

DRUGS AND THE LAW



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The main laws applying to drug offences originated in the Misuse of Drugs Act 1977. This act has been added to and amended over the years to include new drugs, new offences and new penalties and all this information, although quite technical, is available on the Irish Statute Book website which is www.irishstatutebook.ie

In this booklet we have condensed this information in order to focus on some of the key offences and penalties related to drugs and we have also included information about alcohol-related offences and on legal aid and how to access it.

Some information on the more common drug offences is listed below and there is a table to explain the different classes of fines. Note that a *summary hearing* is heard by a district court judge sitting alone and the maximum penalty they can ordinarily impose is a fine and/or up to a 12-month sentence. A *trial on indictment* is usually for more serious offences and is heard in the circuit court before a judge and jury or for some reserved offences this can be the central criminal court.

Possession of controlled drugs – cannabis or cannabis resin

Anyone found in possession of cannabis or cannabis resin is guilty of an offence. If the court

decides that the drug was for personal use and not for sale or distribution and this was a first offence, it can impose a class D fine on summary conviction. For a second offence, an increased class D fine can be imposed. For a third or subsequent conviction, a class C fine can be imposed. If the court decides, a prison sentence of not more than 12 months can be imposed also. On conviction on indictment, the court may decide on an appropriate fine and/or a prison sentence of up to three years.

Possession of any other controlled drugs

It is an offence for any person to be in possession of a controlled drug and on summary conviction for this offence, a person can be liable for a class C fine or a prison sentence of no longer than 12 months. If the court decides, the person can be liable for both. On conviction on indictment for possessing controlled drugs, the court can decide on an appropriate fine and can also impose a prison sentence of not more than seven years.

Possession of controlled drugs for sale or supply

It is an offence to be in possession of a controlled drug with the intention of selling it illegally. Anyone found guilty of this offence is liable to a class C fine on summary conviction in a district court. If the court decides, a fine and a prison term not exceeding 12 months can be imposed. On conviction on indictment for this offence, the court can decide on an appropriate fine. The court can also impose a life sentence for this offence if it decides it is necessary although lesser sentences can also be imposed. Where the market value of the drugs is €13,000 or more, the person convicted is liable for a minimum sentence of 10 years. This does not apply, however, when the court is satisfied there are exceptional circumstances.

Other drugs offences

Since 2010 it is an offence to sell or supply substances which are not specifically proscribed under the Misuse of Drugs Acts, but which have psychoactive effects. Anyone found guilty of such an offence is liable for a class A fine on summary conviction or imprisonment for a term not exceeding 12 months, or both. On conviction on indictment a fine or prison sentence not exceeding 5 years or both can be given.

Anyone found guilty of supplying or attempting to supply a controlled drug into a prison, child detention centre or remand centre can receive a class B fine on summary conviction or a prison term not exceeding 12 months or both. On conviction on indictment, the court can impose an appropriate fine or a maximum prison term of 10 years or both.

Growing cannabis plants, use of premises, vehicles or vessels for certain activities and forged or fraudulently altered prescriptions are other offences that come before the courts. In each of these cases different fines and penalties will apply depending on the seriousness with which the court views the offence.

Classes of fines

There are 5 categories or classes of maximum fine applying to summary convictions. If someone is liable on summary conviction to a particular class of fine, the maximum fine is as below.

CLASS	MAXIMUM FINE
A	€5,000
B	€4,000
C	€2,500
D	€1,000
E	€500

Court-ordered drug treatment

This is a rarely used option but for some drugs offences the court may decide that imposing the usual penalties is not the most effective response. The court can remand a person and during this time, the court can ask the HSE, a probation officer or other qualified person to prepare a medical report and/or a report on the individual's vocational, educational and social circumstances. They may also be asked to make recommendations for their treatment.

Based on the findings of these reports, the court may decide not to impose a fine or prison sentence. Instead, the individual may be placed under the supervision of a named person or body (such as the HSE) for a specified period of time or they may be required to get the kind of treatment that has been recommended for them. The court may also order that a course of education, instruction or training is completed that will improve job prospects or social circumstances of the individual, facilitate social rehabilitation or reduce the likelihood of committing further drugs offences.



Alcohol and the Law

The majority of alcohol related crime falls into public order or drink driving categories and these are the most commonly prosecuted. It is important to note though that alcohol is a significant factor in many assaults, including manslaughter and murder, and also in sexual assaults, rape and domestic violence incidents. Alcohol can also be a factor in crimes such as theft, burglary and criminal damage and a lot of alcohol-related crime goes unreported.

Alcohol-related crime cost an estimated €1.19bn in 2007 and it is a very significant societal and economic problem (*Byrne, S. (2010) Costs to Society of Problem Alcohol Use in Ireland. Dublin: Health Service Executive*).

Over one in four people have experienced at least one or more negative consequences as a result of someone else's drinking (*Hope A (2014) Alcohol's harm to others in Ireland. Dublin: Health Service Executive*).

The most common laws relating to alcohol are the Intoxicating Liquor Acts, the Criminal Justice (Public Order) Acts and the Road Traffic Acts.

Intoxicating Liquor Acts

These acts have been added to and updated over the years and relate largely to licenced premises, off licences, opening hours and sales to minors. Under the act, it is against the law for a young person under 18 to:

- Buy alcohol
- Drink alcohol in a public place
- Pretend to be over 18 in order to buy alcohol
- Be in a pub after:
9pm from 1 October to 30 April
10pm from 1 May to 30 September or
- Be on licensed premises during an exemption.

It is against the law for a young person under 15 to be in a pub without a parent or guardian.

A young person between 15 and 17 can attend a private function, such as a wedding, in a pub after the times above if a proper meal is being served.

It is also against the law for an adult to buy alcohol for a young person under the age of 18.

In a private residence, alcohol cannot be served to a visiting young person (under 18) without the explicit consent of that young person's parent or guardian.

Criminal Justice (Public Order) Acts

Although it has been amended slightly since, the most relevant sections of this Act are contained in the Criminal Justice (Public Order) Act, 1994. These are:

- Intoxication in a public place
- Disorderly conduct in public place
- Threatening, abusive or insulting behaviour in a public place
- Failure to comply with direction of a member of Garda Síochána
- Violent disorder
- Affray

Each of these items is considered an offence and can lead to a fine and/or prison sentence in some cases, if convicted.

Road Traffic Acts

The main laws dealing with road safety are covered in the Road Traffic Act 1961. This has been updated regularly and the introduction of the Road Traffic Acts 2006 and 2014 gave the Gardaí additional powers to help reduce and eliminate the offences of drink and drug driving.

Gardaí have the power to breathalyse any driver stopped at a mandatory alcohol checkpoint without the need to form any opinion in relation to the driver of the vehicle.

Since 2011, Gardaí must now conduct a preliminary breath test where they believe a driver has consumed alcohol or at the scene of a crash where someone has been injured and requires medical attention.

Since 2014, it is possible to take a specimen of blood from a driver who is incapacitated following a serious road traffic collision and to test that specimen for intoxicants. The driver is

asked, on regaining capacity, whether they consent to the issuing of a certificate of the test result on the specimen. Refusal is an offence.

Also since 2014, the Gardaí have powers to test drivers whom they suspect of driving under the influence of drugs. Drivers can be required to undergo Roadside Impairment Testing.

The items above are only a summary of some of the key points related to legislation in these areas, for further details you should refer to a solicitor. The following websites also have useful details and there is some information below on legal aid.

www.citizensinformation.ie
www.irishstatutebook.ie



Legal Aid

There is a distinction made between civil legal aid and criminal legal aid.

at times so it is advisable to check in your local area.

Civil Legal Aid

The provision of civil legal aid is overseen by the Legal Aid Board. The Legal Aid Board is a statutory body established under the Civil Legal Aid Act 1995 and its main functions are:

- To provide legal aid and legal advice in civil cases (i.e., non-criminal cases) to people who meet the criteria
- To provide a family mediation service
- To provide information about its services

The Legal Aid Board provides legal aid and legal advice mainly in the following civil areas:

- Judicial separation
- Divorce
- Maintenance
- Domestic violence
- Custody of and access to children
- Problems relating to hire-purchase agreements
- Contract disputes

The Legal Aid Board can be contacted on 066 9471000 or 1890 615200 and their website is www.legalaidboard.ie.

Note there can be a waiting list for free legal aid

Criminal Legal Aid

The Criminal Justice (Legal Aid) Act 1962 set out that free legal aid may be granted, in certain circumstances, for the defence of people of insufficient means during criminal proceedings.

To receive this legal aid, the applicant must establish to the court that:

- They cannot afford to pay for legal aid themselves
- by reason of the 'gravity of the charge' or 'exceptional circumstances' it is essential in the interests of justice that the applicant should have legal aid

What this means in practice is that in order to access criminal legal aid you must satisfy a means test and be in jeopardy of going to prison or receiving a large fine. The means test is purely a discretionary matter for each court and is not governed by any financial eligibility guidelines.

The courts, through the judiciary, are responsible for the granting of criminal legal aid. An application may be made to the court either:

- in person
- by the applicant's legal representative
- by letter to the Court Registrar

In almost all cases, the application for criminal legal aid is made on first appearance in the District Court. The judge informs the defendant of their right to free legal aid and it is at this stage that the application is made.

If a case is sent forward to a higher court for hearing (for example the Circuit Court) an application for legal aid can be made to the higher court.

Further information on these topics is available from the Citizens Information Office or on their website www.citizensinformation.ie. FLAC is a good starting point if you are seeking legal advice.

Free Legal Advice Centres (FLAC)

FLAC is an independent voluntary organisation whose aim is to promote equal access to justice for everybody. They provide advice, information and advocacy through a number of Advice Centres that operate around the country and details can be found on their website www.flac.ie. They also operate an information and referral line on 1890 350250 or 01 8745690.



Refer to Information on Support Services section or www.supportme.ie for details on supports available