

Rt Hon Kit Malthouse MP
Minister for Crime, Policing and Justice
2 Marsham Street
London
SW1P 4DF

Copy: Dame Carole Black, Jo Churchill

Sent by email.

17th September 2021

Drug Deaths Taskforce: Report on Drug Law Reform

Available at: <https://drugdeathstaskforce.scot/>

Dear Kit,

The Drugs Deaths Taskforce was established in July 2019 by the Scottish Government to tackle the shocking escalation in the rise of drug related deaths in Scotland that require urgent attention. We are writing to share our report on Drug Law Reform that was published on the 6 September 2021. This work explores how the existing drug legislation and its use impacts on Scotland's unique drug deaths challenge.

The report is a result of an extensive engagement exercise and consideration of a wide range of evidence. It summarises consensus views of over one hundred organisations and individuals in Scotland on the legal framework and its implementation. We heard from experts in the field from the Drug Deaths Taskforce, Alcohol and Drug Partnerships, Community Justice Partnerships, lived experience representatives, family members and third sector organisations.

Members of the Scottish Drug Deaths Taskforce have reviewed this evidence and we believe the conclusions build on the work undertaken by others in this area, including the Scottish Affairs Select Committee, the Westminster Health and Social Care Committee and, more recently, the Royal College of Physicians of Edinburgh.

In a similar manner to these preceding reports and inquiries into current UK drug laws our report concludes that a root and branch review of the Misuse of Drugs Act 1971 is urgently required. We found 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 is 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.

The Misuse of Drugs Act 1971 has failed to move with the times and transition as new evidence has improved our understanding of dependence. For example, it was 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 deaths in Scotland are still classified as Class C.

Within the proposals there is an ask for a range of specific legislative changes, in particular to enable the introduction of safer drug consumption facilities, the reclassification of naloxone and a widening of provision of drug paraphernalia to enable safer drug consumption. There is also a need for changes to regulations controlling the dispensing, prescribing and supply of controlled drugs and controlling of the supply of pill presses that are linked to the mass production of dangerous cheap pills. These examples, amongst others, highlight where the current law acts as a barrier to the implementation of a real public health approach that is sorely needed. The engagement exercise was broadly supportive of decriminalisation and legalisation. It was however highlighted that this is a complex issue that raises complicated challenges and careful consideration, engagement and consultation on a wider scale is required.

Our findings also reflected on the UK Government response to other reports on this matter and the reluctance to change the law. For this reason, many individuals and organisations in Scotland have called for the legislation to be devolved to enable a Scottish specific solution and public health approach if this reluctance remains.

A cultural change surrounding the law is required in Scotland and it is time to consider what the outcomes would be from the implementation of new drug laws including consideration of the principles on which they should be based. Scotland has one of the highest prison populations in Western Europe and although the numbers in the UK and much of Europe continue to rise, Scotland is particularly affected by drug-related deaths. There is an overarching question around why we are criminalising people with multiple complex needs who experience serious disadvantage. It is vital that we can move toward a public health approach and away from crime and punishment and treat people who use drugs with respect, helping them to not only survive but to thrive. If we are serious about change it is critical that we tackle the underlying causes of drug use including poverty and inequality.

Finally, Professor Dame Carole Black's independent review of drugs highlighted that many areas need reformed within the constraints of the current law and our report also drew out many areas that could be improved without changes to the current legislation. These have been passed to the Scottish Government and we will work with them to support their implementation. Both of these letters will be published on the Drug Deaths Taskforce website.

The thirty proposals from the report are attached to this letter and the twelve of specific relevance to the UK Government have been pulled out for you. This work begins a national conversation on drug law reform in Scotland and we would encourage you to explore all options to deliver the interventions relevant to the UK Government that are supported by our extensive evidence. We would be very happy to discuss any of this with you.

We look forward to your response.

Yours sincerely

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.

Twelve proposals for response by the UK Government

Pill Presses: *The production of illicit pills, including atypical benzodiazepines, cause significant harm:*

Proposal 4. Progress is required to ensure the regulation of pill presses, including a suitable licensing system to reduce related harm.

Safer Drug Consumption Facilities: *The evidence shows that these facilities are known to prevent overdose deaths, lead to safer drug use practices and promote engagement with wider services*

Proposal 13. 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.

Heroin Assisted Treatment: Prescribing heroin is legal and operational in Glasgow but this needs to be expanded

Proposal 15. 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: *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*

Proposal 16. 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.

Drug Paraphernalia: *Drug treatment services including Injecting Equipment Provision should be allowed to supply all items necessary for safe injecting and related drugs paraphernalia*

Proposal 18. 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.

Naloxone: *Scotland has led the way in developing local and national naloxone supply schemes that have made a significant contribution to reducing harm*

Proposal 20. The UK Government should support permanent reclassification of naloxone to make it easier to provide supply.

Proposal 21. 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.

Dispensing and Prescription Forms: *There have been concerns raised over the Misuse of Drugs Regulations 2001 lack of flexibility and the reported impact on patient care and additional burdens for prescribers*

Proposal 24. 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: *Medical professionals highlighted that three temporary emergency measures have been introduced by the UK Government into legislation as a result of the Covid pandemic*

Proposal 25. 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: *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 discrimination against disabled people*

Proposal 26. 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: *The Misuse of Drugs Act 1971 is incompatible with a public health response to problematic drug use*

Proposal 27. 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.

Proposal 28. 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.

Further details, including all the proposals from the report can be found in the table below.

Drug Deaths Taskforce: Drug Law Reform Conclusions Table

Prisons: <i>Many people in Scotland’s prisons are repeat offenders and many also have substance use problems</i>	Lead Organisations	Timescale
1. 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 and Partners	Medium
2. 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.	Scottish Government and Partners	Medium
3. Further exploration of alternatives to remand and imprisonment should be considered, including bail supervision and residential rehabilitation.	Scottish Government and Partners	Medium

Pill Presses: <i>The production of illicit pills, including atypical benzodiazepines, cause significant harm</i>	Lead Organisations	Timescale
4. Progress is required to ensure the regulation of pill presses, including a suitable licensing system to reduce related harm.	UK Government	Medium
Tolerance Zones: <i>Practical policing decisions, such as physical patrols can significantly influence people's perceptions and decisions about drug use and service engagement</i>	Lead Organisations	Timescale
5. 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.	Scottish Government and Partners	Long
Recorded Police Warnings: <i>The Lord Advocate issues Guidelines to the police in relation to the operation of the scheme and in particular which offences may be considered as eligible for a Recorded Police Warning</i>	Lead Organisations	Timescale
6. The Drug Deaths Taskforce would support consideration of the extension of Recorded Police Warnings 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 the scheme.	Scottish Government and Partners	Short
Drug Testing and Treatment Orders: <i>People subject to a Drug Testing and Treatment Order may engage relatively well with support but may still test positive for illicit substances</i>	Lead Organisations	Timescale
7. 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 and Partners	Medium
8. Scottish Government should also work with the Judicial Institute to improve understanding of how to best support an individual's recovery journey.	Scottish Government and Partners	Medium
Diversion from Prosecution: <i>If successful, diversion avoids a person receiving a criminal sanction, and could provide a route to targeted person-centred support if sufficient resources are made available</i>	Lead Organisations	Timescale
9. 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.	Scottish Government and Partners	Medium
10. 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.	Scottish Government and Partners	Medium
Navigators and Peer Support: <i>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</i>	Lead Organisations	Timescale
11. 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.	Scottish Government and Partners	Medium

12. In the interim, the national expansion of the MAV hospital navigator programme should be pursued, taking a particular interest in substance use.	Scottish Government and Partners	Short
Safer Drug Consumption Facilities: <i>The evidence shows that these facilities are known to prevent overdose deaths, lead to safer drug use practices and promote engagement with wider services</i>	Lead Organisations	Timescale
13. 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.	UK Government	Medium
14. 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.	Scottish Government and Partners	Short
Heroin Assisted Treatment: <i>Prescribing heroin is legal and operational in Glasgow but this needs to be expanded</i>	Lead Organisations	Timescale
15. 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.	UK Government/ Scottish Government	Medium
Drug Checking Facilities: <i>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</i>	Lead Organisations	Timescale
16. 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.	UK Government/ Scottish Government	Medium
17. The Scottish Government should support drug testing nationally and work with local services to ensure it is available.	Scottish Government and Partners	Medium
Drug Paraphernalia: <i>Drug treatment services including Injecting Equipment Provision should be allowed to supply all items necessary for safe injecting and related drugs paraphernalia</i>	Lead Organisations	Timescale
18. 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.	UK Government	Medium
19. In the interim, the Scottish Government should explore all options to support this provision.	Scottish Government and Partners	Short
Naloxone: <i>Scotland has led the way in developing local and national naloxone supply schemes that have made a significant contribution to reducing harm</i>	Lead Organisations	Timescale
20. The UK Government should support permanent reclassification of naloxone to make it easier to provide supply.	UK Government	Medium
21. In the absence of a full reclassification, the Scottish Government should work closely with the UK Government to	Scottish Government and	Medium

ensure that the changes planned reflect the breadth of the existing statement of prosecution policy in Scotland.	Partners/ UK Government	
22. 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.	Scottish Government and Partners	Short
Families: <i>The Drug Deaths Taskforce welcomes the engagement with the review from family members and feel this reflects strongly the direction and ambition of the Taskforce</i>	Lead Organisations	Timescale
23. Justice partners should support the adoption of the Stigma Strategy, trauma informed and family inclusive practice and the adoption of distress based interventions.	Scottish Government and Partners	Medium
Dispensing and Prescription Forms: <i>There have been concerns raised over the Misuse of Drugs Regulations 2001 lack of flexibility and the reported impact on patient care and additional burdens for prescribers</i>	Lead Organisations	Timescale
24. 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.	UK Government	Long
Supply Disruption for Controlled Drugs: <i>Medical professionals highlighted that three temporary emergency measures have been introduced by the UK Government into legislation as a result of the Covid pandemic</i>	Lead Organisations	Timescale
25. 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.	UK Government	Short
Equality Act 2010: <i>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 discrimination against disabled people</i>	Lead Organisations	Timescale
26. 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.	UK Government	Medium
Misuse of Drugs Act 1971: <i>The Misuse of Drugs Act 1971 is incompatible with a public health response to problematic drug use</i>	Lead Organisations	Timescale
27. 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.	UK Government	Long
28. 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.	UK Government/ Scottish Government	Medium
29. Meanwhile the Scottish Government should do more to maximise flexibility under the current legislation.	Scottish Government and partners	Short
Further Engagement: <i>This engagement exercise is the first phase of a two phased Drug Law Reform review in Scotland</i>	Lead Organisations	Timescale

<p>30. Further consultation should be undertaken in the second phase of the engagement exercise, exploring:</p> <ul style="list-style-type: none"> • 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. 	<p>Scottish Government and partners</p>	<p>Long</p>
--	---	-------------