Understanding Decriminalisation

an UISCE

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UISCE

Advocacy for People who use Drugs

Executive Summary:

• Decriminalisation of personal drug use is currently the subject of public and policy debate in Ireland, following recommendations from the Joint Committee on Drugs Use Final Report and the piloting of the State's first police-led Health Referral Scheme.

• Decriminalisation removes criminal penalties for possession but does not legalise drug sales or trafficking.

• Evidence from other countries has demonstrated decriminalisation can reduce health harms and criminal justice burdens.

• Some regions have reversed decriminalisation due to concerns over public drug use and overdoses; however, these concerns have been linked to wider factors unrelated to drugs' legal status that should be considered in discussions regarding policy implementation.

• The current pilot for the Health Referral Scheme in Ireland to refer people away from the criminal justice system does not represent a comprehensive health-led approach due to the eligibility requirements.

• The evidence of the harms of criminalisation are clear, and decriminalisation policy must be implemented to prevent further harm to People Who Use Drugs. This document outlines nuanced information on decriminalisation and health-led drug policy informed by international lessons.

Introduction

In response to the Report from the Citizens' Assembly on Drugs Use, which was released in January 2024, the Oireachtas Joint Committee on Drugs Use was established to review and consider these recommendations. In June 2026, the Joint Committee released their final report, which responded to the 36 recommendations made by the Citizens' Assembly. In this report, the Committee expressed the need for a health-led response and acknowledged that criminalising people for drug use has not been successful at reducing harm. In their final report, the Committee recommended the decriminalisation of the person to possession for personal use and that mandated healthcare should not be a part of this approach. Further, the Committee expressed that any health diversion scheme should not place an arbitrary limit on health referrals (1).

Despite the clear recommendations from the Joint Committee on Drugs Use, misconceptions regarding decriminalisation remain. As the national advocacy organisation for People Who Use Drugs, UISCE believes it is of the utmost importance to offer clear, concise, and evidence-based information to inform policymakers and other stakeholders on decriminalisation.

Difference between decriminalisation and legalisation

When considering decriminalisation of People Who Use Drugs, it is important to recognise that decriminalisation is not the same as legalisation. In the case of decriminalisation, criminal sanctions for the possession of drugs for personal use are removed. The substance itself may still be an illegal substance, but being in possession of a small quantity of that substance will no longer incur criminal consequences, such as incarceration. Decriminalisation models have a range of outcomes if someone is caught in possession of a substance for personal use, such as being directed to services or being issued a small fine or penalty. At this time, it is unclear what outcomes, if any, would occur under a future Irish model of decriminalisation, which could take many forms. It is important to note that trafficking and the sale of substances is still illegal in the decriminalisation of possession approach.

Decriminalisation is not legalisation. Legalisation permits the regulated sale of the substance - an example of this would be cannabis dispensaries or off-licenses for alcohol. The substance

would be subject to regulations and restrictions, like alcohol is now, but people who use the substance could engage in use without of criminal or civil penalties.

The case for decriminalisation

Decriminalisation enables a health-led approach to substance use and offers an alternative to people entering the criminal justice system. For People Who Use Drugs or have a substance use disorder, experiencing incarceration or having a criminal conviction can come with health and social consequences. Research has found formerly incarcerated people are at higher risk of dying of a fatal overdose (2). For those who do attempt to reintegrate into society after incarceration, their criminal record can pose problems. The criminal record acquired from a drug offense can impact a person's employment, their ability to navigate health systems, and have familial impacts (3).

In Ireland, communities experiencing social disadvantage are disproportionally represented in the criminal justice system, such as Irish Travellers, and the criminalisation of drug use can perpetuate the inequities these communities already face. Within the population of Ireland, Travellers comprise less than one percent of that population. Despite representing such a small proportion of the population, Travellers are overrepresented in the prison system. Within the context of incarceration, Traveller men make up 8% of the male prison population and Traveller women make up 16% of female prison population. Concerningly, Traveller women are 22 times more likely to be incarcerated compared to the general population (4). These figures highlight the ways in which this marginalised group are disproportionally impacted by the criminal justice system. This mirrors experiences of other racial and ethnic identities elsewhere, with examples of criminalisation perpetuating inequities in the United States, where research has found public support for criminalised approaches to substance use were higher for substances such as crack cocaine and when a defendant was Hispanic or Black (5).

The decriminalisation of drugs in Portugal, combined with health and social responses, has been able to combat some of these health and social issues. Within the Portuguese model of decriminalisation, people found in possession of substances are issued an administration citation and may be sent to the Commissions for the Dissuasion of Drug Addiction. If referred to the Commissions for the Dissuasion of Drug Addiction, a person may be referred to appropriate services for their substance use, or other sanctions such as a fine or community

service (6). These penalties may be suspended in the case of voluntary engagement in treatment services, and proceedings will be deemed closed for those who complete their course of treatment with no additional offenses (7). For those who do not describe themselves as having problematic drug use and have no prior record or those who agree to treatment or other services, proceedings are suspended (8).

Following decriminalisation, Portugal experienced an increase in people seeking medical treatment for their substance use disorder (9). There was also a decrease in the number of fatal overdoses, cases of HIV, and heroin and cocaine seizures following the implementation of this policy (10). Notably, the number of people using heroin decreased over time after decriminalisation was implemented in Portugal. It was reported there were 100,000 people who use heroin in Portugal in 2001, which dropped down to 25,000 people who use heroin in 2017 (11). Through this model, the government was also able to save considerable costs, with research noting an 18% reduction in the social cost of drugs over an eleven-year period following the implementation of decriminalisation (12).

Decriminalisation can also alleviate strain experienced on the over-burdened criminal justice system. From the start of 2025 to Quarter 3, data from the Central Statistics Office recorded 10,012 offences of drug possession for personal use in Ireland. Even in the case of the Adult Caution Scheme for cannabis possession, which aims to divert people away from the criminal justice system, over 17,000 people were issued with a charge or summons for possession of cannabis between December 2020 and February 2024 (13). This scheme has been criticised as it is primarily available for people without a previous conviction and previous engagement with the criminal justice system disproportionally impacts people of a less advantaged socio-economic background (14). Drug-related charges that lead to a period of incarceration in Ireland carry a financial burden on the State, with the annual cost of one person in prison exceeding €100,000 (15). Research from the United States, and Australia on the decriminalisation of cannabis possession, and from Portugal on the decriminalisation of all substances, have noted the decreased burden on the criminal justice system under decriminalisation, alleviating police time, court systems, and costs of incarceration (10,16).

An additional benefit of decriminalisation is that it may lessen the burden of stigma experienced by People Who Use Drugs. In Ireland, some marginalised groups such as Travellers and People Who Use Drugs felt the stigma they experience in society extends to policing practices and impacts individuals and the community at large (4). Research from

Canada has found that People Who Use Drugs view criminalisation as a factor that impacts structural, social and self-stigma (17). When People Who Use Drugs stigmatise themselves or experience stigma from the public, it can lead to social isolation and serve as a barrier to accessing care (18). The stigma or fear of criminalisation can lead to serious health consequences, as research has found it can deter people from calling emergency services in the event of an overdose (19).

Addressing concerns about decriminalisation

While Portugal's model of decriminalisation has largely been viewed as a success, recent efforts for decriminalisation have been rolled back in places like Oregon, USA, and British Columbia, Canada. In both regions, political rhetoric surrounding perceptions of increased public drug use or overdoses played a role in reforming or revoking their approach to decriminalisation (20,21). When considering decriminalisation, it is important to examine the factors that could have hindered the success of the policy in these regions.

In the case of Oregon, increase in overdoses was cited as rationale for revoking decriminalisation as an ineffective strategy among policymakers. However, research found that it was the spread of fentanyl, not decriminalisation policy, that was associated with the increase in overdose events in Oregon (22). Further, the Portugal model demonstrates how the implementation of decriminalisation policy operates within a wider health and social response. In the United States, the health system differs greatly from that of Portugal's, where health insurance is privatized and is often contingent on employment. In the context of Oregon, the establishment of a Behavioral Health Resource Network and Access to Care grants were meant to expand services for People Who Use Drugs, however, funding for these initiatives experienced significant delays (23).

In British Columbia, Canada, a decriminalisation framework was first implemented in January 2023. While decriminalisation remains, an element of "recriminalisation" was introduced to this framework in May 2024. At this time, the Canadian federal government agreed to criminalise outdoor drug use, meaning decriminalisation only applies to private residences, shelters, or harm reduction settings. Scholars have raised concerns that this shift towards aspects of recriminalisation in public settings will disproportionately impact people experiencing homelessness, putting them once again at risk of harm from the criminal justice system (24).

While Portugal experienced a decrease in drug use after decriminalisation, rates and onset of drug use remain a concern for many when considering decriminalisation. Across regions that have decriminalised substances or certain substances, like cannabis, some research suggests decriminalisation does not impact rates of use. Research from Australia studied both onset and rates of use, finding that although decriminalisation shifted the onset of use towards younger groups, it did not impact the proportion of those who initiate cannabis use (25). A 2020 systematic review of 114 articles evaluating drug decriminalisation found this policy change was most often not associated with changes in use (26). A reasonable conclusion from the international research is that there is limited, if any, relationship between a substance's legal status and its problematic use, which is driven by a combination of social, cultural and market factors.

Drug law reform can impact a range of outcomes, however, much of the research available narrowly focuses on the impact on prevalence of use (26). Beyond prevalence of use, drug market conditions should be widely considered when evaluating the efficacy of decriminalisation, and as always, centring health equity to ensure it is implemented in an impactful manner should be at the forefront of decriminalisation policy development.

Why the current Health Referral Scheme pilot isn't enough

Starting the 1st of September 2026, the Department of Health and Department of Justice, Home Affairs and Migration launched the Health Referral Scheme in partnership with the Health Services Executive (HSE) and An Garda Síochána. This scheme, first being launch as a yearlong pilot, is said to reflect the Government's commitment to addressing substance use as a public health issue. Additionally, the implementation of this scheme is said to have taken into consideration the recommendations from the Joint Committee on Drugs Use Final Report (27). In this scheme, eligible people are referred to speak with a trained health professional, where they can receive support, advice, and additional referrals to health services if needed (28).

While efforts to steer people away from the harms of the criminal justice system are an important step forward, the current guidelines for the implementation of this scheme may not be effective for an equitable health-led approach and are a departure from the full recommendations outlined by the Joint Committee. This scheme is being piloted such that it must be a first-time drug offence in order for a person to be eligible for the scheme. Within

the policy, it is stated that “Where the offender has a recent conviction or more than one conviction, this would point to the person being unsuitable for a health referral” (p.3), although, the circumstances of each case will be considered (29).

While diversion programmes hope to redirect people from the harms of the criminal justice system, marginalised groups often face barriers to accessing these types of programmes. The edibility requirements based on prior criminal history outlined in the Health Referral Scheme are common in many diversion programmes (30). While this practice is common, it leaves many vulnerable groups still within the harms of the criminal justice system and the Health Referral Scheme has received criticism due to the perception it would only benefit middle-class people who engage in drug use (31). People Who Use Drugs are disproportionally at risk of incarceration and re-incarceration (32), which will limit their access to the referral scheme based on prior criminal history. These barriers can perpetuate and compound inequities already experienced by marginalised groups.

Stating that the Health Referral Scheme is unsuitable for those with more than one conviction ignores the reality of substance use and does not align with the recommendations put forth by the Joint Committee on Drugs Use (1). For people who do have a substance use disorder, having a limit on health referrals based on previous criminal convictions is not aligned with the scientific understanding of substance use disorders. Much like other chronic conditions, between 40-60% of people with a substance use disorder will experience a reoccurrence of their condition, meaning a return to drug use (33). This high probability of returning to use means placing limits on the eligibility for referrals is not fully aligned with a health-led approach. For those who use substances recreationally, possession does not establish clinical need and referrals to treatment services would be unnecessary. While creating processes to ensure people who need health resources for substance use is a worthwhile endeavour, considerations must be made to recognise the unique needs of people who use recreationally and people who do have a substance use disorder, where episodes of relapse are common aspects of the recovery process. With this in mind, the harms of limitations of referral eligibility for the Health Referral Scheme must be considered.

Conclusion

This paper has carefully outlined the distinction between decriminalisation and legalisation, underscoring that decriminalisation removes criminal penalties for personal drug possession

but does not permit the legal sale of substances. The evidence discussed highlights that decriminalisation can reduce health and social harms, including fatal overdoses and inequities affecting marginalised communities, while also alleviating burdens on the criminal justice system. When implementing decriminalisation, Ireland should monitor external factors, such as drug market conditions, access to services, or housing, in order to strive for the level of success experienced in Portugal. While the Health Referral Scheme may aspire for a health-led approach, the risk of people being captured in the harms of the criminal justice system still remains in this current pilot. It is hoped this paper emphasises the need for a genuinely health-led, evidence-based approach to drug policy reform in Ireland that prioritises health equity and considers lessons from international models. By considering the lessons learned from other jurisdictions, Ireland can best situate itself for a successful transition to the decriminalisation of People Who Use Drugs.

UISCE would like to urge policymakers and State agencies to revisit the recommendations outlined by the Joint Committee on Drugs Use. These recommendations are the result of a years long democratic and comprehensive process, in which the voice of the people and evidence-base were reviewed through consideration of the Citizens' Assembly on Drugs Use recommendations and further deliberation through the Joint Committee on Drugs Use. The Joint Committee was a cross-party report that was signed off on by the government. A summary of these recommendations pertaining to decriminalisation and health diversion schemes can be seen below:

- The Government should introduce a health-led approach to substance use and this should be reflected in the National Drug Strategy (recommendations 1 and 95)
- The Government should reform section 3 of the Misuse of Drugs Act 1977 for the decriminalisation of drugs for personal use (recommendations 91 and 126)
- Any health diversion schemes operated by the State should be health-led, voluntary, and without arbitrary limits on health referrals (recommendation 91)
- Significant investments should be made to support the Health Service Executive to ensure timely access to care for people who receive health referrals (recommendation 92)
- Decriminalisation should apply to all substances rather than limiting reform to cannabis or selected drugs, reflecting the Citizens' Assembly recommendation and international evidence (recommendation 128) (1)

In conclusion, a health-led approach to drug policy must be equitable, human-centred and underpinned by the evidence-base. By continuing with criminalisation and limiting the number of health referrals, the cycle of harm and inequities are perpetuated for People Who Use Drugs.

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