

Release's Written Submission to the Scottish Affairs Committee: 'Use and Misuse of Drugs in Scotland' Inquiry

[Release](#) is the national centre of expertise on drugs and drugs law in the UK. The organisation, founded in 1967, is an independent and registered charity. Release provides free non-judgmental, specialist advice and information to the public and professionals on issues related to drug use and to drug laws. The organisation campaigns directly on issues that impact on its clients - it is their experiences that drive the policy work that Release does and why Release advocates for evidence-based drug policies that are founded on principles of public health rather than a criminal justice approach. Release is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

To what extent does UK-wide drugs legislation affect the Scottish Government's ability to address the specific drivers of drugs abuse in Scotland?

1. Drug use and misuse in Scotland cannot be effectively addressed under the UK's criminal justice-led approach to drug policy, as outlined in UK-wide drugs legislation. The criminalisation of people who use drugs (PWUDs) undermines the vision outlined in the Scottish Government's 'Rights, Respect and Recovery' strategy. Criminalisation exacerbates health harms, as the fear of detection by law enforcement drives high-risk drug taking behaviours, including: sharing (and use of) nonsterile injecting equipmentⁱ; rushed consumption of drugs in unhygienic and unsupervised environmentsⁱⁱ increasing risk of overdose or injury; and pre-loading drugs before entering a venue to avoid detectionⁱⁱⁱ. Criminalising also perpetuates stigma and marginalisation of PWUDs, creating barriers for them to access vital healthcare services and to seek support.^{iv}
2. Additionally, the Misuse of Drugs Act 1971 hinders the Scottish Government's ability to establish a Drug Consumption Room (DCR), as this would engage a number of possible offences under the Act. For example, those accessing the DCR will be in possession of a controlled substance, and so be at risk of arrest and prosecution under section 5 of the Misuse of Drugs Act 1971. Equally, staff of a DCR may be at risk of prosecution under section 8 of the 1971 Act – this offence creates a risk of criminal liability for managers of premises in relation to specific drug-related activities such as supply of drugs, but not use of drugs other than cannabis (and opium). The risks above are not new – they are already managed by drug services through the provision of needle exchange programmes. It is hard to imagine that those accessing these programmes to obtain sterile equipment would not be in possession of the substance they intend to inject. Equally, policies will be in place to protect staff from prosecution under section 8 of the 1971 Act, such as taking action if there is dealing on the premises, both in needle and syringe programme and drug treatment settings.
3. Amending the Act or devolving the matter to Scotland would certainly enable a DCR to be established in Scotland. However, a DCR could be established in Scotland, in the absence of central government action on this issue. Please refer to paragraphs 9 and 19 for recommendations to establish a DCR.

Would further devolution of powers enable the Scottish Government more effectively address drugs misuse in Scotland and tailor their approach to Scotland's needs?

4. Decriminalisation – meaning the ending of criminal sanctions for personal possession offences – would enable the Scottish Government to more effectively respond to drug use in Scotland.

The United Nations System Chief Executives Board for Coordination (UNCEB) recently called for the decriminalisation of drug possession for personal use^v, joining the likes of the World Health Organisation^{vi} and the Global Commission on Drug Policy^{vii}. Please refer to paragraphs 10 to 16 for international evidence related to decriminalisation.

5. In practice decriminalisation of drug possession offences includes both *de jure* models of the approach, that is, those achieved through legislative reforms or constitutional court decisions, and *de facto* models whereby the offence of possession of controlled drugs for personal use is still contained within the criminal statute but the law is not enforced by police or prosecutors. While *de jure* decriminalisation in Scotland would require central government to either amend the Misuse of Drugs Act 1971 or devolve the matter of ‘misuse of drugs’ to the Scottish government, *de facto* decriminalisation would not require legislative reform. The Scottish Government and Police Scotland could instead work to implement diversion schemes for people who use drugs, such as those operating in some police forces in England.
 - Durham Police force’s diversion scheme, “Checkpoint”, is for a range of low-level offences. This initially included drug possession offences, but due to the success of the scheme this has been extended to include low-level supply offences, where the offender is determined to be a user/ dealer. ‘Checkpoint’ diverts people after arrest on the condition that they undertake a four-month programme to address their offending behaviour. Initial findings from the pilot period found lower reoffending rates compared to those who were subject to out of court disposals, such as cautions. Participants in Checkpoint also reported improved outcomes in relation to: substance misuse; alcohol misuse; accommodation; relationships; finances and mental health.
 - Avon and Somerset Police force implemented an on-the-street diversion programme in Bristol for those caught in personal possession of drugs. The ‘Drug Education Programme’ (‘DEP’) was initially launched as a pilot in 2016. Attendees of the DEP are less likely to re-offend when compared to those who had gone through the criminal justice system. The majority of attendees at the DEP reported cessation or reduction in their drug use. The DEP saved police officers significant resources and the reduced burden of diverting drug possession offences to the DEP meant that it freed them up to focus on other tasks. The success of the DEP in Bristol saw the scheme rolled out across Avon and Somerset from April 2018.
 - Following the success of the West Berkshire Drug Diversion Pilot between December 2018 and March 2019, Thames Valley Police force has rolled out a pre-arrest street diversion scheme for people caught in possession of a controlled drug.

Please refer to paragraph 14 for evidence related to diversion schemes in Australia.

6. Drug Consumption Rooms (DCRs) effectively reduce risk of overdose and BBV infections among PWUDs, public injecting and drug-related litter.^{viii} Additionally, DCRs facilitate access to treatment and healthcare services for PWUDs, including for marginalised groups that would not otherwise have come into contact with such services. A DCR would be particularly beneficial in Glasgow, given the high incidence of public injecting and drug-related litter, and the localised HIV outbreak^{ix}, which has been linked to increasing prevalence of cocaine injecting, recent experience of homelessness and frequent incarceration among people inject drugs.^x
7. The objections to a DCR that have been advanced by central government do not stand up to scrutiny. The suggestion that DCRs would pose a challenge for local police has been refuted by Arfon Jones (North Wales PCC), David Jamieson (West Midlands PCC) and Ron Hogg

(Durham PCC), who assured Victoria Atkins MP in an open letter that they would have “the requisite knowledge and skills to manage law enforcement to tackle drug dealing and to tolerate drug possession offences to allow the DCR to operate properly – as we do with current harm reduction centres.” Likewise, there is no reason to believe that introducing a DCR in the UK would have a ‘honeypot effect’, similar to the Danish experience of Swedish people attending the DCR^{xi}. Swedish people who use drugs have a long history of accessing harm reduction services in Demark, largely because they lack access to needle and syringe programmes and opioid substitution therapy in their home country. Additionally, a number of DCRs are already operational in the neighbouring countries of France, Belgium, the Netherlands, Denmark, and Spain^{xii}, and Ireland has plans to introduce such a facility^{xiii}.

8. Despite the well-established benefits of Drug Consumption Rooms (DCRs)^{xiv}, and in spite of the clear need expressed in Glasgow and the support of Scottish Parliament, central government continues to prevent efforts to implement a DCR in the UK on the grounds of the law.^{xv} However, many of the legal issues that are raised in relation to DCRs are already managed and tolerated in relation to drug checking^{xvi} and needle and syringe programmes (NSPs)^{xvii}. The Drugs Minister for the Home Office, Victoria Atkins MP, has confirmed that it is for chief constables in local areas to decide whether to roll out drug checking facilities at festivals under local protocols and agreements^{xviii}. A similar situation exists for NSPs where national Crown Prosecution Service (‘CPS’) guidance states that it is not in the public interest to bring prosecutions for possession of controlled substances where a person has been accessing sterile injecting equipment provided by a drug treatment service. The CPS guidance acknowledges that in relation to NSPs “those who run and use them will necessarily commit offences under the [Misuse of Drugs] Act”^{xix}.
9. While devolving control of drugs legislation to the Scottish Government would facilitate the implementation of a DCR in Scotland, in the absence of devolution, a DCR could operate if there was agreement between Police Scotland, prosecutors and local NHS boards to allow for the provision of such a facility. This would involve police agreeing not to arrest and bring prosecutions for possession offences. This is the same process that exists in England in relation to drug checking at festivals and in town centres.

What could Scotland learn from the approach taken to tackle drug misuse in other countries?

10. Research undertaken by Release looked at 25 countries across the globe that had decriminalised personal use and possession of drugs and found ending criminal sanctions for such activities did not lead to an increase in consumption of controlled drugs. Decriminalisation has been associated with reduced rates of recidivism, reduced burden on police resources and savings to the public purse related to social costs. By decriminalising the possession of controlled drugs for personal use, resources could be diverted from the criminal justice system into health and other services for people who use drugs.^{xx}
11. Portugal has *de jure* decriminalisation, since ending criminal sanctions for possession offences in 2001, while also investing in harm reduction initiatives, treatment and prevention. Now people caught in possession are instead referred to a dissuasion committee to see whether

they need help to address their substance use. The drug-related death rate in Portugal was “3.86 deaths per million in 2016, which is lower than the most recent European average of 21.8 deaths per million”^{xxi}. Other positive outcomes have included:

- Decrease in use amongst problematic users & young people becoming dependent on drugs such as heroin;
- Decrease (over 40 per cent) of the estimated numbers of people who inject drugs;
- Increased treatment engagement;
- Significant decrease in HIV and TB transmission;
- Decrease in prison population;
- Reduced burden on criminal justice system allowing police to focus on serious crimes;
- Improved relationship between the community and police,^{xxii} and
- Decrease (18 per cent) in the social costs of drug use in the first 10 years of decriminalisation.^{xxiii}

While we recognise that the matter would have to be devolved for the Scottish Government to decriminalise through legislation, we believe that the approach taken in Portugal is possible in Scotland if there is multi-agency agreement to divert people away from the criminal justice system.

12. The Czech Republic also has *de jure* decriminalisation, since decriminalising the possession of all illicit drugs in 2010. One influencing factor was a cost-benefit analysis of Czech drugs legislation in 2002 that was undertaken by the National Drug Commission. After a two-year evaluation research found that penalisation of controlled drugs had: not affected availability; prevalence increased; there were higher rates of initiation of drug use amongst young people; and social costs increased significantly.^{xxiv}
13. The Netherlands has had *de facto* decriminalisation in place since the late 1970’s. Drug possession and supply remains criminalised under legislation, but prosecutorial guidelines instruct prosecutors not to prosecute possession of cannabis for personal use and police do not pursue individuals found to possess less than threshold amounts of other ‘hard’ drugs, meaning they do not face civil or criminal penalties.^{xxv}
14. There is also international evidence to support the use of decriminalisation via diversionary schemes for drug offences. A 2008 national review of eight jurisdictions’ diversion schemes – essentially *de facto* decriminalisation – in Australia demonstrated that a majority of people did not reoffend following diversion, and that in five jurisdictions out of eight, the majority of reoffenders were only charged with one new offending incident.^{xxvi} Diversion was also associated with positive social outcomes. Research from Australia compared outcomes for individuals who had been criminalised for cannabis possession, to those who had received civil sanctions, under a *de jure* model of decriminalisation.^{xxvii} Of those criminalised 32 per cent reported a negative impact on employment compared to 2 per cent who were given civil sanctions, for accommodation it was 16 per cent versus 0 per cent.^{xxviii}
15. It is therefore clear from these examples, that in the absence of action from central government, *de facto* decriminalisation could be pursued in Scotland.

16. The most recent comparable data between European countries shows that the rate of drug-related deaths is 4 per million in Portugal, 4 per million in the Czech Republic and 19 per million in the Netherlands^{xxix}, compared to 175 per million in Scotland^{xxx}. While the lower rates of drug-related deaths in these countries will not necessarily stem from the legal framework, it is nonetheless noteworthy that all of these countries have ended criminal sanctions for drug possession offences under various models of decriminalisation. Arguably, better health outcomes can be achieved when drug policy is treated as a public health issue, rather than a criminal justice one.

RECOMMENDATIONS:

17. Release would respectfully ask that the Committee consider the evidence for decriminalisation of personal possession offences, and make a recommendation that the UK government either adopt this approach or devolve drugs legislation to the Scottish Government.

18. Release would recommend that the Scottish Government and Police Scotland work to implement pre-arrest street diversion schemes for people who use drugs.

19. In the absence of central government action on a Drug Consumption Room or devolution of the matter to the Scottish Government, a local agreement should be sought between Police Scotland, prosecutors and local NHS boards to allow for the provision of a facility.

Release would welcome the opportunity to submit oral evidence to the Scottish Affairs Committee's inquiry on the 'Use and Misuse of Drugs in Scotland'. For more information, please contact:

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ⁱ United Nations Office on Drugs and Crime (UNODC) (2017) [World Drug Report 2016](#), pp. 71-2.

ⁱⁱ British Medical Association (2013) [Drugs of Dependence: The role of medical professionals](#), p. 102.

ⁱⁱⁱ Fisher, H. & Measham, F. (2018) [Night Lives: Reducing Drug-Related Harm in the Night Time Economy](#), p. 43.

^{iv} Joint United Nations Programme on HIV/AIDS (2016) [Do No Harm: Health, Human Rights and People Who Use Drugs](#); Global Commission on Drug Policy (2017) [The World Drug Perception Problem: Countering Prejudices About People Who Use Drugs](#); International Network of People Who Use Drugs (2014) [Drug User Peace Initiative: Stigmatising People Who Use Drugs](#).

^v United Nations Chief Executives Board for Co-ordination [UNCEB] (2018) [Summary of deliberations: Second regular session of 2018](#), UN doc. CEB/2018/2, p. 14

^{vi} World Health Organisation et al. (2017) [Joint United Nations statement on ending discrimination in healthcare settings](#).

^{vii} The Global Commission on Drug Policy (2016) [Advancing Drug Policy Reform: A New Approach to Decriminalization](#).

^{viii} European Monitoring Centre on Drugs and Drug Addiction (EMCDDA) (2018) [Drug consumption rooms: an overview of provision and evidence](#), Perspectives on Drugs; Potier, C., et al. (2014) 'Supervised injection

services: What has been demonstrated? A systematic literature review', *Drug and Alcohol Dependence*, 145, 48-68.

^{ix} NHS Greater Glasgow and Clyde (2018) [Taking Away the Chaos: The health needs of people who inject drugs in public places in Glasgow city centre](#).

^x McAuley A., et al. (2019) 'Re-emergence of HIV related to injecting drug use despite a comprehensive harm reduction environment: a cross-sectional analysis', *The Lancet HIV*, DOI: [https://doi.org/10.1016/S2352-3018\(19\)30036-0](https://doi.org/10.1016/S2352-3018(19)30036-0).

^{xi} Home Office (2014) [Drugs: International Comparators](#).

^{xii} Stone K. and Shirley-Beavan S. (2018) [The Global State of Harm Reduction](#), Harm Reduction International.

^{xiii} Misuse of Drugs Act Supervised Injection Facilities 2017

^{xiv} European Monitoring Centre on Drugs and Drug Addiction (EMCDDA) (2018) [Drug consumption rooms: an overview of provision and evidence](#), Perspectives on Drugs; Potier, C., et al. (2014) 'Supervised injection services: What has been demonstrated? A systematic literature review', *Drug and Alcohol Dependence*, 145, 48-68.

^{xv} [HC Deb 07 March 2019 c 187139](#)

^{xvi} [HC Deb 06 July 2018 vol 644 c677](#)

^{xvii} Crown Prosecution Service (2019) [Legal Guidance: Drug Offences](#).

^{xviii} [HC Deb 03 September 2018 c163156](#)

^{xix} Crown Prosecution Service (2019) [Legal Guidance: Drug Offences](#).

^{xx} Eastwood, N., et al. (2016) [A Quiet Revolution: Drug decriminalisation across the globe](#), Release.

^{xxi} EMCDDA (2018c) [Portugal Drug Report 2018](#).

^{xxii} Hughes, C., & Stevens, A. (2010) 'What can we learn from the Portuguese decriminalization of illicit drugs?', *British Journal of Criminology*, 50, 1002.

^{xxiii} Goncalves, R., et al. (2015) 'A social cost perspective in the wake of the Portuguese strategy for the fight against drugs', *International Journal of Drug Policy*, 26, 207.

^{xxiv} Eastwood, N., et al. (2016) [A Quiet Revolution: Drug decriminalisation across the globe](#), Release.

^{xxv} *Ibid.*

^{xxvi} Payne J. et al. (2008) *Police Drug Diversion: A Study of Criminal Offending Outcomes*, AIC Reports: Research and Public Policy Series 97, Canberra: Australian Institute of Criminology, page 70.

^{xxvii} *Ibid.*

^{xxviii} McLaren J. and Mattick R.P. (2007) *Cannabis in Australia: use, supply, harms, and responses*, Sydney: National Drug and Alcohol Research Centre, University of New South Wales, page 560.

^{xxix} EMCDDA (2018a) [Netherlands Drug Report 2018](#); EMCDDA (2018b) [Czech Republic Drug Report 2018](#); EMCDDA (2018c) [Portugal Drug Report 2018](#).

^{xxx} National Records of Scotland (2018) [Drug-related deaths in Scotland in 2017](#), page 79.