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An Comhchoiste um Dhlí agus Ceart, Cosaint agus Comhionannas

Tuarascáil ón gCoiste maidir le cur chuige Laghdaithe Dochair agus
Athshlánaitheach i leith méideanna beaga drugaí neamhdhleathacha a
shealbhú

Samhain 2015

Houses of the Oireachtas

Joint Committee on Justice, Defence and Equality

Report of the Committee on a Harm Reducing and Rehabilitative approach
to possession of small amounts of illegal drugs

November 2015

31/JDAE/035



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Contents

Chairman's Preface	6
Introduction	8
Summary of Recommendations	10
Portuguese Approach to Drug Possession	11
Recommendations	12
Other Issues	15
Conclusions	16
Appendix 1 - Committee membership	
Appendix 2 - Orders of Reference	
Appendix 3 – Submissions	

[Published on Committee webpage www.oireachtas.ie]

Chairman's Preface

The Committee, following its call for submissions on serious, often violent crime in parts of Dublin in particular, learned that the position of a dedicated Minister of State with special cross-departmental responsibility for Drugs and Alcohol policy had not been designated following a recent reshuffle of Ministers and Ministers of State. The Committee wrote to An Taoiseach and strongly recommended that a Minister be given cross-departmental responsibility for Alcohol and Drugs Policy as soon as possible. Minister of State Aodhán Ó Ríordáin was given the responsibility on 15th July 2015. The Committee welcomes the decision.

The submissions received and subsequent hearing again highlighted the link between organised and violent crime and the sale, supply and use of drugs.

The Committee, in considering the possible responses to gangland crime and violence, decided to examine the issue of drug possession in much greater detail. In June 2015, a delegation of the Committee visited the European Monitoring Centre for Drugs and Drug Addiction in Portugal and engaged extensively with Portuguese authorities on the approach to drug addiction adopted there since 2001.

On return from Portugal, the delegation proposed that the Committee investigate the adoption of a similar model to the Portuguese approach in Ireland. With the agreement of the Committee, members of the public and Irish civil society were invited to make submissions on the issue. Overall, 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 14th October 2015 at which a number of those who made submissions engaged with the Committee. The Committee has concluded, as a result of visiting Portugal and the engagement there, followed by the consultation and public engagement described above, that there is merit in further exploring the Portuguese model and in examining how it may be adapted for use in an Irish context. The Committee suggests that a health/counselling/treatment 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 imposing a criminal sanction resulting in a lifelong criminal record.

The Committee also points out that better use would be made of Garda and court resources if, in certain cases, a criminal sanction was not mandatory for possession of small amounts of drugs for personal use. The Committee also stressed the need to continue and to escalate the campaign targeting those who supply and deal in illegal drugs. The Committee noted that it is just 15 years since Portugal adopted this approach, and while initially there may have been concerns regarding its introduction,

Portugal has seen the harm reducing benefits of this approach. Such benefits include an increase in the numbers seeking help for addiction, a fall in the number of HIV/AIDS cases and significant savings in law enforcement and court service resources.

The Committee was also told that Ireland's current approach to drugs is affecting a third generation of people and for this reason the adoption of an approach similar to that in Portugal warrants serious consideration.

Finally, I would like to express my gratitude to all those who took the time to make a submission, many of which were very personal and detailed, the contents of which have been noted by the Committee. (Submissions containing personal information have not been published).



A handwritten signature in black ink, appearing to read 'D Stanton', written over a horizontal line.

David Stanton T.D.
Chairman
November 2015

Introduction

In June 2015, during its consideration of the issue of violent crime in Irish communities, the Committee identified close links between illegal drug use and such serious crime.

In light of this, the Committee decided to send a delegation to Lisbon, Portugal to examine the approach introduced there in 2001 to deal with the issue of drug possession.

Following the visit, the Committee decided to invite written submissions from interested groups or individuals to explore if, in their view, a similar approach could be or should be considered in Ireland. The Committee asked that submissions outline the arguments in favour of and against altering Ireland's approach to sanctions for possession of certain amounts of drugs for personal use. The Committee received in excess of 80 submissions from a wide range of stakeholders and interested parties.

Having considered the submissions, the Committee agreed to hold a public hearing to further explore some of the main points raised and this meeting took place on 14th October 2015 [transcript is available on www.oireachtas.ie].

The witnesses invited before the Committee represented the following groups:

- BeLonGTo;
- The Dublin North East Drugs Task Force;
- Students for Sensible Drug Policy Ireland;
- The Association of Criminal Justice Research and Development (ACJRD);
- The Irish Penal Reform Trust;
- The Irish Association of Social Workers;
- Merchant's Quay Ireland;
- The Irish Hospital Consultants Association;
- The Ana Liffey Drug Project; and
- The Citywide Drugs Crisis Campaign.

This Report briefly summarises some of the issues considered at the public hearing. The Committee draws attention to the consensus that has emerged that was supportive of exploring further the Portuguese approach.

Summary of Recommendations

The Committee, based on the evidence presented to it, makes the following recommendations:

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. The Committee recommends that research be undertaken to ensure that the adoption of any alternative approach be appropriate in an Irish context.
7. The Committee recommends that in addition to other measures, enactment of legislation in relation to Spent Convictions be prioritised.

Portuguese Approach to Drug Possession

In June 2015, a delegation of the Committee travelled to Lisbon, Portugal, to witness and examine the Portuguese approach. From its engagement with Portuguese authorities, some key features are outlined as follows:

- It is still an offence in Portugal to possess illegal drugs, but it is now treated as a civil/administrative matter in certain cases. This approach only applies to a quantity of up to 10 days' supply for personal use and any person found in possession of this amount of drugs may be required to report to a Committee for Addiction Dissuasion where an assessment is carried out and education/treatment provided or, in some cases, a return to the criminal justice system can result.
- The delegation was told that this approach resulted in a reduction in costs to the Exchequer, in particular in costs associated with police time, criminal investigations, legal-aid and court time. There was also a reduction in the number of HIV/AIDS cases.
- Proper coordination is necessary for this approach to be successful. Portugal is divided into districts, each of which has a 'Dissuasion Committee' headed by a psychologist, a social worker and a person with legal expertise. Each committee has other staff such as a counsellor etc. as required. This localised approach makes it easier for those referred to attend.
- Positive Discrimination: This aspect of the Portuguese model involves offering incentives to employers to employ former drug users, with the State paying the employee an amount equal to the minimum wage. Employers are required to release the employee so he or she may attend treatment programmes to assist in recovery.
- No Criminal Record: It is recognised that a criminal record may limit employment and other opportunities, which could be counter-productive to rehabilitation and could result in a return to drug abuse in some cases.
- Education: Some people experiment with drugs in their youth and by educating people from a young age about the problems and dangers of drug use, mind-sets and attitudes can be changed.

Recommendations

Recommendation 1

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.

Based on the evidence heard by the Committee, there was a general consensus that the application of criminal sanctions to certain drug users could be counter-productive. Criminal sanctions also stigmatise the person and can have far-reaching consequences such as difficulties gaining employment and access to services e.g. local authority housing, travel visas etc.

The Committee was told by former Minister Pat Carey that any alternative approach must operate as “a humane and health-focused approach for people apprehended with cannabis for personal consumption and treat those people as patients rather than criminals.”

Recommendation 2

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.

While the Committee recommends that, where appropriate, civil/administrative responses should be applied and the individual provided with appropriate treatment/assistance, discretion must remain with An Garda Síochána as to whether a civil/administrative response or a criminal sanction is appropriate.

Should an individual be referred for appropriate treatment/assistance and is subsequently found to be a supplier of drugs, and not just a user, or does not engage with the harm reduction and rehabilitative approach, the discretion to refer the individual back to the criminal justice system for prosecution should be available.

This recommendation seeks to prevent suppliers of illicit drugs avoiding criminal sanctions by carrying only small quantities of drugs for sale and claiming they are for personal use.

Recommendation 3

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 heard that many individuals addicted to drugs may have a chronic addiction which may require life-long support. The Committee also notes that no single treatment approach is effective for all persons and the harm reducing and rehabilitative approach must be flexible and appropriately resourced to cater for individual needs.

The Committee was told that some children are exposed to drug use in the home and family environment across all cultural and socio-economic backgrounds. A harm reducing and rehabilitative approach may be less traumatic to children and families in these circumstances than a criminal justice reaction.

Recommendation 4

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.

While in Portugal, the delegation was told that when an individual attends a meeting with a Dissuasion Committee, the setting is ‘informal’. While recognising that such meetings are crucial to a person’s treatment and recovery, this approach is to avoid situations similar to those which may be encountered in a criminal justice setting. The delegation was told that this approach results in a more positive engagement and contributes to a more successful outcome.

Recommendation 5

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 heard that there is a very important role for the education sector, but also heard that this sector has never fully engaged in the full implementation of the national drugs strategy.

The Committee heard that education is often the most effective solution as it can encourage someone to think about and change behaviour. This should include early intervention and preventative measures.

On this point, the Committee was told that Ireland is currently in its third generation of substance abusers. According to the Association for Criminal Justice Research and Development Ltd (ACJRD), “[i]f we have 10,000 or more opiate users on methadone, it is guaranteed that there are at least 10,000 children living with substance abuse”.

The Committee believes that youth services have a very important role to play, through preventative programmes aimed at dissuading children and youths from a path of drug use, to supporting those who may be already taking drugs. Furthermore, there is a need for a joined-up, inter-agency approach in addressing drug use among minors and adolescents.

Recommendation 6

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

The Committee was told that, while the approach seems to have worked very successfully in some other jurisdictions, there is a need for more research on any advantages and disadvantages on the introduction of such a model and its suitability in an Irish context.

Recommendation 7

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

The Committee has completed its consideration of the Criminal Justice (Spent Convictions) Bill 2012 and emphasises the need to enact this legislation.

The Committee learned that in Portugal, the fact that no criminal conviction was imposed in cases where the harm reducing and rehabilitative approach to possession of small amounts of illegal drugs for personal use was followed. Therefore, the legislation required to deal with Spent Convictions is seen as a crucial component of a harm reducing and rehabilitative approach.

Other Issues

Police, Prison and Court Resources

The Committee heard that it costs the Exchequer approximately €70,000 per annum to keep a person in jail, excluding additional aspects such as education and court time. Over the course of hearings, it was suggested that these resources might be better utilised as part of a harm reducing and rehabilitative approach. The Committee was told that research conducted in the United Kingdom indicated that for every £1 spent on treatment a saving to the Exchequer of £3 is achieved.

The Committee was also told that a recent report by the United Kingdom Treasury highlighted that up to 672,000 hours of police time is expended on minor drug offences. In comparing estimates of combined police strengths between Ireland and the UK, this equates to roughly 60,000 hours of Garda time (excluding Garda reserves).

Following on from its Recommendation on additional resources, the Committee suggests that these could be found from within resources spent on the basis of a criminal justice model, including courts, prison, probation and, of course, An Garda Síochána. In addition, the Committee is already aware of the existence of a Drug Treatment Court, which provides treatment programmes, but remains within the criminal justice system.

Employment

Conviction for drug possession may have far-reaching ramifications for the individual's employment prospects. However, the Committee heard that in cases where the drug used impacts upon memory, concentration, motivation, drive and application, then the ability to work might very well be impaired.

Consequently, the Committee believes that the vetting of potential employees, or indeed the performance of those who have completed programmes, may be a potential issue under a model where criminal sanctions are not involved. This is of particular relevance for roles in certain areas e.g. pharmaceuticals, or roles requiring high levels of attendance and concentration. The Committee highlights this as something to consider if such a model is adopted, but one that can be addressed.

Conclusions

The Committee has made 7 recommendations and identified some additional issues which require consideration also. The Committee believes that based on the evidence it has heard, drug use should be treated, in the main, as a health issue and not a criminal justice one, so an approach that prioritises harm reduction and rehabilitation in the first instance, as practised in Portugal since 2001, should be central. This would mean the option would exist for An Garda Síochána to refer a person found in possession of a small amount of illegal substances for personal use for assessment. This assessment could then result in that person being offered information/education, counselling and/or treatment, as appropriate, instead of being processed through the criminal justice system and, on possible conviction, getting a criminal record for life.

The Committee also highlights the importance of enacting the Criminal Justice (Spent Convictions) Bill 2012 and ensuring diverse treatment services instead of a “one-size-fits-all” approach. Also, the Committee believes that further education on drug-related issues, in particular for young people, as well as additional research on drug use in the Irish context are necessary for effectively combating the harmful effects of drugs.

The Committee believes that a harm reducing and rehabilitative approach is worth exploring but more research on how effective it may be in an Irish context is necessary.

The Committee concludes that the introduction of an appropriate harm reducing and rehabilitative approach could result in-

- A reduction in the number of people arrested;
- A reduction in the number of people imprisoned;
- An increase in those seeking drug-treatment;
- A re-direction of Garda, Court and Prison resources to prevent serious and violent crime;
- A situation where people are less fearful of seeking and accessing treatment,
- A possible reduction in the cases of self-harm and HIV/AIDS;
- A better relationship between An Garda Síochána and the wider community; and
- A reduction in the stigmatisation of people who use drugs including the wide-ranging and debilitating consequences of a criminal conviction.

The Committee commends this report to the Minister for Justice and Equality and the Minister of State with responsibility for Drugs Policy and looks forward to further engagement on these issues.

APPENDIX 1

JOINT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY

31st DAIL

List of Members

Deputies: Niall Collins (FF)⁶
Alan Farrell (FG)¹
Anne Ferris (LAB)² [*Vice-Chairman*]
Seán Kenny (LAB)
Pádraig Mac Lochlainn (SF)⁷
Gabrielle McFadden (FG)¹⁰
Finian McGrath (IND)
Fergus O'Dowd (FG)¹¹
David Stanton (FG) [*Chairman*]

Senators: Ivana Bacik (LAB)
Martin Conway (FG)
Tony Mulcahy (FG)⁹
Rónán Mullen (IND)
Denis O'Donovan (FF)⁵
Katherine Zappone (IND)³

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- 1 Deputy Alan Farrell replaced Deputy Billy Timmins by Order of the Dáil on 29 November 2011
 - 2 Deputy Anne Ferris replaced Deputy Joanna Tuffy by Order of the Dáil on 26 January 2012
 - 3 Senator Katherine Zappone replaced Senator Denis O'Donovan by Order of Seanad Éireann on 10 May 2012
 - 4 Deputy John Paul Phelan replaced Deputy Tom Hayes by Order of the Dáil on 14 June 2012
 - 5 Senator Denis O'Donovan was reappointed to the Committee on 14 June 2012

- 6 Deputy Niall Collins replaced Deputy Dara Calleary by Order of the Dáil on 19 July 2012
- 7 Deputy Pádraig Mac Lochlainn replaced Deputy Jonathan O'Brien by Order of the Dáil on 25 September 2012
- 8 Deputy Marcella Corcoran Kennedy replaced Deputy Michael Creed by Order of the Dáil on 7 November 2012
- 9 Senator Tony Mulcahy replaced Senator Paul Bradford by Order of Seanad Éireann on 19 July 2013
- 10 Deputy Gabrielle McFadden replaced Deputy Marcella Corcoran Kennedy by Order of the Dáil on 2 December 2014
- 11 Deputy Fergus O'Dowd replaced Deputy John Paul Phelan by Order of the Dáil on 9 December 2014

APPENDIX 2

ORDERS OF REFERENCE

a. Functions of the Committee – derived from Standing Orders [DSO 82A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
 - (a) such aspects of the expenditure, administration and policy of the relevant Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee for the purposes of the functions set out below, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—
 - (a) Bills,
 - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 164,
 - (c) Estimates for Public Services, and
 - (d) other matters as shall be referred to the Select Committee by the Dáil, and
 - (e) Annual Output Statements, and
 - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies, and report thereon to both Houses of the Oireachtas:
 - (a) matters of policy for which the Minister is officially responsible,
 - (b) public affairs administered by the Department,
 - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
 - (d) Government policy in respect of bodies under the aegis of the Department,
 - (e) policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,

- (f) the general scheme or draft heads of any Bill published by the Minister,
 - (g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
 - (h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
 - (i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in paragraph (4)(d) and (e) and the overall operational results, statements of strategy and corporate plans of such bodies, and
 - (j) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
 - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- * (6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees:
- (a) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and
 - (b) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.
- (7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any sub-Committee or Committees standing established in respect of the Select Committee.
- (8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,

* By Order of the Dáil of 8th June 2011, paragraph (6) does not apply to the Committee on Justice, Defence and Equality.

- (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
- (c) at the invitation of the Committee, other Members of the European Parliament.

b. Scope and Context of Activities of Committees (as derived from Standing Orders [DSO 82; SSO 70])

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 26. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.
- (4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Dáil Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.