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## **Scottish Government Response to the UK Government Consultation on Swift, Certain, Tough: New Consequences for Drug Possession**

This paper outlines general concerns with principles of the policy and the direction the Home Office are proposing with this aspect of the UK Drug Strategy, followed by specific comments on a number of the proposals.

### **General Comments**

The overall premise of the white paper that tougher measures will deter drug use or will reduce demand is wrong. The evidence is clear that crackdowns such as those proposed displace drug use rather than deter it, increasing the risk and harm experienced by people who use drugs. This displacement may represent as lower reported prevalence but in reality will not have reduced use but simply undermined effective reporting by creating fear. These crackdowns also perpetuate stigma and often have unintended consequences. The Scottish Government therefore questions the outlined measures of success.

The Scottish Government produced an evidence review, which looked at international approaches to drug law reform in 2021, which summarised this evidence, which can be found here: [International Approaches to Drug Law Reform \(www.gov.scot\)](https://www.gov.scot)

The Home Office consultation sets out that it is concerned with severing the link with organised crime that is present through recreational use, avoiding putting money into the pockets of “dangerous drug gangs, fuelling violence and causing wider social harms”. The Scottish government supports the need to tackle drug supply and combat serious and organised crime organisations groups in no uncertain terms. However, this policy will further criminalise people who use drugs and increase

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stigma. This will force an increasing number of vulnerable people into the arms of these groups, increasing risk and undermining the policies stated objectives.

The proposals are targeted at “those who have not yet developed dependence on drugs”. However, the appropriate way to treat this population is to focus on early intervention support to prevent this development of dependence. Driving their drug use underground and further from support will mean that when they need help, they do not feel able to reach out. Services cannot help someone who they never see.

This consultation also claims to focus on “so called recreational drugs”. However, it does not define what a “recreational drug” is. It rightly separates out problematic drug use as a health condition, which requires treatment and support, but fails to set out how this differs from recreational use.

The recent “Innovation Fund to Reduce Demand for Illicit Substances” created by the Home Office to support “From Harm to Hope” defined “so-called recreational drugs” as “cannabis, powder cocaine and ecstasy”. It specified, “the fund will not cover interventions aimed at the use of crack cocaine or opioids” presumably categorising these as non-recreational and problematic. These definitions are questionable on a number of counts:

1. Powder cocaine and ecstasy are both categorised as Class A drugs. There is evidence that shows the flaws in the classification system and that the relative harm of these drugs does not align to their classification. However, this is the system the UK Government has chosen to define substances. This new definition of these as “recreational” is at odds with their current classification.
2. There is significant research that shows that policies that treat crack cocaine and powder cocaine differently disproportionately affect people from minority ethnic groups and from lower socio-economic backgrounds. As an example, in the US last year, a senate committee overwhelmingly voted to remove the sentencing disparity between the two, for this reason.
3. Finally, the proposed approach regarding cannabis breaks with a wider direction being taken around the world. Many countries are recognising that cannabis can be managed effectively through decriminalisation or regulated markets, removing people from contact with the justice system. This approach can reduce stigma and discrimination and improve life outcomes among a significant group of people who will only ever use cannabis.

Overall, the Scottish Government has significant concerns that the policies as outlined will impact disproportionately on people from minority ethnic groups and those from lower socio-economic backgrounds. We would therefore request to engage with you further on this.

In particular, the consultation states that the proposed tier-based system “addresses concerns about the disproportionate number of young people from ethnic minority



backgrounds entering the criminal justice system”. Although consistency in the way individuals are treated when they come into contact with the justice system is vital, this statement ignores that these individuals are more likely to come into contact with the justice system in the first place.

The consultation states “proposals at tiers 1 and 3 could apply across the whole of the UK”. However, these proposals appear to have been designed for the criminal justice system in England and Wales. Therefore, we would welcome information on what work has been done to date to scope how these proposals might work within the Scottish justice system. While the Misuse of Drugs Act 1971 may be reserved, its implementation as part of the justice system in Scotland is devolved. The suggestion that these measures may be introduced in Scotland ignores the different legal systems, and, at present, fails to take account that they may prove unworkable in Scotland. There are also significant concerns with the alignment of these proposals with the public health approach that is being taken in Scotland. We would advise that there will need to be significant work with both the Crown Office and Procurator Fiscal Service and Police Scotland, taking account of their independent roles and responsibilities, to make these proposals workable in a Scottish context.

As previously mentioned, a concern about these proposed policies is the lack of evidence to support them. The paper itself recognises that there is no evidence base for these policies and claims that the UK Government is willing to be the first to try new approaches. However, we challenge any suggestion that these policies are new. They are a repetition of similar policies that have been exhaustively pursued for many years, without success, in many countries that are now moving towards evidence based, public health approaches.

In summary, the principles underpinning this proposed policy are in direct opposition to the public health approach that is being taken in Scotland. We believe the policy will increase stigma, foster isolation and negatively impact on a person’s ability to access health and social care services, benefits or employment. They also undermine the policy objectives in our National Mission.

The lack of evidence also indicates that this Home Office proposed policy is open to significant risk of challenge. We strongly believe that if the proposed course of action is maintained it will heap harm upon harm, will not represent value for public money and will cost lives.



## Specific Comments on Proposals

### Drugs Awareness Courses

The proposal states that the individual will be “required to attend and pay for a drugs awareness course” and if they cannot pay or do not attend that will “result in a larger financial penalty” and will be registered at court for “enforcement or prosecution”.

However, the evidence shows that these sorts of financial penalties are often ineffective. Many people who use drugs will be unable to pay the fees for the course and will as a result be faced with an increasing financial penalty and the prospect of prosecution. This would imply that this policy would work well for those who can afford to pay for it, while punishing those who cannot.

The Scottish Government supports drug awareness and education, however, the approach to this is important. Evidence from a wide range of studies suggests that relying on fear as a deterrent and short stand-alone presentations are rarely effective, particularly among the group it is intended to reach. Fact based, holistic approaches that are built into longer term consistent messaging appear to have more efficacy.

As justice, education and health and social care are all devolved we would be deeply concerned if this policy was forced upon us and would also object to the enforcement of a scheme where we were not responsible for the oversight, implementation or setting of principles.

### Mandatory Drug Testing

Tier 2 talks about “an individual having to comply with a period of mandatory and randomised drug testing”. This is not proposed to apply to Scotland due to the devolved nature of justice. However, we would highlight the potentially disruptive nature of this policy on individuals’ lives and its stigmatising nature. This is particularly relevant if the results are used purely for enforcement rather than rehabilitative purposes.

### Drug Tagging

The consultation proposes that a person will be “required to wear a drug monitor for a duration set by the court”. The paper outlines that “wearable drug monitoring sensors are at varying levels of technological maturity and market readiness”, and “that technologies that include more accurate chemical measurement of drugs themselves are currently far less developed”. While we are supportive of looking at innovative approaches to deal with some of these longstanding issues, we would be very concerned at deployment of any untested technology in circumstances that could lead to a judicial disposal. The appropriate safeguards that would be needed



for deployment of any drug or alcohol monitoring technology would need to be considered.

We understand the evidence on alcohol tagging may support some short-term outcomes but as the paper suggests “the impact of alcohol tagging on longer term reoffending is limited.” However, we would be keen to work with you in understanding, what is a developing evidence base in this area, so we can consider if and how technology can better support our approach in Scotland.

### Confiscation of passport or driving license

The most significant concerns we have are the proposals to remove passports or disqualify an individual from driving and require them to renew their license. The report says, “[these] restrictions might be applied where necessary and proportionate.”

We do not consider that the removal of a person’s passport as a punishment for drug possession is ever likely to be an effective or appropriate sanction. We believe this presents overwhelming civil liberties concerns and will not in any event achieve the intended outcomes. It also sets a dangerous precedent, that a person’s physical representation of their citizenship can be removed, for what is still a relatively minor offence.

While it may be proportionate to disqualify an individual from driving if they are found to be under the influence behind the wheel, we have concerns about disqualifying an individual in the absence of this behaviour. Banning an individual from driving on the assumption that because they are in possession of drugs, they may drive under the influence, sets a dangerous precedent of policing thought.

Removing an individual’s license would also have a significant impact on their ability to access employment, treatment and support, as well as their ability to engage with their wider social network. These proposals imply that this measure is an imposition on lifestyle. The Scottish Government disagrees with this premise and consider this is an interference with an individual’s fundamental rights. The removal of an individual’s passport or driver’s license, which may represent their only form of identification, creates unnecessary barriers to key services such as housing, benefits and employability support.

### **Conclusion**

In conclusion, the Scottish Government does not support the specific proposal, or the principles and values that underpin it.

There are genuine risks that the policy will exacerbate harms people experience from drugs. It perpetuates stigma and discrimination, serving only to push drug use



underground, where people and communities will experience greater harms. This will disproportionately impact on people from minority ethnic groups and from lower socio-economic backgrounds. It poses a significant risk of undermining the work being done in Scotland under our National Mission to save and improve lives.

The Minister for Drugs Policy has arranged an urgent meeting with Home Office Ministers to discuss concerns around these policies being enacted in Scotland. The Scottish Government would also be willing to share learning and the evidence base on our public health approach which we remain committed to.

