



The Drugs Bill – Second Reading Briefing

This briefing has been prepared by DrugScope – the UK’s leading independent centre of expertise on drugs and drug policy – and Turning Point – the UK’s leading social care organisation and largest provider of substance misuse services.

The Drugs Bill toughens drug laws, increases police powers to test and detain suspects, and introduces new powers requiring more drug users who come into contact with the criminal justice system – and some individuals who are subject to Anti-Social Behaviour Programmes - to undergo assessment for drug dependency problems and/or participate in drug treatment.

We agree with the Government that the criminal justice system has a central role to play in tackling drug addiction and its causes. Many people with chronic drug problems who are not engaging with drug treatment services will come to the attention of the police and courts. The Drugs Intervention Programme (DIP) is a worthwhile mechanism for identifying, assessing and diverting drug users into treatment services. Its development has been matched by a massive expansion in funding for drug services since the government’s drug strategy in 1998 (updated in 2002). DrugScope and Turning Point have welcomed many recent initiatives to get drug addicts into treatment services via the police station and the courts – for example, we supported the principle underlying the development of Drug Testing and Treatment Orders (although we have some concerns about implementation, and particularly the high rates of breach reported by research conducted by the Home Office and the Audit Commission) and we have backed the development of arrest referral schemes within police custody suites.

We also feel that measures in the Drugs Bill do not address the need to provide treatment to drug users in the community, who have not committed a crime and who can be prevented from committing a crime in the future by prompt access to treatment. The war on drugs is too easily interpreted as a war on drug users. Instead, tackling substance misuse must be central to a broader social welfare and health agenda that addresses and matches the complex and different needs of many problem drug users

The Bill risks stigmatising all people with drug problems (many of them highly vulnerable and disadvantaged) by exclusively focusing on links between drugs and crime – it is equally important not to neglect the health and welfare dimensions of hard drug use; criminal justice responses can exacerbate the social causes and contexts of problem drug use (for example, if people breach the conditions of orders and end up imprisoned or fined); and the massive increase in referrals into drug treatment via the criminal justice system has not been matched by appropriate development of the treatment sector – a situation which has been described as ‘a motorway into a car park’.

One of our problems with this Drug Bill, then, is its overall emphasis on tougher law and increased police powers instead of other changes to drug policy. DrugScope and Turning Point have published proposals for an alternative Drugs Bill that would speak directly to the key concerns of the drugs field and the messages from the available research. Our focus would be firstly on prevention then treatment provision, harm reduction and improving the capacity of the health service to respond to people with drug problems.¹ This alternative Bill sets out what needs to be in place to really make a difference in reducing drug-related crime.

Specifically, our five key proposals are:

- ❑ An expansion in treatment services which meet complex needs (for example, both substance misuse and mental health problems);
- ❑ Better co-ordinated pathways through treatment to prevent people dropping out, as well as ongoing support as they move out of treatment to prevent them returning to drug or alcohol misuse.
- ❑ A pilot programme of safe injecting rooms to reduce the risk of overdose, to ensure needles are safely disposed of and to help to engage the most problematic users with drug services, as well as an expansion of heroin prescribing to the most chaotic opiate users.
- ❑ Greater support and training for GPs working with drug users.
- ❑ Investment in training and recruitment to develop a highly skilled drug treatment workforce.

As well as helping many vulnerable people with damaged lives, we believe this set of measures would ultimately be a more effective way of reducing drug-related crime and other social problems than a further expansion of police powers.

COMMENTS ON THE DRUGS BILL

Part 1 – Supply of drugs

We are concerned about the increased use of drugs by young people, therefore we do not oppose making it an aggravated offence to be found to be dealing drugs near schools or to use young people to run drugs. However, we believe that this provision is of largely symbolic value. A recent report in DrugScope's magazine *DrugLink* (January 2005) quoted senior police officers as questioning whether there was a problem of professional drug dealers targeting school children. While some small time dealers do operate around schools, it is more likely that young people will come into contact with drugs through older siblings or friends.

Opposition to Clause 2

We oppose Clause 2, Proof of intention to supply a controlled drug, and call for it to be removed. This Clause introduces a new presumption into law that anyone caught with more drugs than reasonable for personal use is committing the higher tariff offence of possession with intent to supply. This would be an evidential burden, which means the onus is on the defendant to prove that the drugs in their possession were for personal use and not supply. In our view this is an unnecessary complication of the law and takes away court discretion. The courts already take into

¹ See www.drugscope.org.uk for the Alternative Drugs Bill

account the quantity of drugs – alongside other factors – when deciding whether to charge somebody with simple possession or possession with intent to supply.

We believe that any attempt to define dealing or supply based on the possession of a defined quantity of substance places evidential burden on the accused. This goes against the fundamental burden of the police proving cause and is likely to be extremely problematic in practice.

There are also several practical difficulties.

1. There would be considerable practical difficulty in setting a precise quantity for the amount of drugs possessed to constitute a criminal offence of possession with intent to supply. The Government has not yet given an indication of the amount of drugs that would give rise to this presumption which will be prescribed by regulations.
2. Dealers could exploit the new offence by ensuring that the amount of drugs held by them at any one time remained below the specified amount.
3. In decisions on intent to supply, courts should have the discretion to consider all relevant circumstances - the amount of drugs found in possession is an important factor but not the only one. Whilst it is recognised that the possession of large quantities is likely to be more consistent with supply than personal use, it is important to consider other factors in weighing up a decision of whether a charge of possession with intent is appropriate. These factors include: the variety of drugs found, evidence that the drugs were prepared for sale, evidence of preparation for dealing, evidence of large amounts of money in the possession of the defendant, and evidence from documentation, such as recorded transactions.

An alternative proposal for reform

DrugScope and Turning Point believe that the law should differentiate between the criminals who run the drugs trade for their own profit and someone buying drugs on behalf of a group of friends or the teenager growing cannabis in their bedroom.

We support the findings of the Runciman Inquiry's report for the Police Foundation on the *Misuse of Drugs Act 1971*, published in 2000, which recommended that it should be a defence in law for a person accused of supply or possession with intent to supply to prove that he/she was a member of a small social group and supplied (or intended to supply) a controlled drug to other members of that group believing he/she was acting, or had acted, on behalf of that group, which shared a common intention to use the drug for personal consumption. This would enable the law to focus on high-level drug dealers who do the most harm.

Part 2 – Increasing police powers

The Drugs Bill gives the police significantly greater powers in relation to dealers who swallow drugs or hide them in body cavities. The police will be able to order an X-ray or ultra sound scan and magistrates will be able to remand to custody suspects who they believe to have swallowed drugs for a period of up to eight days.

We acknowledge the difficulty that the police can have in charging and securing the conviction of drug dealers who ingest drugs to avoid detection.

However, we do have concerns about these provisions.

1. Assurances are needed that these powers will be used to target dealers and traffickers. These powers should be used only if the person is suspected of intent to supply, supply or trafficking and not simple possession.
2. The Bill would allow a court to draw an adverse inference if a person refuses without good cause to consent to an intimate search, X-ray or ultrasound scan. Someone may be reluctant to submit to an intimate search for a range of reasons. A Home Office Statistical Bulletin² showed that drugs were found in only 1 in 7 of intimate searches undertaken in 2003/4. It should be clear that an 'adverse inference' does not mean a 'presumption of guilt'.
3. We have serious concerns about the provision enabling someone to be remanded in custody for up to 192 hours. It should only be used if the police have proof that the suspect has ingested drugs through X-ray or scanning (or they have good reasons to suspect drugs have been ingested in circumstances where a suspect has refused to submit to a scan). If X-ray and scanning equipment is reliable and is available to all police officers, then there can not be justification for holding somebody in custody for an extended period where X-ray and scan results are negative. Therefore any increase in remand time should only be used in certain stipulated circumstances.

Part 2, Clause 7 – Testing for class A drugs and the role of assessment (Part 3)

This key proposal makes a number of amendments to the *Police and Criminal Evidence Act 1984* to allow for the introduction of drug testing of a person for specified Class A drug use at arrest for a 'trigger' offence, to require a person with a positive test to attend an assessment by a drugs worker and where appropriate to attend a further follow-up assessment for the purposes of drawing up a care plan. At present, a drug test can be administered only when someone charged with a trigger offence.

We support the development of assessment and referral procedures within police custody suites through Arrest Referral Schemes. The most effective response to drug related offending is to get drug offenders into treatment programmes. We share the aspiration of Government to get more people into drug treatment, and accept that a good way of engaging some of the most chaotic users is by targeting action at police stations, courts and prisons.

However, we are doubtful whether the power to test at arrest, rather than at charge, will lead to an improvement in the number of people entering and completing treatment. The evidence on improving responses to problem drug users at the point of arrest does not suggest that the problem is with a lack of coercive police powers to compel people into treatment. We recommend that the emphasis should be on strengthening existing voluntary schemes – particularly arrest referral - rather than introducing new police powers (which are linked to criminal sanctions) to get more people into treatment.

Developing Arrest Referral

Arrest Referral is a voluntary scheme that aims to identify problematic users at the point of arrest and to encourage them to tackle their problem. Police custody staff offer the scheme. On agreeing to participate people are assessed, and if appropriate referred to services. Arrest referral workers screened about 49,000 individuals in

² Arrests for Notifiable Offences and the Operation of the Certain Police Powers under PACE 18/04

England and Wales between October 2000 and September 2001. More than half of them were voluntarily referred to a specialist drug treatment service. Of those referred, a quarter (5,500 individuals) entered treatment.

The research evidence on arrest referral suggests that the priority - if the Government is concerned about improving outcomes for arrestees with drug problems - is not to introduce new coercive police powers. Recent research identifies the following essential ingredients for successful arrest referral work:

- ❑ A proactive mode of work;
- ❑ A working style which wins the respect and trust of users;
- ❑ Adequate resourcing;
- ❑ A capacity to provide ongoing support;
- ❑ Appropriate treatment services to which to refer;
- ❑ Adequately resourced treatment services to which to refer.³

Turning Point and Drugscope believe that the Government should use this opportunity to introduce a number of practical improvements to existing arrest referral schemes in order to deliver enhanced arrest referral and encourage people to enter treatment on a voluntary basis. Modifications could include:

- ❑ The provision of pre-booked appointments for treatment;
- ❑ Accompanying clients to appointments and assertive outreach following non-attendance;
- ❑ Follow-up contact;
- ❑ Special arrangements for particularly vulnerable clients; and
- ❑ The provision of further training for workers on issues such as prostitution, stimulant use and alcohol.

These would be more effective measures in actively supporting people to voluntarily attend drug treatment.

Further concerns about Clause 7

In addition, there are a number of issues, both technical and ethical, that need to be clarified.

1. There needs to be clarification over the status of the test sample and how the information derived from the results of the test is used. We seek assurances that information from test results is handled sensitively and that it is only used to inform a course of treatment rather than influencing criminal proceedings, where it has no bearing on the crime, and does not relate to problematic behaviours. We hope that the Government will confirm that the test results will not be used as additional evidence in support of offences that the person has been arrested for, does not influence a decision whether to charge, or as an aggravating factor when sentencing.
2. We are concerned that the process and results of testing at arrest could be used in an oppressive way in interrogation and related processes at the police station. We seek assurances that appropriate guidance, safeguards and monitoring will be put in place to ensure that these powers are not misused.

³ Edmunds M, May T, Hearnden I and Hough M (1998), *Arrest Referral: Emerging Lessons From Research*, DPI Paper No.23.

3. It is important to clarify how the results are recorded and how long they will be retained. This is particularly important if the charges are dropped for the crime that the individual was originally arrested for.
4. It is not clear what occurs if someone is arrested, tests positive for Class A drug use, but is not charged. Is this person still bound to attend assessments and face criminal penalties if they do not attend?

There are also a number of additional implementation issues that need to be carefully considered:

1. The implementation procedures need to be carefully developed, with sufficient and clear guidelines ensuring that the individual concerned is provided with adequate information about the procedure and the implications.
2. Clear and balanced implementation procedures are required to ensure that the police powers are not used in a discriminatory way and that a similar situation to the controversial use of 'stop and search' powers does not arise. (Police will have discretion whether to test arrestees or not, and it is important to ensure that these decisions are taken on appropriate grounds.)
3. The Bill introduces powers to require a person with a positive test to attend an assessment by a drugs worker and where appropriate to attend a further follow-up assessment for the purposes of drawing up a care plan. This will only be done when the assessor believes that the drug user is ready and might benefit from further assessment, treatment or both. We have some reservations about this proposal. The vital relationship of trust between the drugs worker and the client will be affected by the obligatory nature of the assessment and follow-up assessment. Motivation may not be so strong as it is for those that volunteer for treatment as part of arrest referral.
4. The relationship between the police and the drugs worker will need to be closely considered, as the effectiveness of the follow-up assessment will depend on the quality of the partnerships in which they operate. There are particular problems around who will conduct the assessment and the need for the police to accept a drugs worker's final assessment decision, particularly if it is felt that a care plan would not be appropriate in the circumstances.
5. There is a need for clear inter-agency procedures and criteria governing decisions on assessment. This is vital as confusion over the boundaries will affect the relationship between the worker and the client, and could adversely affect the assessment process.

Part 4 – Anti-social behaviour and intervention orders

The Bill includes a provision to give a court a power to supplement an anti-social behaviour order with an intervention order. Initially, the new order will only address drug-taking behaviour. It will be a civil order aimed at adults. The intervention order will require a person to participate in specific activities and require attendance at particular times.

We agree that anti-social behaviour can be linked to drug and/or alcohol misuse. The key issue here, however, is access to effective forms of treatment to enable people to achieve and sustain a change in their behaviour. The issues that relate to

anti-social behaviour are often complex. People who are 'labelled' anti-social often have high levels of vulnerability and a range of complex needs. Effective responses need to recognise this and work with individuals to ensure that their support needs are met, thereby tackling and changing the causes of their behaviour.

Lack of clarity and detail

We have considerable concerns that these provisions are being debated with little detail as to precisely what implementation orders would look like or how they will operate in practice. The Bill does not define 'appropriate activities'. Nor does it identify who will be responsible for deciding what amounts to a proportionate response to the trigger behaviour or who will provide or supervise the 'appropriate activities'. In other words, it is unclear how intervention orders will be used, in practice, as a tool to address problem behaviours. It is crucial that we do more to tackle the long-term causes underlying anti-social behaviour and focus our energies on ensuring that a range of support – such as early interventions, training and accommodation to prevent drug use – are available and accessible.

We are also concerned that the 'appropriate activities' provided in the intervention order will be compulsory. This means that people may have little incentive to begin and sustain the activities other than to avoid a fine, and only minimal improvement can be expected of someone forced into certain activities. It is hard for providers of drug treatment and other services to work effectively with clients who are not motivated to change. Fining individuals will not tackle the behaviour of individuals or its underlying causes (indeed, it may make these causes worse, for example by increasing debt problems). Before fines are imposed, measures need to be taken to ensure that they are a realistic response for the individual given their financial situation. Non-payment could result in a custodial sentence, which is unlikely to be the most appropriate response to their needs, or the most effective way of preventing them from acting anti-socially in the future.

Part 4 – Magic mushrooms and drug classification

DrugScope supports the need for the Government to clarify the law surrounding the sale and distribution of magic mushrooms. At present, magic mushrooms are a Class A drug if they have been prepared, but fall outside the *Misuse of Drugs Act 1971* in their natural state. This has led to the spirit of the drug laws being flouted by some retailers, and is all the more confusing as Magic Mushrooms are often used in their raw state and do not necessarily have to be prepared in any way for the psycho-active ingredients to take effect. It is confusing to leave the legal definition surrounding illegality of Psilocin etc to be determined by the issue of 'preparation', which is how the law currently stands.

We agree with the Government that the law needs to be clarified and that fungus of any kind that contains the drug Psilocin or an ester of that drug should be treated in the same way. We do not, however, believe that Magic Mushrooms should be in the same category under the Misuse of Drugs Act as heroin and cocaine (Class A). The change to the law proposed in the Drugs Bill could be represented as extending the Misuse of Drugs Act to cover a new category of substances – the active ingredients in Magic Mushrooms, regardless of whether they are in a natural or prepared form. Given this, we believe the Government's Advisory Council on the Misuse of Drugs (ACMD) should be asked to look at the classification of Psilocin, etc.

DrugScope and Turning Point would like to see the Government go further and commit to a review of the drug classification system under the auspices of the

ACMD. The aim should be to ensure that it truly reflects the overall harms to individuals and society and is more consistent with the focus of the Government's overall drug strategy – implicit in this Drugs Bill - on the most harmful Class A drugs, namely heroin and cocaine/crack. The Runciman Report (2000) and the Home Affairs Select Committee Report (2001) raised questions about the appropriateness of classifying ecstasy and LSD as Class A drugs, alongside heroin and crack/cocaine. The same arguments apply to Magic Mushrooms.

If passed into law, we hope the Government will ensure that resources are allocated to educate and inform the public about the change and the related risks and harms associated with use.

Schedule 2 – Repeal of extension of Section 8 of the Misuse of Drugs Act

DrugScope and Turning Point applaud the Government for repealing Section 38 of the *Criminal Justice and Police Act 2001*, which extended section 8 of the *Misuse of Drugs Act 1971* to include all illegal drugs.

Under Section 8, it is an offence for a person responsible for a premise or service to knowingly allow drugs to be used or administered on those premises. This was the legal provision used to prosecute John Brook and Ruth Wyner (the so-called Cambridge Two) who received long prison sentences in 1999 when it was found that heroin was being dealt at a day centre for the homeless that they ran in Cambridge. Originally Section 8 only applied to cannabis and opiates. Section 38 of the *Criminal Justice and Police Act 2001* would have extended it to all illicit drugs. Organisations like DrugScope and Turning Point feared that extension of Section 8 could restrict the ability of social care agencies to deliver harm reduction services to some of the most vulnerable people. This provision was never implemented and we welcome the Government's change of heart.

Conclusion

Much of the Drugs Bill is concerned with coercing offenders into drug assessment. These provisions are an extension of - and a way of toughening up - arrest referral procedures already in place. The question, therefore, is whether this is the right way to improve the effectiveness with which the drug treatment system is engaging with arrestees who have drug problems, and whether it will have a positive impact on treatment outcomes. It is concerning that new coercive powers are being introduced without evidence that this is an effective way to reduce drug misuse, and the best investment of available resources if we want to cut drug related crime and anti-social behaviour. This is especially concerning when some of the government's own departments have found that more needs to be done to improve retention in treatment and limiting relapse.

When it comes to dealing effectively with arrestees, research undertaken for the Home Office⁴ has shown that voluntary arrest referral schemes can be highly effective. It is not clear that making arrest referral compulsory rather than voluntary - i.e enforcing follow up assessments - will increase successful treatment outcomes or improve the arrest referral system in line with the findings of the research evidence.

⁴ Edmunds, Mark; May, Tiggey; Hearnden, Ian; Hough, Mike *Arrest Referral: Emerging lessons from research*, DPI paper No.23 (1998)