



REPORT ON DRUG LAW REFORM

September 2021

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FOREWORD

The challenges of treating problematic drug use as a public health, as opposed to a criminal justice issue in the UK, have been well documented in recent years, through reports by, for example, the Health and Social Care Committee¹, the Scottish Affairs Committee² and the Royal College of Physicians of Edinburgh³. Professor Dame Carol Black's independent review of drugs⁴ also highlights that many areas should be reformed within the constraints of the current law and concludes that the public provision for prevention, treatment and recovery in the United Kingdom is not fit for purpose, and urgently needs repair.

In recent times, Scotland has tragically seen a significant increase in drug related deaths. The National Records of Scotland reported that 1,339 people lost their life to a drug-related death in Scotland in 2020, 5% more than in 2019. This was the largest number ever recorded. This means that Scotland's drug-death rate was approximately 3½ times (relative to the size of the population of all ages) that of the UK as a whole. It is noted that the European Monitoring Centre for Drugs and Drug Addiction have highlighted issues of coding, coverage and under-reporting in some countries. However, it appears certain that Scotland's rate is well above the level of most (if not all) of the EU countries⁵.

Since the Drug Deaths Taskforce was established, it has taken forward a significant amount of work, funding 31 innovative projects, 10 research projects and over 85 interventions through Alcohol and Drug Partnership (ADP) direct funding intended to reduce drug deaths in Scotland. The Interim Report⁶ published on the 1 July 2021 details the work and achievements to date.

In the work underpinning this report, the Drug Deaths Taskforce has explored how existing drug legislation affects the access of people who use drugs to health and social care services, promotes evidence based public health interventions and how changes to the Misuse of Drugs Act 1971 could contribute towards a truly public health approach.

This work aims to improve our understanding of the problems and explore potential solutions, building on the current momentum in Scotland. It embraces a public health approach and allows us to work towards the vision of Scotland as a country where we live long, healthy and active lives regardless of where we come from.

We welcome the findings of this report and would like to thank all those that have contributed their time, expertise and opinions. We hope that it provides an informed view for further work in the second phase of engagement, alongside meaningful proposals for change.

Catriona Matheson: Chair of the Drug Deaths Taskforce

Neil Richardson: Vice Chair of the Drug Deaths Taskforce and Chair of the Criminal Justice and the Law Sub Group.

¹ Health and Social Care Committee: <https://publications.parliament.uk/pa/cm201919/cmselect/cmhealth/143/143.pdf>

² Scottish Affairs Committee: <https://publications.parliament.uk/pa/cm201919/cmselect/cmsscota/44/44.pdf>

³ The Royal College of Physicians of Edinburgh: https://www.rcpe.ac.uk/sites/default/files/drugs_deaths_in_scotland_report_final_0.pdf

⁴ Independent review of drugs by Professor Dame Carol Black: <https://www.gov.uk/government/collections/independent-review-of-drugs-by-professor-dame-carol-black>

⁵ NRS Drug-related Deaths in Scotland: [Drug-related Deaths in Scotland in 2019 | National Records of Scotland \(nrscotland.gov.uk\)](https://www.nrscotland.gov.uk/publications/drug-related-deaths-in-scotland-in-2019)

⁶ Drug Deaths Taskforce Interim Report: <https://drugdeathstaskforce.scot/news/interim-report-published/>

INTRODUCTION

This Phase One engagement exercise on drug law reform was originally intended to support the Scottish Government in setting out the reforms they would like to see to the 1971 Misuse of Drugs Act, in order for them to present these ideas in the public consultation committed to in the Programme for Government in 2019. To this end, it set out to understand the problems with the existing drug legislation and explore potential solutions. As this work has progressed the context in which we operate has rightly continued to change, the response to Scotland's other public health emergency has included changes which will relate to the content of this report not least the recent manifesto commitments made by the SNP to hold a citizen's assembly on decriminalisation. The report is intended to improve the understanding of what critical barriers to providing access to health and social care services have been, or are being, experienced under the current legislation. It is primarily intended to inform on how the current law affects our ability to implement strategies to reduce drug deaths and drug related harms. It is interested in:

- Experiences practitioners, organisations and people affected by drug use have had in relation to the law;
- Their views on how the law may create or contribute to barriers that prevent better outcomes from being achieved;
- Their views on how the law could be changed to improve outcomes for people affected by drugs.

Methods

This project sought to gather and synthesise information from relevant stakeholders about how the Misuse of Drugs Act 1971 impacts their ability to minimise drug deaths and harms.

Respondents were individuals or organisations, identified by the project team (a working group of members of the DDT group on drugs and the law, and the DDT secretariat) as being stakeholders that operate in the intersection between health and justice, in relation to drug use, or those that may be impacted by the legislative framework. Over 100 individuals participated in this engagement exercise. These included experts in the field, including members of the Drug Deaths Taskforce, those who work in Alcohol and Drug Partnerships, Community Justice Partnerships and third sector organisations. Lived experience representatives and family members also made valuable contributions.

The working group developed a set of questions intended to address the research aims . Respondents were asked about their experiences in relation to the current drug law and how it may create or contribute to barriers that prevent better outcomes from being achieved. They were also asked how they thought the law could be changed to improve outcomes for people affected by drugs and for views on what topics it would be important to include in a Phase Two wider consultation on drug law reform.

Participants were given the choice to respond through an online survey or through live online events where the question set was used to structure group discussions. Notes from these events were then summarised and considered alongside the written survey responses. Additionally, a number of written responses were also received, which followed the general themes of the engagement but did not follow the questions structure outlined. These included written submissions, and summaries of the notes from other organisation's recent events on similar topics.

The Taskforce secretariat team reviewed all responses and summarised the key themes they identified. These themes were then presented to the working group, who worked with the wider membership of the Taskforce to consider and assess them, developing the report and its conclusions in collaboration. It should be noted that the responses provided by

participants were not systematically validated, and no independent legal advice was sought on whether participants' perceptions were technically correct, beyond the expertise that working group members brought to the project.

How to Consider the Findings of this Report

This report is divided into seven substantive sections, based on the areas that the consultation covered. Each section presents a summary of the input respondents provided, followed by an assessment by the Taskforce on the importance and accuracy of that input. Where possible, the Taskforce has sought to add corroborating data or to contextualise respondent's input with respect to the actual law, and to highlight where there may be gaps between the underlying policy and what respondents report observing in their professional experience. Where appropriate the Taskforce has reached conclusions in relation to next steps or proposals for consideration by relevant bodies. Throughout the report, text boxes have been used to separate findings from external exercises conducted by partners. These were submitted to inform the current engagement exercise, but were not conducted by the Taskforce.

Following these substantive sections, there are two concluding sections, on Phase Two of this consultation, and further next steps.

Additionally, some respondents raised issues which, while not directly related to the law, merit further exploration either by the Scottish Government or the Drug Deaths Taskforce. These will be considered separately and are listed at **Annex B**.

This report aims to provide a common understanding and language from which robust, evidence based discussion can proceed in the next phase of this work in Scotland. However, is not intended to limit the evidence.

The Current Law

In Scotland, the subject matter of the Misuse of Drugs Act 1971⁷ (the 1971 Act) is reserved to the UK Government. The main purpose of the 1971 Act and its associated regulations is to regulate the management of controlled drugs, as well as the use of controlled drugs.

The 1971 Act divides drugs into three classes, and creates a range of offences relating to those substances, including personal possession, production, cultivation, supply, distribution, and allowing a premises to be used for these purposes. The vast majority of recorded drug crimes under the 1971 Act in Scotland are for possession or possession with intent to supply. The legislation does not specify the amounts that would be considered personal possession or supply; the relevant charge is decided in Scotland by the Procurator Fiscal, depending on the circumstances of each case.

Controlled drugs are also subject to strict legal controls and legislation determines how they are ordered, stored, prescribed, administered, dispensed and destroyed. All controlled drugs supplies are strictly regulated as they are susceptible to misuse or diverted and can cause harm. To ensure they are managed and used safely, legal frameworks for governing their supply have been established. There is some limited flexibility for pharmacists to exercise professional judgement when there are minor errors or omissions on a controlled drug prescription. However, this can potentially lead to difficult ethical dilemmas when there are delays in contacting the prescriber to obtain the necessary amended prescription leading to increased risks associated with the patient having no medication and at risk of falling out of treatment.

⁷ <https://www.legislation.gov.uk/ukpga/1971/38/contents>

EXECUTIVE SUMMARY

This report sets out the findings of an engagement exercise on the Misuse of Drugs Act (1971), which asked people working in some fields impacted by drug law what changes they feel would help to urgently tackle Scotland's drug related deaths emergency. It makes specific recommendations for change across many organisations. Scotland's drug deaths crisis is a complex problem and urgent action is needed to strengthen the public health approach that is already underway. It is only through following the evidence and committing to ambitious change that lives will be saved.

This engagement exercise has explored, with experts that operate in the intersection between health and justice and people who are impacted by the legislation, what critical barriers to providing access to health and social care services have been, or are being, experienced under the Misuse of Drugs Act. The responses and resulting recommendations can be categorised under the following broad themes: changes within the law, changes to the law and changes to the culture that surrounds the law.

[Changes within the law]

It is clear that change to the law is not the only answer, there is more that can be done without any change to the law. In fact, much of this report focuses on the improvements to services and practices could be made without wholesale changes to primary and secondary legislation. Existing services can be improved, including support and treatment in prisons, the reintroduction of throughcare support officers and the expansion of Recorded Police Warnings, as well as changes to practice to support family inclusive practice, holistic support and the removal of stigma.

We know that many evidence based initiatives such as heroin assisted treatment and drug checking facilities can operate under the current legislation. However, there is a requirement for national support, funding and leadership to help with widespread implementation. Funding and national support is also required to support services and interventions that operate at times of greatest risk such as with peer navigator models and diversion from prosecution.

Many areas require further exploration to see whether improvements are needed. Drug Treatment and Testing Orders (DTTOs) for example should be reviewed to assess whether they are the most effective mechanism to support recovery and reduce recidivism; tolerance zones should be considered to help people access treatment without fear of prosecution; and alternatives to remand and imprisonment should be contemplated.

Even where changes have been outlined in law, and are covered by the next theme, there may be opportunities for the Scottish Government to act within the existing legal framework and we would encourage them to explore all options to deliver interventions supported by evidence.

[Changes to the law]

All the members of the Drug Deaths Taskforce recognise the current reserved nature of the Misuse of Drugs Act 1971, but we have concluded from our engagement that a review is urgently needed to support a public health approach. This is not a new recommendation and has been outlined by many other reports and experts, but the strength of feeling across the sector is clear. It should be noted that many respondents to this engagement exercise are not legal experts but are experts in the area of alcohol and drugs. These experts are unequivocal that the Act in its current form creates barriers to the implementation of a public health approach.

This engagement has demonstrated support for wholesale change, however a range of specific legislative changes were highlighted to enable further harm reduction activity, in

particular the introduction of safer drug consumption facilities, the reclassification of naloxone and enabling the provision of drug paraphernalia through services to enable safer drug consumption.

It has also highlighted a need for changes to regulations controlling the dispensing, prescribing and supply of controlled drugs, while also recommending the introduction of regulations to control the supply of pill presses, which are involved in the mass production of street benzodiazepines.

The report outlines changes that go beyond the Misuse of Drugs Act including, devolution of the licensing for premises to deliver heroin assisted treatment, creating a single office coordination of this licensing; consideration of a change to the Equality Act; and, Scottish Government legislation to end Friday liberations from custody.

There was general support for a move towards decriminalisation or legalisation but respondents were quick to highlight that any moves by government towards regulating, legalising or the decriminalisation of the drug market is a complex issue and requires careful consideration, engagement and consultation on a wider scale.

[Changes to the culture that surrounds the law]

This report also recognises that a cultural change is required in Scotland. We currently have one of the highest prison populations in Western Europe, a fact that will inevitably have a detrimental impact on outcomes for those effected by problematic drug use who are too often trapped in the justice system. We also know that much of the problematic drug use in Scotland is hidden and there continues to be unacceptable and avoidable stigma and discrimination. This is not helped by criminalising people with multiple complex needs who experience serious disadvantage, we need to tackle the underlying causes of drug use including poverty and inequality. We need to treat people who use drugs with respect, helping them to not only survive but to thrive.

These issues are not new but we believe that we have now passed a tipping point in Scotland. The conclusions in this report provide part of the solution and a real opportunity to think about how we direct resources to where they are needed most. We welcome the new investment by the Scottish Government but this is not just about money, it is about action and it is about saving lives.

DRUG DEATHS TASKFORCE REPORT ON DRUG LAW REFORM

THE LAW AND JUSTICE SYSTEM

Treatment in Prisons

What was said by respondents

Respondents to this engagement exercise highlighted that many people in Scotland's prisons are repeat offenders and many also have substance use problems. Most agreed that incarceration seems ineffective at breaking the cycle of addiction and repeat offending. However, they felt there was evidence that effective community-based sentences that address both drug use and offending behaviour in conjunction with one another could be more effective.

Many respondents felt that the criminal justice system is not resourced to provide support to those in custody with complex needs across mental health, physical health and drug use, and to maintain support for recovery following release. They felt that the Scottish Prison Service understand the need for a public health approach, but there were some key decisions in relation to imprisonment that have not kept up with the change in attitudes. In particular the removal of throughcare officers, the availability of treatment and the connection to the community on liberation.

Some highlighted a gap in support as people are waiting for a sentence, and in discussions most agreed with the principle that whether people are remanded or sentenced in the prison setting, treatment and support must be enabled to continue without interruption, including throughcare support for reintegration into the community.

Respondents were clear that a focus on rehabilitation and reintegration would help to impact on drug related harms and deaths, and felt that the current drug legislation remains a barrier to providing a proper public health approach through a continued focus on incarceration. A number of options were presented by respondents for improving support in prison including utilising peer support to fill gaps in provision.

Drug Deaths Taskforce assessment

Scotland currently has the highest per capita prison population in Western Europe with between 7,400 and 7,500 prisoners at any given time so far in 2021. The latest available data shows that the reconviction rate of individuals who were released from a custodial sentence or given a non-custodial sentence and subsequently reconvicted within a year, was 26.3% in 2017-18⁸. Latest available data also shows that in 2018/19, amongst 1,017 voluntary tests carried out at prison entry as part of an addiction prevalence monitoring study, 71% of people tested positive for illegal drugs (including illicit use of prescribed drugs)⁹.

The Taskforce recognises that there is access to medical support, including treatment for drug dependency, in prisons and the connections between poor mental health, trauma, and the impact of prison are factored in to this support. However, the Taskforce feels there are clear opportunities for improvements in support and the access to meaningful activity for people with a history of substance use. The Taskforce is aware of further support provided in relation to the provision of naloxone on release and for long-acting buprenorphine to treat opiate dependence. Good progress has already been made in this space, and will continue with the implementation of the MAT standards in custody.

⁸ Scottish Government: [Reconviction rates - offender cohort: 2017 to 2018 - gov.scot \(www.gov.scot\)](https://www.gov.scot/recovery/article?aid=11147)

⁹ SCOTPHO: <https://www.scotpho.org.uk/behaviour/drugs/data/availability-and-prevalence>

The Taskforce welcomes the current needs assessment being undertaken by the Scottish Government on substance use in Scottish Prisons and will build on its recommendations through its Criminal Justice and the Law Subgroup to support further recommendations.

Drug Deaths Taskforce conclusions

When individuals are in prison, support must be available for them. At present that support could be improved. The Taskforce will undertake further work focusing on support in prisons building on the outputs of the substance use needs assessment currently taking place. The focus will be on the need for holistic support addressing multiple complex needs, including exploring the reintroduction of throughcare support officers.

Ending Friday Liberations

What was said by respondents

A specific challenge raised by the majority of service providers was the issue of Friday liberations. It was highlighted that this can leave people particularly vulnerable to relapse as there are limited available services at the weekend. In some cases, support will have been in place for the 12 weeks prior to release, however the day of release is often crucial for putting in place the basic building blocks for life outside of prison. As well as needing to attend mandatory appointments with relevant probation staff, prison leavers may need to do a range of things including finding somewhere to live and registering for benefits. Those with health needs also often require access to immediate support and medication¹⁰. This is critical for people who use drugs as release from prison has been shown to be a time of high risk for drug related death, due to reduced drug tolerance and access to support networks.

Drug Deaths Taskforce assessment

The Taskforce is aware that since 2015 a flexible release policy has allowed the Scottish Prison Service to release individuals a day or two prior to their official liberation date if there is sufficient evidence that release on the set date would cause unnecessary risk to the individual by limiting their ability to access services. The policy requires service providers to apply to have the liberation date altered. Some respondents noted that this mechanism is rarely utilised citing reasons such as data sharing and capacity within services as reasons for this.

Data provided by the Scottish Prison Service (SPS) confirms that this policy is very infrequently used and even less frequently approved. In the 5 and a half years from 2016 to the end of May 2021, only 92 applications were made and only 28 were granted.

Members also highlighted that there is an at risk group, released directly from a court appearance, who have no connections made to services and whose resident local authority will not have been informed of their liberation in advance. These individuals may have spent significant time 'on remand' in custody and will not be captured by a policy which ends Friday liberations. How to support these individuals should also be considered by the Scottish Government.

Drug Deaths Taskforce conclusions

Friday liberations from custody create unnecessary risk. The Scottish Government should work with the Scottish Prison Service on changing the policy to remove the requirement for services to apply to change this date, and implementing a blanket policy of no liberations on a Friday or in advance of a public holiday. It should also explore ways to support individuals released directly from court.

¹⁰ NACRO: Barriers to effective resettlement; Friday Prison Releases: <https://www.nacro.org.uk/wp-content/uploads/2018/08/Nacro-Policy-Briefing-Friday-Releases.pdf>

Alternatives to Remand or Imprisonment

What was said by respondents

A few respondents suggested there should be more flexible options regarding bail or sentence of imprisonment, including residential rehabilitation as an alternative.

Drug Deaths Taskforce assessment

The Taskforce is aware of Scottish Government work to expand alternatives to remand, including bail supervision and electronic monitoring of bail.

The Taskforce has received prior evidence which suggests that members of the judiciary have expressed a desire for a greater range of alternative disposals for supporting an individual with a history of drug dependency.

We understand that work to develop a test of residential rehabilitation as an alternative to remand within Community Justice Scotland is being formulated.

In addition to this, we are aware that the Scottish Government have commissioned research to explore decision-making with regard to bail and to gather views on alternatives to remand. Subject to approval, the research will elicit views from Sheriffs, fiscals, defence agents and social workers.

Drug Deaths Taskforce conclusions

The Drug Deaths Taskforce supports the ongoing work exploring alternatives to remand and imprisonment, including bail supervision and residential rehabilitation.

Pill Presses

What was said by respondents

A few respondents, including those from law enforcement, reported that the sale of pill pressing machines are linked to the industrial scale production of cheap drugs including fake benzodiazepines. They called on the UK Government to make changes to the law to regulate pill presses¹¹ through a licensing system for suppliers and end users.

It was suggested that Section 9A of the Misuse of Drugs Act 1971 could be used to tackle the sale of industrial pill presses where it could be established that the supplier believed the pill presses may be used to produce controlled substances, particularly if ordered repeatedly by people for delivery to a domestic residential address.

Drug Deaths Taskforce assessment

The Taskforce is aware that a number of pill presses have been recovered and seized by Police Scotland in recent times as evidenced in drugs manufacturing and supply cases. These are being used by Serious Organised Crime Groups to produce large quantities of illicit drugs. Opportunities to reduce access to the equipment presents an additional tool to disrupt illegal activity and reduce risks in communities. However, given the profits involved, illicit access to pill presses will take place but enforcement represents a real opportunity to tackle mass production.

The production of illicit pills, including atypical benzodiazepines, causes significant harm. The regulation of pill presses (and capsule filling machines) offers an opportunity to reduce this harm. The Taskforce is aware that conversations are ongoing between Scottish Government and UK Government Ministers on this topic.

¹¹ In addition to pill presses, capsule production machines should also be included

Drug Deaths Taskforce conclusions

The Taskforce notes the enforcement work by Police Scotland and partners but would like to see urgent progress to ensure the regulation of pill presses and capsule filling machines, and supports a suitable licensing system to reduce related harm.

Tolerance Zones

What was said by respondents

Respondents felt that stop and search creates stigma, opposition and contention. In particular, it was suggested that the police should not stop and search or serve warrants on people when they engage with support and treatment services as this acts as a deterrent for individuals attending. However, it was also noted that more could be done within services to protect individuals from drug dealers and other individuals who may target people when they are accessing services.

Drug Deaths Taskforce assessment

The risk environment for people who use drugs is influenced by many factors including practical policing decisions, such as physical patrols that can significantly influence people's perceptions and decisions about drug use and service engagement¹². There is well-established research evidence that a visible police presence in an area can deter people from using a harm reduction or treatment service. Evaluations of successful interventions in other jurisdictions have highlighted tolerance zones as important to improving relationships and trust between police and people who use drugs, and have contributed to improving service engagement and minimising harm.

The need for a tolerance zone must be carefully balanced with the need for operational independence for police officers to respond to both concerns from members of the public and to any potential criminal offence they witness. Care must also be taken to ensure that police can continue to target dealers who may exploit any tolerance zone, thereby placing people at increased risk.

Drug Deaths Taskforce conclusions

The issue of introducing tolerance zones, where police agree not to make active patrols or use stop-and-frisk powers in the vicinity of certain services is not straightforward, however the Taskforce would like to explore their potential introduction. This may involve working with Police Scotland to adapt training to help ensure treatment and all harm reduction services are protected spaces, ensuring that the possibility of arrest or interaction with the police, or perception of this as a risk, is not a barrier to treatment. This could be explored as part of the Phase Two consultation alongside peer safety within services.

Recorded Police Warnings

What was said by respondents

Many respondents drew parallels between Recorded Police Warnings (RPWs) issued by Police Scotland and Police Community Resolutions (PCR) available in England and Wales. Respondents felt that RPWs could act as a possible alternative to criminalisation, and can be delivered via the de-prioritisation of criminal sanctions, rather than formal legal change.

In this engagement exercise it was clear that there are a number of misunderstandings about the Recorded Police Warning Scheme and respondents would welcome further information on how the scheme operates. In particular, respondents often reflected on RPWs

¹² <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2021/03/international-approaches-drug-law-reform/documents/international-approaches-drug-law-reform/international-approaches-drug-law-reform/govscot%3Adocument/international-approaches-drug-law-reform.pdf>

being used for Cannabis possession, suggesting that these are not used for possession of other substances and many were unsure of the process an individual would go through when given an RPW.

Respondents felt that the expansion of the Recorded Police Warning scheme could lead to de facto decriminalisation providing an opportunity to remove the harm and stigma of criminalisation and prevent further interaction with the criminal justice system.

Drug Deaths Taskforce assessment

Recorded Police Warnings (RPWs) are an alternative disposal option that are available to Police Officers to deal with lower level offending, including specified drug possession offences under the Misuse of Drugs Act 1971. The RPW scheme is intended to provide an intervention mechanism that is timely, justifiable and proportionate to the crime or incident under review. RPWs do not represent de-criminalisation of offences. It has a positive impact on alleged offenders in that it does not result in a criminal conviction and it does not require witnesses to attend court to give evidence.

The Lord Advocate issues Guidelines to the police in relation to the operation of the RPW scheme and in particular which offences may be considered as eligible for a Recorded Police Warning. The Guidelines extend beyond drug possession offences and are therefore confidential. Although it was a common view in the responses received that RPWs are only utilized for cannabis offences, RPWs can be issued for small amounts of specified controlled substances under the Misuse of Drugs Act 1971. However, the RPW scheme does not apply to all drugs in all classes.

The Drug Deaths Taskforce notes that the classification system is only partially supported by the scientific evidence, with drugs like LSD, psilocybin and MDMA/ecstasy often being ranked as less harmful than cannabis.¹³

Drug Deaths Taskforce conclusions

The Drug Deaths Taskforce would support consideration of the extension of RPWs in relation to drug possession offences to cover all classifications of drugs and concludes that there would be value in work by the Scottish Government, Police Scotland and COPFS to increase understanding of RPWs.

Drug Testing and Treatment Orders

What was said by respondents

Respondents noted that justice services are obliged to report a failed drug test when someone is on a DTTO). This is considered a failure and evidence of engagement in illegal activity. People subject to a DTTO may engage relatively well with support but may still test positive for illicit substances. The consequence is that some service users will miss a drug test appointment and disengage from treatment, knowing they will test positive and face potentially negative consequences. It was felt that this does not incentivise people who are otherwise making good progress to continue engagement and may trigger a breach for missing appointments.

¹³ See, for example:

Nutt, D., King, L., & Phillips, L. (2010). Drug harms in the UK: a multicriteria decision analysis. *The Lancet*.

van Amsterdam, J., Nutt, D., Phillips, L., & van den Brink, W. (2015). European rating of drug harms. *Journal of Psychopharmacology*.

McFadden Consultancy. (2016). Research Report: The New Zealand Drug Harm Index 2016 (2nd edn). . New Zealand Ministry of Health.

Bonomo, Y., Norman, A., Biondo, S., Bruno, R., Daghli, M., Dawe, S., . . . Castle, D. (2019). The Australian Drug Harms Ranking Study. *Journal of Psychopharmacology*.

Drug Deaths Taskforce assessment

Problematic drug use often fuels offending and any reduction in people's dependencies can have significant benefits in breaking the cycle of offending which law enforcement on its own cannot achieve. The Taskforce is aware of the issues with frequent breach in DTTOs, and notes that the practice and expectations in these disposals are also not consistent with what is known about the recovery process, which is that almost all people who recover from drug addiction require multiple attempts before they succeed. Time needs to be spent developing the person's understanding of their underlying problems, building their readiness to change, and developing skills to help them respond differently to setbacks. Only once progress is made in these areas is it realistic to expect someone to substantially cut back their drug use, and even then it is likely to take time. The level of compliance required by DTTOs often does not allow for this process to take place before the person is breached.

Drug Deaths Taskforce conclusions

Scottish Government should review DTTOs to assess how they have been used, their outcomes and whether they are the most effective mechanism to support an individual's recovery and reduce recidivism rates.

In the interim period while this review is taking place the Scottish Government should work with the Judicial Institute to improve understanding of how to best support an individual's recovery.

Diversion from Prosecution

What was said by respondents

Diversion from prosecution was seen as beneficial by respondents who gave an opinion on this topic as it reduces the likelihood of receiving criminal sanctions and increases the likelihood of support.

It was highlighted by some that although referrals to other services can be made in exceptional cases, onward referrals and multi-professional working are not considered the norm or the diversion's focus. This is not in keeping with a "no wrong door" policy and relies on an in depth understanding of an individual's multiple complex needs and a correct referral. The system should allow for an expert to refer a person on to get the best support or to bring in multi-disciplinary support. It was also flagged that those who do not manage to attend meetings with social workers can be deemed 'non-engaging', resulting in further sanctions.

Drug Deaths Taskforce assessment

If successful, diversion from prosecution avoids a person receiving a criminal sanction, and it could provide a route to targeted person-centred support if sufficient resources are made available to local authorities.

Diversions will only be successful where the appropriate services and resources exist to support the individual. This requires adequate service planning and resourcing in all areas of the country, to ensure it can be provided consistently and maintain equality. This is a key focus for Community Justice Scotland and the Taskforce is aware that progress is being made in this space.

However, diversion from prosecution is not a substitute for community treatment and support. It is a criminal justice response and previous research indicates that it may still involve an element of coercion which is not necessarily compatible with a voluntary model of recovery. Although not intended to be punitive, people can still experience limited choice in decisions made about their support/care.

To maximise the effectiveness of diversion in relation to individuals who are addicted to drugs, a whole systems holistic approach should be taken within services which are specifically focused on harm reduction.

Drug Deaths Taskforce conclusions

Scottish Government should work with partners such as COPFS, Community Justice Scotland and local authorities to ensure that all people have access to well resourced, high quality services following diversion, taking a multi-disciplinary, holistic approach to support. Increased funding should be provided to support this. Training should be given to ensure that those who work in this area understand the challenges of engagement for people with dependency issues and give individuals multiple opportunities for recovery.

Navigators and Peer Support

What was said by respondents

Some respondents highlighted the Drug Deaths Taskforce Pathfinder project as having the potential to reduce the short-termism of current criminal justice-led service provision. It is hoped that Pathfinder¹⁴ will enable people to stay engaged in recovery-focussed supports for longer, while potentially reducing the likelihood of incurring criminal sanctions.

Respondents felt that the scheme has the potential to provide Prosecutors with much more in-depth information about an individual's circumstances and the activities they are undertaking to address their underlying issues, which can in turn reduce the likelihood of criminalisation.

Respondents felt that police referral pathways following the peer navigator model should be available and consistent across Scotland, to ensure people with addiction problems have access to services at the earliest stage, and prosecutors have access to information on an individual's identifiable needs.

Drug Deaths Taskforce assessment

A study by Stirling University (forthcoming) provides further evidence of the value of Peer Navigators, concluding that trained peers can play a vital role in addressing stigma, advocating for individual's rights, fostering trust and creating cultures of hope.

The wider literature points to peers' significance in strengthening connections to communities, highlighting the importance of human connections in reducing the likelihood of offending and reducing drug-related harms

The established Navigator¹⁵ model in Scotland, is a hospital-based violence intervention initiative launched by the Scottish Violence Reduction Unit in partnership with Medics Against Violence and the NHS. Navigators seek to stop the revolving door of violence in emergency departments. They complement medical staff by directly engaging and supporting those affected by violence, from young people involved in gangs to domestic-abuse survivors and those affected by issues such as addiction and self-harm, at a 'reachable' moment, when they may be open to behavioural change.

The Taskforce has funded a number of other navigator projects testing the model for individuals when they interact with new Mental Health Assessment Units, on release from prison and at various community settings within the justice system.¹⁶

¹⁴ Medics Against Violence, Pathfinder: <https://www.mav.scot/pathfinder-2/>

¹⁵ Medics Against Violence, Navigator: <https://www.mav.scot/navigator/>

¹⁶ Drug Deaths Taskforce [Taskforce work and projects | Drug Deaths Taskforce](#)

Drug Deaths Taskforce conclusions

The Drug Deaths Taskforce will continue to explore the use of navigators and peer support workers and make a recommendation on the best model for a national navigator service to support individuals to access treatment, including in justice settings.

In the interim period, the Scottish Government and territorial health boards should support the national expansion of the hospital navigator programme currently run by Medics Against Violence and the Violence Reduction Unit, taking a particular interest in substance use.

HARM REDUCTION

Safer Drug Consumption Facilities

What was said by respondents

There was significant support for Safer Drug Consumption Facilities (SDCFs) among respondents. Currently, staff working in justice and treatment services are able to provide advice and talk to people about safe injecting techniques to reduce the risk of harm. However, these staff are not currently permitted to actively demonstrate safe techniques on service users, or allow them to inject under their supervision.

Respondents generally agreed city centres were the best place for these facilities, although inequalities in communities can impact on service provision and consideration should be given to other locations and the use of mobile facilities where appropriate.

Respondents highlighted a range of potential benefits:

- SCDFs allow people to use in supervised conditions.
- They can help to reduce drug litter and improve community safety.
- SCDFs present an opportunities for service linkage, enabling people to access holistic support, resulting in wider health improvement and lasting treatment relationships.
- SCDFs can be especially helpful to hard-to-reach populations, particularly marginalised groups like the homeless community, people who are isolated, or others with limited opportunities for hygienic injection, including those living in an otherwise non-using household.

Respondents also highlighted some potential risks:

- There were also concerns of increased crime in the vicinity of SDCFs, although the evidence on such services elsewhere shows that this does not typically occur¹⁷.
- If the public are not supportive of the facilities, or they are rolled out without adequate community engagement and information, this could have the potential to increase stigma.

These concerns were seen as similar to those raised when residential rehabilitation facilities were first introduced. Public communication about these facilities would therefore be critical.

The following evidence from the Scottish Government study; International Approaches to Drug Law Reform¹⁸ was submitted by respondents as part of this engagement exercise.

“... the benefits of providing supervised drug consumption facilities may include improvements in safe, hygienic drug use, especially among regular clients, increased

¹⁷ Drug consumption rooms: an overview of provision and evidence European Monitoring Centre for Drugs and Drug Addiction (2015): https://www.emcdda.europa.eu/topics/pods/drug-consumption-rooms_en

¹⁸ Scottish Government (2021): <https://www.gov.scot/publications/international-approaches-drug-law-reform/>

access to health and social services, and reduced public drug use and associated nuisance. There is no evidence to suggest that the availability of safer injecting facilities increases drug use or frequency of injecting. These services facilitate rather than delay treatment entry and do not result in higher rates of local drug-related crime.”

“In the more than 18 years since [the Medically Supervised Injecting Centre in Sydney, Australia] opened, there have been more than one million injections supervised. In that time there has been 8000 overdoses – but there has not been one single death.”¹⁹

“Since it began, there has never been a death at Vancouver’s supervised injecting facility. Extensive evaluation has indicated that the facility decreases risk of fatal overdose, improves service user’s safe injecting practices, increases uptake of addiction treatment, and reduces public nuisance issues”

NHS Greater Glasgow and Clyde and Glasgow City Alcohol & Drugs Partnership sent details of its health needs assessment, which reviewed the health needs of people who inject drugs in public places in Glasgow city centre. The excerpt below covers their view on SCDFs based on a review of international literature and the local evidence gathering from stakeholders:

“The ‘Taking Away the Chaos’²⁰ (2016) report recommended the introduction and evaluation of a pilot safer injecting facility in Glasgow city centre to address the unacceptable burden of health and social harms caused by public injecting. The progression of a safer drug consumption facility is dependent on legal issues relating to breach of current statutory and common law prohibitions on the use, production, supply and possession of controlled drugs. The relevant legislation is reserved to the UK government, and it is highly unlikely that there would be any change in primary legislation in the timeframe required to address the public health needs identified in Glasgow.

At present a SDCF cannot be established unless there is either a change in the law or a change in current Scottish prosecution policy, by means of a prosecution waiver, coupled with strict enforcement of appropriate rules and protocols to address potential criminality or its facilitation. As the legislation in question is not devolved to the Scottish Government, it is anticipated that any change would require the support of the UK Government and would, if supported, potentially take some years to be enacted.

In light of the public health emergency and the urgent issues which this service aims to address, it is considered that the preferable route is a prosecution waiver from the Lord Advocate. This could be for a period with a view to informing a permanent legal solution should the service be deemed successful and desirable in the longer term. As well as allowing the service to be established, the legal permission will also allow the necessary protocols with Police Scotland to be established to ensure appropriate local policing practice to support the running of the proposed facility and close liaison between local Police Scotland colleagues and the managers and service leads. A previous request to the Lord Advocate for a prosecution waiver was rejected and the matter passed for consideration to the UK Government and rejected.”

¹⁹ Report on the Medically Supervised Injecting Centre, Sydney, Australia (2019)
<https://www.theage.com.au/national/nsw/lessons-from-the-heroin-injecting-room-20190115-p50rec.html>

²⁰ <http://www.nhs.gov.uk/your-health/public-health/reports/health-needs-of-drug-injectors/>

Many respondents felt that there was scope for more clarity from the authorities on what changes could possibly happen, and questioned whether there is room to act within the current legislative framework that is not being utilised. In particular, respondents asked questions in relation to the drug consumption van in Glasgow²¹ and its ability to operate to date.

While the Home Office has remained unwilling to make regulations under the Misuse of Drugs Act 1971 to allow for Safer Consumption Facilities, introduce specific legislation, or to devolve the powers that would allow the Scottish Government to act, respondents felt that all routes past this barrier should be explored. Respondents noted that other countries have navigated legal restrictions in order to respond to the demand and the evidence, and many countries that now have legal SDCFs got to that point through practice changing, often in legally ambiguous ways, before the law was updated.

It was highlighted that the Covid-19 pandemic led to substantial, rapid and sometimes radical health responses, and as drug deaths are a public health emergency some respondents felt they should be subject to the same intervention. Respondents called for a statement of prosecution policy, following the precedent set in the approach to naloxone distribution during the pandemic, ensuring no legal challenge or prosecution to the introduction of Safer Drug Consumption Facilities during the life of this drug deaths public health emergency or until a more permanent solution is found²².

Drug Deaths Taskforce assessment

Under the current legislation, the range of potential offences which may be committed, depending on the rules of the service, and the actual behaviours of both service users and staff, may include possession offences, 'Permitting or suffering premises to be used for certain prohibited purposes' or 'Incitement to commit a MDA offence'²³.

The evidence shows that SDCFs are known to prevent overdose deaths, lead to safer drug use practices and promote engagement with wider services. Evidence has consistently shown that they reduce a range of harms amongst the people who use them, including overdose deaths, and teach people safe injecting practices that reduce risky behaviour outside the facility as well. This point of contact can also be used to provide take-home naloxone to people likely to witness an overdose. The evidence shows SDCFs are effective at increasing uptake of addiction treatment, by providing a point of contact where information can be provided, and a non-judgmental environment that people will continue to come back to. Some SDCFs also provide low level healthcare for things like injection site infections or minor injuries, for people who may otherwise struggle to access mainstream clinics due to chaotic lifestyles^{24, 25}.

The Taskforce notes that countries have different legal systems and what is possible in one system cannot be lifted wholesale to the Scottish context. It is therefore vital that a tailored solution is found that works for Scotland.

²¹ The Pharmaceutical Journal: <https://pharmaceutical-journal.com/article/feature/the-man-and-his-illegal-van-trying-to-fix-glasgows-drug-problem>

²² COPFS Lord Advocates Guidelines Page 5: <https://www.copfs.gov.uk/publications/prosecution-policy-and-guidance?showall=&start=4>

²³ Misuse of Drugs Act 1971: <https://www.legislation.gov.uk/ukpga/1971/38/crossheading/miscellaneous-offences-involving-controlled-drugs-etc?view=plain>

²⁴ EMCDDA: Drug consumption rooms: an overview of provision and evidence (Perspectives on drugs): https://www.emcdda.europa.eu/publications/pods/drug-consumption-rooms_en

²⁵ EMCDDA: Report on drug consumption rooms: https://www.emcdda.europa.eu/html.cfm/index54125EN.html_en

It is worth noting that overdoses still occur in these facilities but the professional supervision and immediate access to oxygen and naloxone prevents these becoming fatal. The Taskforce is aware that in millions of consumptions in numerous facilities worldwide there has only ever been one fatality we are aware of, and many countries have operated these facilities for years with no deaths²⁶.

As outlined above the strength of SDCFs is the supervision by appropriately trained professional staff that enables them to intervene immediately in overdoses to prevent fatalities, but moreover, they provide an opportunity to engage individuals with wider health services who can provide interventions which may be lifesaving.

The Drugs Death Taskforce also notes the terms of motion passed by the Scottish Government on 17 June 2021 “that the resources of the police and justice system should be focused on supporting lifesaving, public health interventions and believes that all options within the existing legal framework should be explored to support the delivery of safe consumption facilities”

Drug Deaths Taskforce conclusions

The Drug Deaths Taskforce supports the introduction of properly resourced safer consumption facilities in Scotland. The Drugs Death Taskforce recommends that the UK Government consider a legislative framework to support their introduction. In the interim, the Scottish Government should explore all options within the existing legal framework to support the delivery of safer consumption facilities.

The Scottish Government should also consider increasing public understanding of such facilities to better inform the public, allay any concerns and build on the existing public support for the facilities.

Heroin Assisted Treatment

What was said by respondents

Prescribing heroin is legal and operational in Glasgow but many respondents felt this needs to be expanded. Heroin-Assisted Treatment (HAT) refers to the prescribing of injectable, pharmaceutical-grade diamorphine (heroin), which is then self-administered in a specialist outpatient facility under clinical supervision with strict safeguards. There is high-quality evidence to suggest that it can improve individual and social outcomes when provided as a second-line treatment for people with chronic opiate dependency²⁷.

Prescribing heroin for some dependent users, usually for use in clinics under medical supervision can be particularly useful for those that haven't, for a number of reasons, engaged or responded well with treatment through methadone or other medication.

Respondents felt that process for submitting a license application for HAT is overly complicated and resource intensive. At the moment there is one Enhanced Drug Treatment Service, which includes heroin-assisted treatment, in Scotland that is located in Glasgow City Centre. Respondents suggested that the ability to offer HAT alongside other Medication Assisted Treatment should be more widespread and that any remaining barriers to the provision should be removed.

²⁶ Journals of Substance Use ,Page 2:

https://www.researchgate.net/publication/303522332_Similar_Problems_Divergent_ResponsesDrug_Consumption_Room_policies_in_the_UK_and_Germany

²⁷ https://www.nhs.gov.uk/media/238302/nhs.gov.uk_health_needs_drug_injectors_full.pdf

Drug Deaths Taskforce assessment

To make HAT more accessible, licensing requirements could be reviewed. At the moment, applications for premises are sent directly to the Home Office. Once that application is approved and a site licence issued by the Home office an application can be made to the Scottish Government by the health board for a prescriber licence separately. This adds a layer of bureaucracy to the licencing process that makes applying for a licence complicated. There are additional risks that where licensing arrangements are not joined up a service may be unsuccessful in one application with one Government and successful in the other. This may lead to wasted resources for services and reduce an organisation's willingness to invest time and resource to navigate the current licensing processes, acting as a barrier to service provision and impact on the planned expansion of HAT.

The benefit of HAT is that it is an effective, evidence based clinical intervention of particular benefit for those who have not managed well on existing options. HAT is an intensive option but could still be expanded beyond the current one site in Glasgow.

Drug Deaths Taskforce conclusions

The Taskforce recognises the strong clinical evidence base supporting the use of HAT and the opportunities for additional benefits in relation to removing patients from the illegal market. The Scottish Government should explore how they can promote the accessibility of Heroin Assisted Treatment by, for example, issuing staff training guidance, identifying suitable premises and making extra funding available for staffing and other costs.

In particular we support the devolution to Scotland of licensing for HAT premises to allow the single-office co-ordination of licensing for both premises and prescribers which will minimise bureaucracy.

Drug Checking Facilities

What was said by respondents

Where drug checking facilities were discussed, respondents were unanimous that this is a critical tool that should be available in Scotland. They felt that where people are accessing clean injecting equipment, or other support for drug related issues, specialist staff should be able to test substances and provide information to reduce harm. They highlighted that in this way current drug trend data could be used for real time drug alerts.

Drug checking should be available in ways that do not stigmatise and are easy to access. It was felt that this could have a huge impact on drug death and non-fatal overdose rates. Limits on the availability of drug checking facilities restricts intelligence sharing and the provision of harm reduction advice being provided, which could help people use drugs more safely.

Respondents felt that authorities should be doing more to make these facilities widely available to those working with people who use drugs and highlighted anecdotal challenges with accessing licensing for these services.

Drug Deaths Taskforce assessment

The use of street benzodiazepines was highlighted as particularly problematic in Scotland. These are implicated in 64% of drug related deaths in 2019²⁸ and pills can be variable in quality and strength. A service that checks a pill's chemical makeup, allowing people to

²⁸ NRS Drug Related Deaths in Scotland in in 2019 (page 3): <https://www.nrscotland.gov.uk/files//statistics/drug-related-deaths/2019/drug-related-deaths-19-pub.pdf>

make informed decisions, could help reduce the risk to those using a range of substances, including 'street valium', heroin, New Psychoactive Substances and other drugs.

It was also noted that there have been drug testing services at festivals, clubs and pop-up city centre sites in England and across Europe for a number of years. Community justice and health settings in Scotland are not currently permitted to test substances on behalf of service users or utilise services, such as Public Health Wales WEDINOS²⁹, without committing an offence under the Misuse of Drugs Act 1971³⁰.

The Home Office granted its first licence for a trial testing service in 2019. The Drug Deaths Taskforce are currently supporting a two-year project (2020-2022) that aims to directly address two of the Taskforce's evidence-based strategies to help reduce drug-related deaths: targeting people most at risk, and optimising public health surveillance. The project is conducting research into the barriers currently experienced in establishing drug checking services. Alongside this research the project team are working with three areas across Scotland (Glasgow, Dundee and Aberdeen) to prepare for the implementation of drug checking facilities. This will help the Taskforce to understand how a more open, transparent and accessible licensing process from the UK Government to support lifesaving projects is required. This could be supported by an appropriate digital infrastructure allowing quicker real time information to be shared.

The variability of quality and strength in illicit drugs makes it impossible for people to judge how much to safely take without a drug checking service, increasing their risk of overdose. Drug checking services should be widely available to support harm prevention where needed. However, as outlined on the section of this report around Tolerance Zones, any drug checking service will need to be carefully balanced with the need for operational independence for police officers to respond to both concerns from members of the public and to any potential criminal offence they witness.

Drug Deaths Taskforce conclusions

Drugs checking facilities may have an important role in empowering individuals to make safe choices. They also potentially provide an early warning system. The Drug Deaths Taskforce recommend the Scottish Government work with the Home Office to review the current drug licencing regime to ensure that it is open, transparent and accessible, in line with a health based approach.

The Scottish Government should support drug testing nationally and work with local services to ensure it is available to those that need it most, at the point of need. This should be aligned with developments in digital technology

Drug Paraphernalia

What was said by respondents

Many respondents highlighted that drug treatment services including Injecting Equipment Provision should be allowed to supply all items necessary for safe injecting and related drugs paraphernalia.

Respondents highlighted that due to the restrictions on providing drug paraphernalia people will often use makeshift and inadequate alternatives, and the ability for services to provide clean, adequate equipment and paraphernalia would reduce harms. Respondents called for it to become legal to provide a full range of equipment for harm prevention, including but not limited to:

- Cut out straws could be provided at large events including festivals.

²⁹ WEDINOS: <https://www.wedinos.org/>

³⁰ <https://www.legislation.gov.uk/ukpga/1971/38/contents>

- Scales to measure doses;
- Implements to promote safer inhalation;
- Tourniquets to facilitate safer injecting;
- Crack pipes (the use of makeshift pipes can increase lip trauma and increase the risk of blood borne viruses);
- Wooden sticks (to prevent metal screens coming loose in pipes and to prevent makeshift push sticks melting or causing harm);
- Filters or suspension devices (makeshift devices can be inhaled causing respiratory damage).

Drug Deaths Taskforce assessment

At present, only certain authorised people can provide a number of specified items used when taking drugs, under the Misuse of Drugs Regulations 2000. Anyone else who provides items that are not on that list, but are intended for use with illegal drugs, may be in breach of section 9A of the Misuse of Drugs Act 1971.

Staff in services highlighted the inconsistency under the current legislation (specifically section 9A of the Misuse of Drugs Act 1971³¹), and that retail outlets can legally sell items which could be used to consume drugs, as it can be claimed, at the time of sale (as in the case of pill presses), that the seller did not know that the item would be used for illegal drug use.

The list of items of equipment that could be included is not exhaustive and a fuller engagement with the medical and drug treatment profession, and people who use drugs, would be required to develop a business case for change. However, there are significant challenges with trying to list all the possible options, therefore a more open regulation would be preferred giving flexibility to services to provide paraphernalia for harm prevention.

Drug Deaths Taskforce conclusions

The Taskforce recognises the harm reduction benefits of providing additional drug paraphernalia and would call on the UK Government to amend the Misuse of Drugs Act 1971 or Misuse of Drugs Regulations 2000 to allow for the legal provision of all drug paraphernalia through harm reduction and treatment services, to enable safe drug consumption.

In the interim, the Scottish Government should explore all options within the existing legal framework to support the provision of drug paraphernalia by harm reduction and treatment services, to enable safe drug consumption. This should be considered as part of the second phase of this work.

Naloxone

What was said by respondents

Many respondents highlighted how Scotland has led the way in developing local and national naloxone supply schemes that have made a significant contribution to reducing harm, and represent what is possible within the existing framework. The Lord Advocate has issued a statement of prosecution policy, enabling any more services working with people at risk of an opiate overdose to register and supply naloxone for use in an emergency to save a life, during the COVID-19 pandemic. Respondents were positive about this intervention and felt this demonstrates the ability of our legal system to adapt in the face of crisis. They believed that, even out with the current pandemic, the number of unnecessary and avoidable drug related deaths represents its own crisis, and as such, the current position should be made permanent, either through amendments to the current legislation or an extension of

³¹ Misuse of Drugs Act 1971 section 9A: <https://www.legislation.gov.uk/ukpga/1971/38/section/9A>

the statement of prosecution policy for the life of the public health emergency on drug related deaths.

Drug Deaths Taskforce assessment

Clinicians explained that naloxone remains a Prescription Only Medicine (POM) under UK Human Medicines legislation. Changes have been made to extend the prescribing rights for this POM to a wide range of groups who would not normally be able to prescribe POMs. However, as the drug remains a POM it is subject to additional controls that restrict the easy access to stocks of the drug, even though prescribing rights have been relaxed. In view of the extensive experience in Scotland of supplying naloxone, its safety profile and the need to expand access to this drug, consideration should be given to relaxing the classification status to Pharmacy Only (P) or General Sales List (GSL). It was thought that the classification of Prenoxad may be unlikely as all injections are POMs in the UK, but there may be more opportunities with the nasal spray, Nyxoid.

We are aware that the UK Government are currently considering changes to the law to allow extended provision of naloxone, and are currently running a consultation on this. Respondents were clear that any changes must be at least as wide ranging as the current statement of prosecution policy to ensure that none of the lifesaving initiatives that have been developed during the pandemic are lost.

Drug Deaths Taskforce conclusions

The Drug Deaths Taskforce is clear that any remaining existing legal barriers to wider access and administration of naloxone should be removed. The Drugs Death Taskforce support the reclassification of naloxone to make it easier to provide supply. The Scottish Government should work with the UK Government to update the UK Human Medicines legislation to relax the classification of naloxone to Pharmacy Only or General Sales List, particularly for Nyxoid.

In the absence of a full reclassification of naloxone, the Scottish Government should work closely with the UK Government to ensure that the changes planned reflect the breadth of the existing statement of prosecution policy in Scotland.

In the interim, the Scottish Government should also engage with the Lord Advocate in relation to the extension of the current statement of prosecution policy.

FAMILIES

What was said by respondents

A Drug Law Reform workshop for families was hosted by the Drug Deaths Taskforce Family Reference Group on 12 March 2021. Family members represented various different areas of Scotland and family situations and the subsequent report was submitted as part of this engagement exercise.

Family members felt there is an inconsistency in Scotland between the public health approach to substance use and harms, and the impact of drug laws.

“Most of the tripwires that affect the people that we’re talking about is when the utter chaos of their day to day life becomes problematic. Now there isn’t a medication for that, it’s compassion, it’s reaching out to people. ... We have a cultural problem in Scotland that we are trying to fix with a medical and legal response, and it’s just not working”.

Families' experiences of being excluded from their loved one's treatment and care were echoed in their experiences of being excluded by the justice system, with decisions made without any recognition of the impact on the family.

"Families are excluded at every point of the criminal justice system. Families are still sitting on the outside"

Family members felt the vicious cycle of people having to supply drugs to fund their own drug use is not recognised or addressed through a justice-based approach. In many cases, it had created a progression to more serious drug use and harm, for example where the person ended up in custody.

"But actually even twelve months [in prison] or whatever is traumatic and it changes people. For some people it might not be big change, but for others it can be a life changing experience and a traumatic experience. So they then have a trauma to deal with."

Families also shared their own experiences of getting involved in criminal behaviour to protect their loved ones.

"That was the first time I'd ever told lies to the police, but I thought no, I've done the right thing, because they would have arrested him, put him in prison and he wouldn't have got into recovery. It's dreadful that parents and people are put in the position they are put in."

Family members concluded *"We'll just keep on fighting for change"* and made seven recommendations for consideration by the Drug Deaths Taskforce. These recommendations and the full consultation response and recommendations can be accessed on Scottish Families Affected by Drugs website³².

Drug Deaths Taskforce assessment

The engagement and response from the Family Reference Group was extremely detailed and set out some important issues for consideration. The group highlighted the importance of seeing substance use as a health issue with a public health response, even within the justice system. They highlighted the need to have options for treatment, support and recovery at every stage of the justice system. The Taskforce supports access to treatment and support at every stage of a person's journey and have funded a number of new approaches to support future recommendations.

The Reference Group highlighted the need for justice professionals to take a trauma informed approach, recognising that the system itself can be traumatising. They flagged a need for a distress intervention approach wherever there are substance use or mental health issues. In particular they highlighted the need for training in these areas and for the Stigma Strategy, published by the Taskforce in 2020, to be adopted by all justice organisations.

They also flagged the need for family inclusive practice. The Taskforce supports engaging family members at every stage and has benefitted from the input provided by families in our own work. There is a fine balance needed in this process between an individual accessing the full range of support available including through family members, and in maintaining that individual's rights to privacy and control over their own care. This will need to be managed carefully by justice organisations in partnership with family representatives. However, the Taskforce notes that this is regularly managed within a health and social care setting, and

³² SFAD, Family Reference Group, Drug Law Reform:: [210325-FINAL-Response-from-DDTF-Family-Reference-Group-to-Drug-Law-Reform-Consultation.pdf](https://www.sfad.org.uk/210325-FINAL-Response-from-DDTF-Family-Reference-Group-to-Drug-Law-Reform-Consultation.pdf) (sfad.org.uk)

the processes developed there, including a presumption of family involvement, could be drawn on in justice settings also.

Drug Deaths Taskforce conclusions

The Drug Deaths Taskforce welcomes the engagement with this review from family members and feel this reflects strongly the direction and ambition of the Taskforce. We will continue to learn from the projects funded and will make further recommendations on options for treatment, support and recovery. The Taskforce recommends the Scottish Government works with justice partners to support the adoption of the Stigma Strategy, trauma informed and family inclusive practice and the adoption of distress based interventions.

DISPENSING AND PRESCRIPTION FORMS

What was said by respondents

Medical professionals outlined how the original regulations 15/16 of the Misuse of Drugs Regulations 2001³³ were introduced before there was any widespread OST instalment dispensing, computer generated prescriptions, pharmacist and nurse prescribers or electronic transfer of prescriptions. There have been concerns raised over the regulations lack of flexibility and the reported impact on patient care and additional burdens for prescribers.

Amendments have been made to try and address some of these issues. In response to the acknowledged practical difficulties with missed collection of doses and both planned and emergency pharmacy closures, specific Home Office approved wording to be added to prescriptions was introduced (S.I 2015/891 2015). These changes were intended to give pharmacists a degree of flexibility in dispensing. Pharmacists must be satisfied that the prescribers' intentions are clear, and can only make the supply if the approved Home Office wording has been added to the prescription in advance.

However, the barrier remains that pharmacists can only act in the patient's best interest if the Home Office wording has been added in advance to the prescription. This prevents pharmacists from exercising the flexibility required to provide a service that is fully centred on the immediate needs of the patient and restricts the pharmacists' ability to exercise their professional judgment. It is known that engaging and maintaining people in treatment is a protective factor in preventing drug related deaths. Prescription forms can often become illegible, or unreadable by scanners at pricing stages, due to the scale of additional information and caveats required. However, pharmacists cannot dispense prescriptions that are not fully compliant with the regulations even when the prescriber's intentions are clear and unambiguous. In addition to not being able to exercise professional judgement, the pharmacist can't accept clarification by phone or an electronic amendment. The time taken to rectify or clarify prescriptions can cause delays lasting days for patients.

The Royal Pharmaceutical Society called for an urgent review to look at the current legal framework on the dispensing of controlled drugs by community pharmacists. This review should involve the Royal Pharmaceutical Society, General Pharmaceutical Council and other relevant professional and governing bodies of the prescribing professions. This should seek to understand the problems and explore potential solutions including the possibility and implications of:

- (a) relaxing the restrictions on pharmacists amending errors and omissions and allowing them to amend instalment prescriptions after contacting the prescriber.
- (b) remove the requirement for the Home Office approved wording to be contained in the body of the prescription and allow the pharmacist to make a professional judgement on

³³ The Misuse of Drugs Regulations 2001: <https://www.legislation.gov.uk/ukxi/2001/3998/contents/made>

appropriate supply to cover planned and unplanned emergency pharmacy closures and missed dose situations.

Drug Deaths Taskforce conclusions

The Drug Deaths Taskforce would support the call for a review of the regulations on prescriptions to take account of the changes since the initial regulations were implemented in 2001. We would call on the UK Government to work with the outlined partners in delivering this urgent review.

Supply Disruption for Controlled Drugs

What was said by respondents

Medical professionals highlighted that three temporary emergency measures have been introduced by the UK Government into legislation³⁴ as a result of the Covid pandemic. These new measures are not immediately implemented but can be enacted at the request of the relevant Minister and may be introduced where there are severe disruptions to the supply of controlled drugs. The aim of these emergency measures is to ensure continuity of treatment if supplies are disrupted.

Drug Deaths Taskforce assessment

This was highlighted as something which would help the sector to continue to deliver controlled drugs needed to protect some of the most vulnerable members of society, in the case of other civil contingencies. It was seen as a successful test of new measures and would be supported by the sector for other emergency disruptions.

Drug Deaths Taskforce conclusions

The Drug Deaths Taskforce recommends that the UK Government extends the temporary Covid-19 measures put in place to support the resilience of medicine supplies and treatment continuity allowing Scottish Ministers to implement an immediate response to local emergencies within the existing legal framework.

EQUALITY ACT 2010

What was said by respondents

Respondents felt that the exemption of drug dependence within the Equality Act 2010 limits their ability to fully exercise their duties under the Equality Act 2010, they highlighted that the solution was to remove this exemption. They felt this exemption was inconsistent and contradictory. Highlighting that the exemption is justified for the purpose of preventing discrimination against disabled people, while instigating a culture of fear towards people who use drugs and exacerbating stigma. Adjustments that might be offered to other groups, e.g. those with a mental health diagnosis, are not afforded to those seeking support for drug dependency, for example appointments later in the day could be offered to someone with a mental health condition as a reasonable adjustment under the Equality Act, but not for a person who uses drugs. In this example, missed appointments could result in sanctions, for the person seeking drug dependency treatment, having a negative impact on patient outcomes and leading to treatment being withdrawn.

Drug Deaths Taskforce assessment

The Equality Act 2010, in keeping with the Disability Discrimination Act 1995, excludes those identified as drug and alcohol 'addicted' from the scope of provisions prohibiting

³⁴ The Misuse of Drugs (Coronavirus) (Amendments Relating to the Supply of Controlled Drugs During a Pandemic etc.) Regulations 2020: <https://www.legislation.gov.uk/uksi/2020/468/contents/made>

discrimination against disabled people. This exemption is set out in S3.1 of the Equality Act 2010, (Disability) Regulations 2010.

A study by Flacks in 2012³⁵ looked at the significance of, and justification for, this exclusion, concluding “the continued, express exclusion of drug and alcohol addicts from UK disability discrimination legislation reinforces their marginalised status, and reproduces their inhumanity”. It stated that “Both systems of disease classification and human rights law support the inclusion of substance dependence within disability rights legislation, although the sociology of substance use and dependence sheds light on the reasons for the exclusion”. It found that the inclusion of substance use and dependence in equality legislation would better match the social model of disability, preferred by disabled people, which frames disability by the construction of disadvantage in society rather than placing blame on the individual.

The Drug Deaths Taskforce is supportive of the removal of this exemption and alignment of drug dependency with other impairments accepted as part of the social model of disability, but recognise the potential for unintended consequences through the removal of this exemption. This therefore should be explored in greater detail to determine whether this exemption is best serving people who suffer from addiction.

Drug Deaths Taskforce conclusions

The Drug Deaths Taskforce supports a review of the exemption is set out in S3.1 of the Equality Act 2010, (Disability) Regulations 2010 to explore the impact of this exemption and whether it best serves people suffering from addiction, and what the implications of removing it and making addiction a protected characteristic would be. The UK Government should conduct this review with a view to removing the exemption, and if it is upheld the reasons for doing so should be clearly articulated.

REFORM OF THE MISUSE OF DRUGS ACT 1971 Scottish Drug Policy Conversations Event

The Scottish Drugs Policy Conversations is a space for people with varied viewpoints and different experiences of drugs and drugs policy who wish to learn from this diversity, and influence future developments within Scotland. On the 26 February 2021, thirty participants with backgrounds in law, policing, academia, politics, health, social care, education, statutory bodies, voluntary services and lived experience of their own or a family member’s drug misuse met to discuss “The Misuse of Drugs Act – is it right for Scotland”.

It concluded that:

- The Misuse of Drugs Act 1971 is not fit for purpose and should be replaced.
- The Act has little impact on availability but has a severe impact on the life chances of a population of people already typically suffering from multiple disadvantages. As such, interaction with the criminal justice system may exacerbate mental health problems, increase homelessness, break up families and increase violence.
- The current law is about retribution rather than rehabilitation, and about catching criminals rather than prevention. It is also very broad, so as to catch as many people as possible in relation to drugs.
- These contradictions are so stark that the Act should be replaced by a fundamental and radically different approach, developed through a public health lens.
- Drug users and low-level dealers should be removed from a criminal justice approach to one supporting their mental, physical and social wellbeing.

³⁵ University of Leading the Way, Westminster Research: [Flacks 2012.pdf \(westminster.ac.uk\)](https://www.westminster.ac.uk/research/flacks-2012.pdf)

The full report and all recommendations from the Scottish Drug Policy Conversations event can be accessed under documents on the SDPC website³⁶.

Crew Survey

Survey exploring the impact of drug legislation in Scotland: The third sector organisation Crew conducted a survey in February 2021, exploring the impact of drug legislation in Scotland. Based on 154 responses from self-selecting members of the public, they found that:

- 92% of respondents did not think that the Misuse of Drugs Act was fit for purpose.
- 89% of respondents thought that the current legislation led to an increase in harm.
- 10% thought that it neither increased nor decreased harm.
- 1% of respondents thought that the current drug legislation prevented harm.
- 70% would be concerned about disclosing illegal drug use when accessing treatment for other health conditions.
- 59% have been concerned that they would receive different treatment if they disclosed the use of controlled drugs.

The full results of the survey, comments and further insights into the impact on health or access to treatment are displayed on the Crew website³⁷.

Reform of the Act

What was said by respondents

Many respondents reflected that the Misuse of Drugs Act 1971 is incompatible with a public health response to problematic drug use. In a public health approach, the starting point is asking “what has happened to you” as opposed to “what have you done”. A large number of respondents felt that although the current legislation contains elements of flexibility to adapt and allow harm reduction responses, the legislation is rooted in an outdated view that drug use can be prevented in all instances, results from personal failure, and must be punished.

Respondents reflected that the Act is not suited to addressing the unique circumstances faced in Scotland. Understanding of problematic drug use has shifted since the 1970’s and the evidence base on what is effective in preventing and responding to harm has advanced significantly.

Respondents felt that rather than punishing, a public health approach to problematic drug use allows public systems to intervene early, redirecting more people to get the support they need and address the drivers of problematic drug use. It was noted that this is not about excusing crime, or protecting people from accountability for harm done; rather this is acknowledging that there is a better way to prevent and address drug related crime. Hard Edges Scotland detailed how some people considered involvement in the justice system as often like the ‘golden ticket’ for people with drug issues and the only way to access the support and treatment that they need.

“...certain people go out intentionally to break the law, so they can go inside...I mean some of them in that situation see prison as the only solution for them to be able to go and get help...a few weeks ago she said she was actually thinking about going out and committing a crime, so she would be arrested.”³⁸

³⁶ <https://www.sdpc.org.uk/>

³⁷ www.crew.scot/survey-results-drug-law-21

³⁸ Hard Edges Scotland (2019) Lankelly Chase Pg. 211

By viewing substance misuse as a public health issue not a justice issue, there are many aspects of someone's life to consider³⁹. We need to understand the barriers to accessing treatment, as well as the relational challenges, inequality, deprivation, trauma, and multiple complex needs people who use drugs typically experience. We need to address issues such as homelessness and barriers to work, thinking holistically about the individual.

For these reasons the majority of respondents thought that the Misuse of Drugs Act 1971 required urgent reform, as outlined by the House of Commons Scottish Affairs Committee inquiry into Problem Drug Use in Scotland⁴⁰. Many reflected on the UK Government response to this report and their reluctance to change the law, and for this reason many called for the legislation to be devolved, to enable a Scottish specific solution and public health approach if this reluctance remains.

While overwhelmingly supportive of reform, respondents were clear that the legislative framework isn't the only factor slowing progress and alongside the longer term aim to reform legislation, there is a need to focus on what change can be affected now. There were calls for the Scottish Government to act with courage and demonstrate leadership in taking these forward.

Drug Deaths Taskforce assessment

Respondents to this engagement exercise were selected for their expertise in drug and alcohol services, their intersection with justice services or for their lived experience. The respondents are not legal experts and were asked to outline the barriers to adopting a public health approach from their experience. As a result they generally did not outline specific sections of the Act which are the cause of these barriers. However, the message that was repeated by almost all respondents was that the Act is incompatible with a public health approach. They supported a root and branch review of the Act to make it fit for the modern day.

The Misuse of Drugs Act 1971 was written 50 years ago for another time with different challenges. The Act has failed to move with the times and transition as new evidence has improved our understanding of dependence. It has been highlighted that some drugs in classes A and B have lower levels of harm than legal substances like alcohol and tobacco, while drugs like illicit benzodiazepines that increasingly contribute to more and more deaths⁴¹ are still classified as Class C. The evidence is clear that the Misuse of Drugs Act is in urgent need of review to meet the needs of a public health approach.

Research showing that criminal sanctions exacerbate harm and can undermine efforts at harm minimisation⁴² was submitted as part of this engagement exercise. A Scottish Government review of the international evidence concluded that most drugs used at appropriate doses do not inherently cause large amounts of harm when used recreationally, the vast majority of harm arises from dependence⁴³. However, the law does not distinguish between use and misuse. Many young people experiment with drugs in their early and mid-teens, hazardous use starting in the late teens or early twenties, and consumption tending to

<https://lankellychase.org.uk/resources/publications/hard-edges-scotland/>

³⁹ [COSLA-Response-Drug-Deaths-Consultation-Feb-2021.pdf](https://www.gov.scot/publications/cosla-response-drug-deaths-consultation-feb-2021/pdf/)

⁴⁰ <https://publications.parliament.uk/pa/cm201919/cmselect/cmsscota/44/4402.htm>

⁴¹ ⁴¹ <https://drugdeathstaskforce.scot/scotland-s-unique-challenge/tackling-benzodiazepines/>

⁴² International Approaches to Drug Law Reform (2021) *Scottish Government*: Pg. 53:

<https://www.gov.scot/publications/international-approaches-drug-law-reform/>

⁴³ Ibid: Pg. 3

reduce from mid-twenties onwards⁴⁴. There are a wide range of biological and social factors that influence whether drug use becomes problematic, and the legal framework can be one of those factors.

An international survey of drug users found that those from countries with a strong prohibition-based drug policy reported a far greater propensity to seek help following the introduction of more permissive policies. The main reason for the change in help-seeking behaviour cited was the reduced fear of criminal sanctions⁴⁵. This is important because being in treatment is known to be protective against death for people who use drugs problematically, and increasing uptake of treatment can therefore decrease the rate of drug related deaths.

The current system, with drugs governed by criminal law rather than a regulated market, encourages interaction with the criminal world, increasing the risk of harm. Criminalising young people, in particular, can make it harder for them to move away from drug use and hinder efforts to tackle the underlying causes of dependence. Although the Rehabilitation of Offenders Act 1974 does allow for certain convictions to become 'spent' after a specified period of time.

As was outlined in previous sections, respondents were clear that incarceration is ineffective at breaking the cycle of addiction and reoffending, that policing can serve as a deterrent to effective treatment, and criminalising individuals can do more harm than good. There was clear support for a range of harm prevention measures, diversion from prosecution and measures to remove individuals from harmful interactions with organised crime and illegal markets. The Taskforce heard from family members and service providers of the fear that the Misuse of Drugs Act creates by criminalising individuals for trying to help people who use drugs. Many highlighted that the Act itself creates trauma, stigma and harm, preventing evidence based approaches proven to reduce harm and save lives. All of this supports the argument that the Misuse of Drugs Act 1971 is outdated and in desperate need of reform.

Health professionals highlighted that in addition to supply and possession, the Act also covers the legal framework for pharmaceutical drugs, and the whole Act cannot be simply discarded. This supports a wider review to assess such a wide ranging Act.

Drug Deaths Taskforce conclusions

The Drug Deaths Taskforce supports a root and branch review of the Misuse of Drugs Act by the UK government, taking a public health approach, and reforming the law to support more harm reduction measures.

If the UK Government are not willing to reform the Misuse of Drugs Act, it should commit to exploring all available options openly with the Scottish Government to enable Scotland to take a public health approach to address their unique challenges with drug deaths.

Meanwhile the Scottish Government should do more to maximise flexibility under the current legislation.

⁴⁴ Pathways to Problems: Hazardous use of tobacco, alcohol and other drugs by young people in the UK and its implications for policy (2006) Advisory Council on the misuse of Drugs
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/119053/Pathwaystoproblems.pdf

⁴⁵ International Approaches to Drug Law Reform (2021) *Scottish Government* Pg. 53
<https://www.gov.scot/publications/international-approaches-drug-law-reform/>

DECRIMINALISATION, REGULATION, LEGALISATION

What was said by respondents

In this engagement phase, respondents were asked about three different options for major changes to the law:

- Decriminalising drug possession for personal use: Full removal of criminal sanctions. Production and supply remain crimes.
- Decriminalising drug possession for personal use: Replacing criminal with non-criminal sanctions. Production and supply remain crimes.
- Legalising and regulating the market for certain drugs.

Respondents to this engagement exercise were broadly supportive when discussing decriminalisation and legalisation. There was, however, a general feeling that further consultation was needed to understand the realities and options for implementing such a change, and to explore public attitudes towards decriminalisation and legalisation. Participants did not support administrative fines and other non-criminal sanctions, where these did not relate to mandated treatment. This position is supported by international evidence⁴⁶ that civil fines may undermine many of the benefits of decriminalisation, be equally punitive on individuals, and can also lead to net-widening in policing, unintentionally causing more people to be formally processed.

Respondents noted that there is no conclusive evidence to suggest that coercing people into treatment is effective in the long term. Often, treatment requires significant preparatory work between a professional and the person being treated to reach a mutual understanding of their underlying problems and develop their readiness to change. This is done before expecting them to begin reducing their drug use and eventually abstaining fully. This process is not possible in the context of a criminal justice system that expects high degrees of compliance from the first engagement. While criminal justice-led interventions can have positive outcomes for some, it is not because they coerce people toward change. Instead, participants shared experiences of circumstances where professionals have taken the time to be interested in individuals' lives and have provided respect and care.

Below are the views of respondents on the benefits and risks of each approach, as well as caveats and considerations that would need to be taken into account.

Decriminalising drug possession for personal use: Full removal of sanctions. Production and supply remain crimes.

Respondents highlighted a number of examples of countries that have decriminalised some drugs and have lower drug-related death rates than the European average. In one example the social costs of drug use in Portugal decreased by 12% in the five years following decriminalisation. Decriminalisation has been found to reduce overall re-offending⁴⁷ and depenalisation has also been seen to lead to an increase in people seeking voluntary treatment for drug use problems.⁴⁸

Most respondents preferred the removal of all sanctions, rather than replacing criminal with alternative civil sanctions, pointing out that people may not comply with the non-criminal sanctions, which would result in criminal sanctions anyway. This might include fines which

⁴⁶ International Approaches to Drug Law Reform (2021): <https://www.gov.scot/publications/international-approaches-drug-law-reform/>

⁴⁷ (<https://harmreductioneurasia.org/wp-content/uploads/2019/07/Hughes-et-al-ISSDP-2019-Models-for-the-decriminalisation-depenalisation-and-diversion-of-illicit-drug-possession-FINAL.pdf>)

⁴⁸ <https://harmreductioneurasia.org/wp-content/uploads/2019/07/Hughes-et-al-ISSDP-2019-Models-for-the-decriminalisation-depenalisation-and-diversion-of-illicit-drug-possession-FINAL.pdf>

people struggle to pay, consequently up-tariffing people within the justice system when they default. If drug use is to be treated as a public health issue, non-criminal sanctions will continue to stigmatise people who use drugs, increasing their social marginalisation and reducing their likelihood of seeking support. This was seen as a reason to support the total removal of sanctions.

Respondents highlighted a range of potential benefits to removing all sanctions:

- A more supportive approach based on individual's needs.
- Removing the stigma of criminality from drug use, encouraging a public health focus on root causes, vulnerability and trauma. Stigma currently prevents many people from asking for help, accessing support, speaking to family and providing frank information to their healthcare providers.
- Savings for the justice system in both time and cost reductions. By removing offences and supporting people with drug dependency, police and prosecution resources can be better allocated, and the prison population is likely to be reduced. These savings can support the necessary increased investment in other health interventions and community justice priorities.
- Greater equality, as homeless people are at higher risk of criminalisation, through having no private place to use drugs safely without being criminalised.
- Remove the impact of a criminal record for drug offences, improving people's life chances and ability to access employment and housing, which are desirable in and of themselves, and also likely to improve the probability of someone recovering from dependence. This, as well as improved access to support, may break the cycle for some repeat offenders who are in and out of prison.
- Increase the opportunities for someone to access support, for example instead of criminalising people, the police could refer to treatment, and by having a safe space, people could be offered support.
- Research into the effects and harms of controlled drugs can be expanded. This may help with treatment and support, but also more broadly support advancement in treating physical and mental health conditions in people who use drugs.
- Lead to better relationships between vulnerable people and the police. Some people who use drugs mistrust the police and will not engage for fear of criminalisation, including when they themselves are a victim of crime.
- Removing criminality from drug use may lead to fairer policies and risk assessments relating to children and families.

Respondents highlighted a range of potential risks:

- Potential for increased drug use and risky behaviours. Theoretically criminality may deter some people from drug use, or from certain risky behaviours related to it. However, it is worth noting that the clear consensus in the international literature on drug law reform is that decriminalisation is not associated with increased usage.⁴⁹
- Only decriminalising possession could increase demand for drugs from a market that remains operated by organised crime. This may increase debt and criminal activity related to drug use. Again, the international evidence does not support the expectation that demand would significantly increase, but even if it remains stable, it will also remain in the hands of organised crime unless the supply side is also reformed.
- There is still no quality control for the drugs, and risks remain without adequate drug checking and treatment options.
- There would still be crimes committed to fund the purchasing of drugs therefore drug related offences will remain an issue.

- Decriminalising for personal supply could lead to the exploitation of vulnerable people to carry small amounts of drugs for dealers.
- Buying in bulk is cheaper so could result in people being charged with supply when they are in fact purchasing a personal supply intended to last them a longer period of time. This would need careful consideration in the design of any new law.

Decriminalising drug possession for personal use: Replacing criminal with non-criminal sanctions. Production and supply remain crimes.

Respondents were very clear that this would not be a preferred option. Of the three options outlined above this was the only option that received a strong rejection from respondents, with more risks highlighted than benefits. The experience internationally was seen as an argument against non-criminal sanctions, however there was some support for recovery based sanctions being implemented, including referrals to treatment and support.

Respondents noted some potential benefits:

- Non-criminal sanctions such as testing orders or other recovery based sanctions could be positive alternatives to criminal sanctions and encourage engagement in services. However, testing orders need to be flexible and based on a realistic understanding of the treatment and recovery process, recognising that to be effective people need to have the chance to fail without being immediately breached and up-tariffed.
- Fewer people would have a criminal record and the stigma around drugs may reduce.

Respondents highlighted a range of potential risks:

- When considering replacing criminal sanctions with non-criminal sanctions, a number of respondents highlighted examples where this has led to a more punitive system than existed within criminalisation⁵⁰. In part, this is due to the effect known as “net-widening”, where making it easier to process people for low level offences means more people who may otherwise have benefited from police discretion are instead formally processed.
- Those who cannot comply with non-criminal sanctions can find themselves pushed into the criminal justice system via other routes, especially if the consequence of non-compliance is more severe than the previous criminal sanction for the offence would have been. Administrative fines may also be just as punitive as criminal sanctions for those in poverty.
- As many people who become dependent on drugs are already living in poverty, and marginalised groups (including ethnic minorities and those in deprived areas) are more likely to be policed, financial penalties could lead to increased inequality.

Legalising and regulating the illegal drugs market for certain drugs.

Respondents reflected that drugs are illegal because many are dangerous. However, people continue to sell and use drugs despite this, and illegality contributes to increasing that danger in a number of ways, including the lack of quality control in an illegal and therefore unregulated market. In balancing these issues against one another, society must consider methods of supply, cost and disposal of equipment.

Respondents were more mixed in their support of legalisation and regulation, but many highlighted that alcohol and tobacco are dangerous while heavily regulated and legal. The research evidence shows that some illegal drugs (such as cannabis or LSD) are in fact less

⁵⁰ A Quiet Revolution; Drug Decriminalisation Across the Globe:
<https://www.release.org.uk/sites/default/files/pdf/publications/A%20Quiet%20Revolution%20-%20Decriminalisation%20Across%20the%20Globe.pdf>

harmful than alcohol or tobacco, and in general the UK classification system does not reflect the relative harms of the substances it governs. Respondents reflected on the trend towards legalisation of cannabis in many countries around the world.

Like decriminalisation, respondents were interested to explore the realities of legalisation and public attitudes to reform.

Respondents highlighted a range of potential benefits:

- A regulated drug market could have proper quality control and product standards, reducing the risk of harm and death. Regulated products would be a predictable strength, unadulterated with dangerous fillers, untainted by other drugs, and provided with safe usage equipment if required.
- Removing the market from criminal organisations' control would remove a key revenue stream for them, and may subsequently reduce cuckooing, county lines and reinvestment of drug profits in other crimes such as human trafficking or sexual exploitation.
- Some people fear for their safety when there is visible drug dealing in the area, so moving it into retail locations would help these people feel safer.
- People will be less likely to be offered harder drugs or transition to more risk taking behaviour.
- Regulation could prevent sale to young people, and packaging could include information on dosage, side effects, interactions and risks.
- Tax revenue can be collected from drug use and be spent on public services, treatment and support.
- Removing drug use from the criminal space will reduce risk through interaction and association.
- Reducing stigma could repair relationships, lead to better individual and family outcomes, and increase people's propensity to seek help.
- Legalising cannabis has been shown to impact on the prevalence of more harmful drug use [ref].
- In cities hosting a cannabis dispensary in the United States, synthetic opioid deaths were 17% lower in comparison to neighbouring cities without legal regulation of cannabis⁵¹.

Respondents highlighted a range of potential risks:

- Potential increase in drug use. As noted earlier, the evidence on softening drug laws generally shows that usage does not increase, but there are currently fewer examples of full legalisation than there are of decriminalisation, so this is less certain.
- Increased use of services (either through people being more willing to use services, or an increase in drug use) would need to be funded.
- Profit-driven interests could lead to a commercialisation of the drug market. This would need to be mitigated through the regulation of advertising and health education. One proposed model would be a cost-neutral government body responsible for all supply, with the mission to provide safe drugs to minimise harms but no incentive to increase usage⁵².

Caveats outlined in relation to decriminalisation and legalisation.

- Some respondents felt it may be worthwhile to decriminalise in limited ways such as exemptions for certain spaces, for example drug consumption rooms. However many

⁵¹ British Medical Journal: <https://www.bmj.com/company/newsroom/legal-cannabis-stores-linked-to-fewer-opioid-deaths-in-the-united-states/>

⁵² [Government monopoly as an instrument for public health and welfare: Lessons for cannabis from experience with alcohol monopolies - PubMed \(nih.gov\)](#)

felt that this would not solve the present issues and supported more significant changes.

- Either of these approaches must not occur in a silo, but rather as one step toward a cultural shift which begins with creating acceptance and addressing stigma, and that aligns with national structures. Research suggests decriminalisation is most effective when aligned with the structures, cultures and institutions that exist within a society⁵³.
- Some respondents supported targeted, specific harm based approaches for each drug, implementing different regulations and legislation for each. This could reflect the different usage patterns, degree of addictiveness, and degree of individual and social harm associated with different substances. Importantly, such an approach must be based on the best available evidence in relation to each substance, and not on the current UK classification structure, which does not reflect the scientific consensus on the relative harms of the drugs it regulates.
- Some argued for legalising Cannabis as a naturally produced plant rather than a manufactured drug, highlighting that cannabis is less harmful than synthetic cannabinoid alternatives.
- If drugs were removed from the criminal justice system, pathways to treatment from within the system may be lost. Therefore, pathways out with the justice system would need to be prioritised. This linked to the support for recovery based sanctions and mandated treatment.

“Drugs have never been more plentiful and drugs have never been easier to get. It comes as a shock that what I did for 32 years made not a blind bit of difference. What happened during that time was that the criminals who ran the drugs market got richer, made more profits and destroyed more lives.” (Retired Police Inspector and member Law Enforcement Action Partnership Scotland).”

Drug Deaths Taskforce assessment

Respondents were broadly supportive of decriminalisation and legalisation, outlining a range of benefits for the individual as well as wider social improvements in relation to crime. These benefits were highlighted alongside a significant reduction of harm. This list is not exhaustive and many others have been raised in discussions, such as the increased likelihood of people calling for help when faced with an overdose, as a result of the removal of criminalisation.

They were clear however, that this is not a simple question. There are complicated challenges in implementing either decriminalisation or legalisation. There are potential opportunities for hybrid approaches for different drugs, more accurately based on harm. It may be prudent to explore truly hybrid approaches for example, fully legalised and regulated markets for low harm drugs such as cannabis and psychedelics, while more harmful or addictive substances may be decriminalised and available on prescription. This should be based on a model of decriminalisation for personal supply and a true focus on support and treatment.

Any assessment of how decriminalisation or legalisation would work in the Scottish context will take significant exploration and it is crucial that any significant change comes alongside appropriate review and investment in workforce, a wider campaign to reduce and tackle stigma and design of new approaches to education appropriate for the context. It is important that any approach considered is tailored to Scotland and not lifted wholesale from another country.

There was a general feeling that further consultation was needed to understand the realities and options for implementing such a change. There were also questions on public attitudes

⁵³ European Journal of Criminology: <https://journals.sagepub.com/doi/full/10.1177/1477370819887514>

towards decriminalisation and legalisation. This should be consulted on and must incorporate the values the public want drug policy and legislation to be guided by. This consultation should take account of the policy context, including the Scottish Government's 2019/20 Programme for Government commitment to "consult on drug law reform, setting out the changes we would want to make to the 1971 Act in the event that UK Government agrees to devolve the powers in the Act", which initiated this engagement, as well as the commitment in the SNP 2021 manifesto to explore the topic of decriminalisation through a citizen's assembly.

Drug Deaths Taskforce conclusions

The Drug Deaths Taskforce recommends further consultation be undertaken in the second phase of the engagement exercise. This should be taken forward by the Scottish Government to explore the level of public support for:

- Decriminalising drug possession for personal use, including the full removal of criminal sanctions, with production and supply remaining crimes.
- Legalising and regulating the market for certain drugs.
- Testing public attitudes to harm reduction measures such as safer drug consumption facilities and paraphernalia distribution.

PHASE TWO ENGAGEMENT

What was said by respondents

Respondents welcomed further exploration of the issues outlined above and provided suggestions for topics to be considered for the second phase of this engagement exercise. They were clear that any engagement should utilise legal experts, academia, third sector organisations and expert testimony in shaping the engagement.

Respondents outlined that any further engagement should also include people affected by drug use, including:

- Family and friends of people who use drugs.
- Service workers, including peer workers, third sector and voluntary service.
- People with lived and living experience, including those who currently use drugs, those in treatment, people on diversion, recovery communities and those in prison.
- Marginalised groups whose voices may not be heard, such as homeless people, should be included through community organisations.

Respondents stated that the methods and systems used to collate the information should be easy to access, available to people with a variety of different accessibility needs and provide choice for individuals in how they want to make their views known. The exercise should be advertised to ensure a range of national, geographic, and specific interest views are received. Respondents felt that existing reference groups, services, recovery communities and trusted intermediaries would be the best way to engage people who may fear prosecution.

Drug Deaths Taskforce assessment

Further engagement on drug legislation and policy can provide specific challenges as the people most affected, whose views matter most, are likely to be reluctant to be frank about their own experiences due to fear of criminalisation, removal of treatment or support, or disengagement as a result of negative experiences. Particular focus is needed therefore on the methods and approaches used to facilitate engagement. This should therefore be coproduced with people with lived and living experience, families and service providers.

Drug Deaths Taskforce conclusions

The Drug Deaths Taskforce propose the following topics that could be included in the second phase of this engagement exercise:

- Exploration of the public's perceptions of drug policy and opinions on what our guiding principles should be when developing policy and legislation.
- People's thoughts on relaxing the laws around drug possession offences, such as decriminalisation or legalisation and regulation.
- Gauging public support for the harm reduction measures currently restricted by the Misuse of Drugs Act or related regulations.
- User engagement to understand how the law impacts people's willingness to access services.

NEXT STEPS

The Drug Deaths Taskforce will write to Scottish Ministers, sharing this report and its conclusions with them. We will continue to work constructively with the Scottish Government on ways in which these recommendations can be implemented, ensuring that reforms are ambitious and contribute to the wider development of an effective public health approach. We will work directly with our partners to promote these changes and support implementation.

We will also write to UK Government Ministers reiterating the need for urgent reform to bring the Misuse of Drugs Act into the 21st century. We will extend the same offer to work collaboratively on the proposed changes, which will make a real and lasting difference in this public health emergency and will save lives.

The publication of this report marks an important milestone in the work of the Taskforce. The second phase of our engagement will provide evidence to inform the final report of the Taskforce in December 2022.

SUMMARY OF CONCLUSIONS

Prisons

- Further work is needed to ensure holistic support is provided for people with multiple complex needs, including exploring the reintroduction of throughcare support officers. The Taskforce asks that options for sustainably funding a reinstated throughcare service are explored.
- Scottish Government should work with the Scottish Prison Service to end Friday liberations from custody, implementing a blanket policy of no liberations on a Friday or in advance of a public holiday. It should also explore ways to support individuals released directly from custody.
- Further exploration of alternatives to remand and imprisonment should be considered, including bail supervision and residential rehabilitation.

Pill Presses

- Progress is required to ensure the regulation of pill presses, including a suitable licensing system to reduce related harm.

Tolerance Zones

- The possibility of tolerance zones should be explored where police agree not to make active patrols or use stop-and-frisk powers in the vicinity of certain services.

Recorded Police Warnings

- The Drug Deaths Taskforce would support consideration of the extension of RPWs in relation to drug possession offences to cover all classifications of drugs and concludes that there would be value in work by the Scottish Government, Police Scotland and COPFS to increase understanding of RPWs.

Drug Testing and Treatment Orders

- Scottish Government should review DTTOs to assess how they have been used, their outcomes and whether they are the most effective mechanism to support an individual's recovery and reduce recidivism rates.
- Scottish Government should also work with the Judicial Institute to improve understanding of how to best support an individual's recovery journey.

Diversion from Prosecution

- Scottish Government should work with partners to ensure that all people have access to well resourced, high quality services following diversion, taking a multi-disciplinary, holistic approach to support. Increased funding should be provided to support this.
- Training should be given to ensure that those who work in this area understand the challenges of engagement for people with dependency issues and give individuals multiple opportunities for recovery.

Navigators and Peer Support

- The Drug Deaths Taskforce will continue to explore the use of navigators and peer support workers and make a recommendation on the best model for a national navigator service.
- In the interim, the national expansion of the MAV hospital navigator programme should be pursued, taking a particular interest in substance use.

Safer Drug Consumption Facilities

- The Taskforce supports the introduction of safer consumption facilities in Scotland. The UK Government should consider a change to the legislative framework to support their introduction.
- In the interim, the Scottish Government should explore all options within the existing legal framework to support the delivery of safer consumption facilities. The Scottish Government should also take steps to increase public understanding of such facilities.

Heroin Assisted Treatment

- The Taskforce supports the devolution of licensing for HAT premises to allow the single-office co-ordination of premises and prescriber licensing and the Scottish Government should support and promote a national roll out for HAT.

Drug Checking Facilities

- Licensing of drug checking facilities should be reviewed to ensure that the licensing of drug checking services is open, transparent and accessible, and in line with a health based approach.
- The Scottish Government should support drug testing nationally and work with local services to ensure it is available.

Drug Paraphernalia

- The UK Government should amend the Misuse of Drugs Act 1971 or Misuse of Drugs Regulations 2000 to allow for the legal provision of a wider range of drug paraphernalia through harm reduction and treatment services, to enable safer drug consumption.
- In the interim, the Scottish Government should explore all options to support this provision.

Naloxone

- The UK Government should support permanent reclassification of naloxone to make it easier to provide supply.
- In the absence of a full reclassification, the Scottish Government should work closely with the UK Government to ensure that the changes planned reflect the breadth of the existing statement of prosecution policy in Scotland.
- In the interim, the Scottish Government should also engage with the Lord Advocate in relation to the extension of the current statement of prosecution policy.

Families

- Justice partners should support the adoption of the Stigma Strategy, trauma informed and family inclusive practice and the adoption of distress based interventions.

Dispensing and Prescription Forms

- The Taskforce supports prescribers call for a review of the regulations on dispensing and prescription forms to take account of clinical and technological advances since implementation in 2001.

Supply Disruption for Controlled Drugs

- The UK Government should extend the temporary COVID-19 measures put in place to support the resilience of medicine supplies and treatment continuity to cover a wide range of public health and other emergencies.

Equality Act 2010

- A transparent review is needed of the exemption set out in S3.1 of the Equality Act 2010, (Disability) Regulations 2010 to explore the impact of this exemption and whether it best serves people suffering from addiction, what the implications of removing it and making addiction a protected characteristic would be.

Misuse of Drugs Act 1971

- A root and branch review of the Misuse of Drugs Act is needed, taking a public health approach, and reforming the law to support harm reduction measures.
- If the UK Government are not willing to reform the Misuse of Drugs Act, it should commit to exploring all available options openly with the Scottish Government to enable Scotland to take a public health approach.
- Meanwhile the Scottish Government should do more to maximise flexibility under the current legislation.

Further Engagement

- Further consultation should be undertaken in the second phase of the engagement exercise, exploring:
 - The public's perceptions of drug policy and opinions on what our guiding principles should be when developing policy and legislation.
 - People's thoughts on relaxing the laws around drug possession offences, such as decriminalisation or legalisation and regulation.
 - Gauging public support for the harm reduction measures currently restricted by the Misuse of Drugs Act or related regulations.
 - User engagement to understand how the law impacts people's willingness to access services.

ISSUES RAISED BY RESPONDENTS NOT RELATED TO DRUG LAW REFORM

Respondents raised a number of issues which, while not directly related to the law and the recommendations outlined in this paper, merit further exploration either by the relevant Scottish Government policy team or the work of the Drug Deaths Taskforce, these will be considered separately. These topics include:

- Many respondents highlighted that tackling poverty, inequality, ACEs and deprivation is critical as these are the root causes of dependency issues, these will be taken forward by the Scottish Government.
- Significant focus on stigma is needed, these issues have been raised in the Stigma Strategy and Stigma Charter recommendations, which will now be taken forward by the Drug Policy Division at Scottish Government.
- Evidence based education needs to be a top priority for the Scottish Government, partners and the public.
- Data sharing was highlighted as a significant issue affecting the shared working of justice and health services.
- Many respondents reflected on the need for adequate resourcing of services and the development of consistent services across Scotland.
- There are significant challenges in relation to the policies around child separation and the disproportionate impact of the justice system on women. This is being considered by the Short Life Working Group who will report soon.
- Medication Assisted Treatment Standards should be implemented at pace.

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