



# PAVEE POINT

## TRAVELLER AND ROMA CENTRE

### Submission to the Working Group Regarding the Public Consultation on Personal Possession of Illegal Drugs

July 2018

#### **Background**

Pavee Point Traveller and Roma Centre welcomes the opportunity to make this submission to the Department of Health as it prepares to examine alternative approaches to the personal possession of illegal drugs.

Pavee Point Traveller and Roma Centre is a national NGO that works to promote Traveller and Roma human rights in Ireland through research, policy development, advocacy and collective community action. We work at national, regional and international levels to address the needs of Travellers and Roma as minority ethnic groups experiencing exclusion, discrimination and racism. Our work involves a community work approach based on the principles of human rights, participation, equality and interculturalism.

Pavee Point holds to the principle that in order to achieve equality for Travellers and Roma, attention must be paid to the structural determinants/ issues that impact on their lives, in the areas of education, employment, poverty, health, discrimination and racism.

### **Introduction:**

Pavee Point's submission is limited to and addresses the issue of decriminalisation of the possession of drugs for personal use and argues for a health-led approach rather than the current approach of criminal sanctions. **Decriminalisation** would mean the possession of drugs for personal use would not be a criminal offence and therefore would not result in a criminal conviction. Essentially, the decriminalisation of drugs for personal possession would mean no longer imposing a criminal sanction on an individual but instead placing a collective obligation on state bodies to treat problematic drug use as a public health issue i.e. the individual using drugs is not criminalised but the drugs themselves would still be classed and treated as illegal.

Pavee Point acknowledges the problematic nature of the current drug crisis in Ireland, but nevertheless supports the decriminalisation of drugs for personal possession – as we believe individuals should not be deemed criminal / have a criminal conviction due to personal use. The new National Drug Strategy 'Reducing Harm, Supporting Recovery, a health-led response to drug and alcohol use' highlights the Government's commitment to addressing problematic drug and alcohol use through a health-led approach. The strategy provides a policy framework for the removal of criminal sanctions and offers a more effective, human rights based approach to dealing with the serious problems resulting from drug abuse in Ireland, especially in marginalised and disadvantaged communities.

### **Summary of key recommendations:**

'Reducing Harm, Supporting Recovery' focuses on a health-led response to recovery, rehabilitation and re-integration. Therefore we recommend the following:

- 1) Decriminalise drugs for personal possession in order to provide a legal framework to support and refocus implementation of the strategy as, currently, the criminalisation of personal possession acts as a barrier to introducing a health-led approach
- 2) Move to decriminalisation, using Portugal as an evidence based example, to ensure reinvestments and correct allocations in services, such as local, evidence based

interventions and services, treatment options, housing supports, training and education which have been under resourced for years

- 3) Refocus on addressing the root causes of addiction in a health rather than justice-led approach to allow the National Drug Strategy to concentrate on addressing addiction and promote rehabilitation and recovery

### **Ireland's Current Drug Legislation**

Ireland's current legislation, the Misuse of Drugs Act 1977, deems personal possession a criminal offence which can lead to imprisonment <sup>1</sup>. Section 3 'restriction of the possession of controlled drugs' has led to little success in tackling and reducing both the use and possession of drugs in Ireland. The following examples demonstrate how Ireland's drug laws are currently unsuccessful in dealing with growing and problematic drug use:

- The opium law, Section 16 of the Drug Misuse Act <sup>2</sup> is the only law forbidding both possession and consumption of a substance. Originally implemented to tackle the growing heroin crisis the Act deems a person guilty of an offence if in possession of or found to be using **opium**; furthermore being in possession of drug paraphernalia and being present in a place of consumption is also an offence. Noting its ineffectiveness to date, the act which has been in existence for over 40 years has not resulted in a prosecution, the likely reasons being that **opium** is not really a problem in Ireland and secondly, legally and chemically **heroin** is a different substance
- Ireland has the fourth highest rate of overdose deaths in Europe <sup>3</sup>
- The National Drug Treatment Recording System reported an increase in the number of individuals presenting for treatment for problematic drug use during the period: 2010 – 2016 <sup>4</sup>
- In 2016 71% of drug offences were for possession for personal use accounting for 11,486 recorded offences, increasing to 12, 211 in 2017 <sup>5</sup>

Furthermore the Act has been counterproductive for individuals, their families and the wider community as this approach has and continues to discriminate and place unnecessary and avoidable barriers for marginalised communities and individuals seeking treatment. Addiction is a chronic, relapsing condition and therefore the imprisonment of an individual for repeat counts of personal possession has been ineffective in addressing the root causes of their addiction alongside other presenting issues, including social and economic issues.

Imposing criminal sanctions on individuals also reduces the possibility of education around safer drug use, reinforces stigma and places difficulties on services working to support those using drugs (due to the increasing numbers attending services with no additional funding being allocated). The new National Drug Strategy ‘Reducing Harm, Supporting Recovery’ places a strong emphasis on service users’ involvement but the current Drug Misuse Act hinders this. Hearing the voices of drug users is extremely important if there is to be a real change.

### **Health Lead Approach - Portugal leads by example**

To date over 21 countries have decriminalised the personal possession of illegal drugs by using a range of different models resulting in different outcomes, such as: no criminal offence, police discretion, administrative decision, criminal justice decision, no sanction and police diversion<sup>6</sup>.

In 2001 Portugal introduced decriminalisation as a result of the worsening health of their drug using population, and an increase in drug related deaths and incidents of Hepatitis, HIV and other drug related conditions. This shift in approach has provided a body of evidence supporting the positive impact of decriminalisation and of using a health-led approach instead. **Some key changes:**

- No longer a criminal offence but requiring public health intervention. Effective interventions are completed and appropriate services are recommended to individuals. Drug use differs amongst individuals and therefore appropriate interventions at the earliest stage is of particular importance
- Portugal steered away from a criminal justice-led approach and possession is now dealt with as an administrative violation, punishable by penalties ( fines or community service)
- Greater resources were provided in the areas of prevention, treatment, harm reduction and social reintegration programs. There is an emphasis on interagency work providing a comprehensive service for individuals and resulting in a more rounded approach to addressing substance misuse issues
- Applied a pro-active approach to employment opportunities for recovering addicts, which includes an incentive for employers. This is a stark contrast to Ireland’s current approach which places an expectation on individuals to return to employment, leaving

many facing barriers in an increasingly competitive market due to the permanency and stigma of a criminal conviction

- Access to adequate transitional housing for those in recovery. Currently due to the housing crisis in Ireland, a number of individuals exiting residential treatment have no adequate housing and therefore no option other than to access overcrowded, under-resourced homeless accommodation

### **Key findings since Portugal's Decriminalisation in 2001 <sup>7</sup>**

- Current levels of drug use are below the European average
- Drug use amongst the younger population (those who are at a higher risk of initiating drug use) has declined
- Rates of use, continuation of drug use and problematic drug use have all decreased
- Decrease in blood borne viruses, especially HIV
- Since implementation there has been a steep decrease in drug related deaths. In 2001 there was an estimated 80 deaths recorded compared to 19 in 2015
- Reduction in the number of people arrested and presenting before the courts which has resulted in a lower percentage of overall prison population
- Surge in people presenting to health clinics dealing with addiction and disease

The above not only outlines the effectiveness of decriminalisation and a health-led approach but highlights the importance of local specialist services as an effective response which is also an approach adopted by Ireland in the new National Drug Strategy. Specialist addiction and community services have not received additional funding since budgets were cut in 2008, yet there has been a huge increase in that amount of individuals presenting to services for support. This will need to be a key area to focus on if we are to move from criminal to a health led approach.

### **Proposed benefits for Ireland in adopting a decriminalisation, health-led approach:**

- Support the effective implementation of the new Drug Strategy 'Reducing Harm, Supporting Recovery' which focuses on a health-led response
- Cease overloading the criminal justice system with cases of simple possession, allowing time to be spent on more serious offences and produce a more effective court and prison system. 'Ireland has one of the highest rates of committal to prison in the EU, due to the overuse of short custodial sentences. While the EU daily prison

population rate is 83 per 100,000, Ireland's rate of committals (number of people committed to prison) is 375 per 100,000, while the rate of release is 379 per 100,000<sup>8</sup>

- Provide an argument for more adequate, relevant and strategic resource allocation supporting community based initiatives in line with the new health-led approach
- Weaken the existing discrimination and stigma that individuals face, due to addiction (current or previous) and criminal convictions, in areas such as employment, housing, family and community, education, health, travel, insurance etc.
- Offer an evidence based approach upon which to develop integrated government services and supports

### **References:**

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3. European Drugs report (2018), Figure 3.14. <http://www.emcdda.europa.eu/system/files/publications/8585/20181816>( Accessed 12 June 2018)
4. Health Research Board Bulletin (2018), Drug Treatment in Ireland NDTRS 2010-2016. [www.drugsandalcohol.ie/28986](http://www.drugsandalcohol.ie/28986)
5. Citywide (2018), Decriminalisation Evidence Based. <https://www.citywide.ie/decriminalisation/>
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7. Transform Drug Policy Foundation (2014). Drug decriminalisation in Portugal, setting the record straight. <https://www.tdpf.org.uk/blog/drug-decriminalisation-portugal-setting-record-straight>
8. Aebi, M.F & Delgrande, N. (2015). SPACE I – Council of Europe Annual Penal Statistics: Prison Populations. Survey 2013. Strasbourg: Council of Europe. [http://www.iprt.ie/files/IPRT\\_Submission\\_on\\_Decriminalisation\\_of\\_Possession\\_Offences\\_Final.pdf](http://www.iprt.ie/files/IPRT_Submission_on_Decriminalisation_of_Possession_Offences_Final.pdf)