention.

If decriminalisation is inadequately devised or implemented, it will have only marginal impacts, even potentially creating new problems such as net-widening. Decriminalisation should ideally form part of a wider policy reorientation and resource reallocation away from harmful punitive enforcement and towards public-health-oriented and human-rights-based approaches targeted at people who use drugs, particularly young people and people who inject drugs. It can be seen as a part of a broader harm reduction approach, as well as a key to creating an enabling environment for other public health interventions.

³⁴ Australian Capital Territory Act, *Crimes Legislation Amendment Act 2013 (NO. 2) (No. 50 of 2013) - Section 171A (7), definition of simple cannabis offence , paragraph (b)*, http://www.austlii.edu.au/au/legis/act/num_act/claa2013250o2013347/

The above is a very brief outline of some of the factors and variables to consider in developing a model of decriminalisation. Our organisations would be delighted to provide additional written and/or oral evidence, or other technical assistance, in any future development of Ireland's policy.

(August 2015)