Release
Drugs, The Law & Human Rights

Release's Response to the UK Government's White Paper: 'Swift, Certain, Tough: New Consequences for Drug Possession'

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 believes in a just and fair society where drug policies should reduce the harms associated with drugs, and where those who use drugs are treated based on principles of human rights, dignity and equality. Release is a NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

Release has submitted a response to the Home Office White Paper "Swift, Certain, Tough: New Consequences for Drug Possession" via the online consultation. That response is also outlined before so that policymakers, media and the public can see how the organisation responded.

In summary, Release is fundamentally opposed to the proposals contained in the White Paper. The Government is guilty of ignoring the evidence of how we can reduce the harms of drugs and the harm caused by current drug policies. Criminalisation and punishment of drug possession offences does not deter use, a point that has been confirmed by the Home Office. However, criminalisation can have a negative impact on health, social and economic outcomes for individuals and their families. Moreover, the policing of drugs drives racial disparities in the criminal justice system. Two thirds of all stop and searches are for drugs, with Black people being subjected to drug searches at nine times the rate of white people despite being less likely to use controlled substances, and being less likely to be found in possession of drugs after such a police interaction. The proposals contained within the White Paper are predicated on expanding the policing of drugs, which will inevitably involve increasing police stop and search. At a time when community-police relations are so fundamentally damaged, these proposals are the opposite of what is needed.

It appears that the Conservative Government is moving backwards when it comes to drug policy; the number of countries adopting decriminalisation of drug possession offences is ever-increasing. Decriminalisation of drug possession, when coupled with investment in harm reduction and wider public health responses, can have positive outcomes, especially in the arena of health. The WHO has called decriminalisation a 'critical enabler' of service access (a crucial point considering the UK is experiencing record levels of drug related deaths) and the Chief Executive Board of the United Nations, the body that represents all UN agencies, has endorsed decriminalisation of drug possession and use.

Beyond decriminalisation of all drugs, a number of jurisdictions have legalised and regulated cannabis for recreational purposes - this includes almost half of US states, Canada, and Uruguay. In Europe, Malta has legalised cannabis through non-commercial outlets, and both Germany and Luxembourg have committed to regulating the possession, supply and production of this substance. The UK frankly looks like it is still

operating an outdated, outmoded and harmful legal framework when it comes to controlled drugs, what is proposed is not only more of the same, it is a doubling-down on a failed approach. An approach that costs the UK Government £1.6 billion to enforce, which by the Home Office's own admission has "little impact on availability" of drugs.

Release has explored decriminalisation in over 30 jurisdictions, and has found that drug decriminalisation does not lead to an increase in prevalence, and when done well, can improve health outcomes, reduce drug-related deaths, and reduce offending and recidivism, and reduce the burden on police resources and public spending related to social costs essentially. This approach would be better suited to achieve some of the targets of the Government's 10-year Drug Strategy, primarily improving health outcomes for people with problematic drug use and beyond.

Response to substantive questions

7. Do you agree with our proposals that for a first offence of possession of a controlled drug an individual should be required to attend a drug awareness course designed to make them consider their behaviour?

Strongly disagree

Release is disappointed with the framing of the consultation response document, which prevents the respondent from engaging with the principles and direction of the proposed policy. Instead, the questions are framed around the mechanisms of the policy approach, as such we will use this question to highlight some of our broader concerns. This is an approach we will take across the responses, as well as the end dealing with the specific question.

Release fundamentally opposes the framework proposed by the Home Office as it will result in a significant increase in the policing of drug possession offences, Currently, two thirds of all stop and searches are for drugs accounting for almost half a million such police interactions, with Her Majesty Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) estimating that 70 per cent of these searches are for simple possession of drugs. These searches fall most heavily on Black people and those from other ethnic communities, and people living in deprivation. Black people are nine times more likely to be stopped and searched for drugs, despite being less likely to use drugs. And even though the "find" rate of drugs resulting from a police search is lower for Black people, when caught in possession they are more likely to receive a harsher punishment, for example, a Black person is sentenced to cannabis possession at almost 12 times the rate of white people. The proposed framework will inflame this situation, leading to even worsening levels of trust and legitimacy in police, when community-police relations are at a nadir.

At Paragraph 22 of the consultation response, the Home Office acknowledges concerns about the overrepresentation of young people from ethnic minority communities for drug possession offences. It is suggested that adherence to the tiered system will somehow reduce entry into the criminal justice system for young people from these communities, we presume on the basis they will be subject to a fine/ awareness course at Tier 1. Yet, police discretion is retained, allowing officers to process someone caught

on the first occasion to be subject to Tier 2 or Tier 3. In any event, the proposals do nothing to reduce the over policing of racialised communities and will in fact exacerbate the problem. The White Paper also references Release's paper on drugs and racial disparities, The Colour of Injustice, in the Bibliography, whilst ignoring the actual content and the recommendations of that paper - none of which include an increase in policing.

Paragraph 19 of the White Paper states that the UK will "build an evidence base for a particular intervention". Considering the focus on drug awareness courses we would recommend that if the Home Office is committed to building the evidence, then they wait for the outcome from the research being undertaken by Professor Alex Stevens and the College of Policing, funded by the Cabinet Office, into drug diversion schemes. These schemes divert people into drug awareness courses.

Additionally, evidence from across the world by leading academics has shown that punitive policing approaches can undermine health and increase risks for individuals. Criminalisation and punishment of drug possession offences does not deter use, a point that has been confirmed by the Home Office. However, criminalisation can have a negative impact on health, social and economic outcomes for individuals, and fuels stigma and marginalisation. All the emerging evidence - by contrast - points towards the efficacy of public health led interventions, free from coercion and punitive sanctions.

Portugal ended criminal sanctions for possession of all controlled drugs in 2001, while also investing in harm reduction initiatives, treatment, and prevention. People caught in possession are instead referred to a dissuasion committee to see whether they need help to address their substance use – in over 80 percent of cases proceedings are suspended. The drug-related death rate (aged 15-64 years) in Portugal was 8 deaths per million in 2018, which is considerably lower than the UK's 76 per million. Czechia also decriminalised possession of controlled drugs, the most recent law reform was in 2010, and similarly to Portugal, it has a significantly lower mortality rate of 5 per million - 15 times lower than the UK's rate. In fact, all the countries in Europe that have some form of decriminalisation - including Spain, Germany, Italy, and the Netherlands - have a lower drug-related death rate than the UK. While the lower rates of drug-related death in these countries will not necessarily stem from the legal framework, it is noteworthy that all of these countries have ended criminal sanctions for drug possession offences under various models of decriminalisation. Evidently, better health outcomes can be achieved when drug dependency is viewed through the lens of public health, rather than criminal justice.

There are a number of crucial problems that exist with the proposals, especially in relation to the targeting of "so-called recreational users". Firstly, the decision to focus on this group (and that would suggest it is a homogeneous demographic, it is not) will do little to undermine the drugs market. Dame Carol Black in the first phase of her review of drugs for the Home Office found "those who use drugs three or more times per week account for 91% of total expenditure on drugs. Thus, attempting to reduce drug use among occasional users is unlikely to have a material impact on drug market revenues."

The proposed tiered framework for dealing with drug possession offences outlined in the White Paper is intended to only target these "so-called recreational users". It is not clear how law enforcement is meant

to distinguish between this group of people who use drugs and those who use drugs dependently. Police are not qualified to make such determinations.

In relation to the specific question asked, mandating people to attend an awareness course (and pay for it) is totally unnecessary and a waste of public resources. If drug treatment agencies are expected to deliver such courses then this will place undue pressure on existing services, who after a decade of cuts are faced with a serious labour shortage. It is vital that during a public health crisis, where drug related deaths are increasing year on year to unprecedented records, the focus must be on people who are at risk of death. Fifty per cent of people who die from drug related causes have not been in contact with treatment services for at least five years - this is where the crisis and need is, instead of wasting resources on these proposals, we urge the Home Office and the Department of Health to focus their energies on this issue.

Failure to attend the course or pay the fine will lead either to an increased fine or prosecution; given the inevitable expansion in policing, the result will be a greater number of people ending up with criminal records for simple possession of drugs. Given the increased number of countries moving away from criminalising drug possession offences, and the rise in jurisdictions legalising and regulating cannabis, the UK looks archaic in its approach - this is the opposite of the supposed "Global Britain".

8. Do you agree that the individual should pay for the cost of the drug awareness course?

Strongly disagree

We strongly oppose the proposal that individuals pay for the course. This will create an inequity within the system whereby those from affluent backgrounds can afford to buy themselves out of the system whilst those living in deprivation will have to choose between "heating and eating" or avoiding a prosecution. Research undertaken by Release has demonstrated that the highest levels of police drug stop and searches occur in areas of deprivation as defined by the Index of Multiple Deprivation. When we intersect the experience of deprivation with structural racism, the impact of this proposal and the wider framework contained within the White Paper will have a detrimental and damaging impact on racialised communities.

9. Do you agree that there should be a consequence in the form of a financial penalty for those who refuse to attend the drug awareness course? Please select one option.

Strongly disagree

Please see our comments at Q8. Again, this will create a two-tiered system - one for the rich who can afford to pay a financial penalty, and one for those from less affluent socio-economic backgrounds who may not be able to attend due to work or family commitments. Failure to pay the Drug Enforcement Notice (DEN) will result in risk of prosecution, this will inevitably disproportionately impact those with less disposable income - many of whom will come from communities who are already overpoliced. The Home Office is literally baking in unfairness and inequality into the proposed framework.

10. Do you think that current police-referred drug awareness courses have a positive, negative or no impact on illicit drug use and re-offending rates? Please select one option for each answer.

Illicit drug use - don't know

Whilst we do not know how a drug awareness course impacts on levels of drug use, what we do know from the evidence is that decriminalisation of drug possession offences does not lead to increased prevalence. Decriminalisation is associated with better health, social and economic outcomes when accompanied by investment in harm reduction and public health investment (UK and devolved administrations already invest in these responses). Please see Q7.

Re-offending - don't know

Research from Australian states has shown that criminalisation of cannabis possession offences is associated with higher levels of re-offending.

11. Do you know of available evidence on police-referred drug awareness courses (not educational settings) and their effectiveness in reducing drug use and re-offending? If yes, please share any evidence.

No

12. Do you think that the drug awareness course should be a standardised national offer across all police forces?

Don't know

We would recommend waiting for the outcome of existing Government funded research projects before rolling out national programmes. We do have evidence from models of decriminalisation from across the world which would help inform a national approach, the most effective way of implementing these models is through legislation and, in fact, could be achieved by repealing s5(1) and 5(2) of the Misuse of Drugs Act 1971.

13. In your experience, on average, what proportion of proven drug possession offenders do you think are currently referred to drug awareness courses?

Don't know

Tier 2 Qs

14. Do you agree that those who are caught in possession of drugs for a second time should be offered a caution with rehabilitative conditions, (where their alternative option is to face arrest and charge)?

Strongly disagree

We strongly oppose this proposal. A conditional caution is a criminal record and will appear on certain background checks. This can limit a person's life opportunities, increase the likelihood of re-offending and progression into more problematic patterns of drug use. Public local services have long been underfunded and overstretched and it will likely be those services that are charged with delivering "rehabilitative conditions". The proposal has failed to make a case for how those services will be funded to deliver these conditions. More fundamentally, it is unclear what these "rehabilitative conditions" are and, indeed, why those targeted by the proposed measure should be expected to undergo such conditions if the proposal is suggested to apply to people that are not dependent on their drug use. It is not clear if there is an implication that those found in possession for a second time are to be treated as being dependent on drugs and, indeed, how the police are expected to approach those individuals.

Opinion polls consistently show that the public do not support the criminalisation of people who use drugs. Ending criminal sanctions for drug possession has been positive in other countries. The US have recently announced a pardon of all federal cannabis possession convictions on the basis that these convictions are disproportionately of Black and minority populations and unjustly impact on the housing, employment and personal outcomes of those convicted. We support this approach and are of the view that the UK should follow suit. The white paper is silent on practical solutions to the racial disparities in the policing of drugs, but the expansion in policing implicit in the proposals will significantly worsen these problems and related community-police tensions.

A more pragmatic and genuinely evidence-based approach would be, in the short term, to develop and deliver best practice diversion schemes, based on evidence from the 14 police authorities already implementing such approaches for possession offences. This should be seen as an important step towards formal decriminalisation of drug possession.

Evidence shows decriminalisation does not lead to increased drug use and results in better outcomes across health, social and economic indicators.

15. Do you agree that, where proportionate, the Tier 2 conditions should include:

i. A mandatory drug testing requirement?

Strongly disagree

Drug testing is abusive, disproportionate, expensive and ineffective. Testing is an invasive intrusion on people's right to privacy, and would incur substantial personal costs in terms of time, problems with employment or family responsibilities and so on. As such it is clearly disproportionate.

The evidence for mandatory drug testing for people who are arrested (whether for drug offences or trigger offences) almost all relates to people who have been assessed as drug dependent, and has shown that it has little impact on use or recidivism, any inferences to the people who use drugs recreationally - nominally the target of these proposals - is highly questionable. For example, the first paper referenced by the Home Office in the White Paper in relation to drug testing (Barnett, G. D., & Fitzalan Howard, F.

(2018). What doesn't work to reduce reoffending? A review of reviews of ineffective interventions for adults convicted of crimes. European Psychologist, 23(2), 111.) describes drug testing as "ineffective" and having "no impact on drug use" or "recidivism". Another article referenced by the Home Office, and co-authored by the President of the Royal College of GPs, Professor Clare Gerada, states that "the only systematic study of random drug testing in schools failed to find an impact…researchers found that testing was not associated with either the prevalence or the frequency of student cannabis use and other illicit drug use by male high school athletes."

The Home Office is proposing to subject individuals to randomised drug testing over a period of up to 3 months, giving those individuals "*around 24 hours*" notice to attend a local testing location. The Home Office recognises that this will prevent international travel and it is our position that this alone is a disproportionate and unjustifiable punishment for a possession offence and an unjustifiable infringement of Article 8 of the European Convention on Human Rights as implemented by the Human Rights Act 1998.

The Home Office's justification, to prevent individuals from being drug-free only during the days leading up to the test, fails to consider that different drugs are detectable over different periods, dependent on the test used and run the risk of false positives. This risk is particularly severe as a positive result could lead to a formal charge. The Home Office also fail to consider the wider impact that this short notice and the duration of the testing requirement will have on an individual's work, family and private life, and will hit those on low incomes, undertaking shift-based work the hardest, potentially placing many at risk of employment termination or disciplinary action.

There is evidence that testing for certain drugs can displace people's use to other potentially more dangerous drugs that are not tested for. This has happened, for example, in prisons - where random testing for cannabis displaced use to much more risky synthetic cannabinoids (not tested for) or heroin (which is detectable for a much shorter time period). Testing on a mass scale would be yet another unnecessary resource burden on police and forensic services, incurring huge albeit unspecified costs (especially if private actors had to become involved as seems likely).

ii. Attendance at a further drug awareness course?

Strongly disagree

Mandating that an individual attend a drugs awareness course and pay for it, either at cost or for profit, represents a financial sanction that will have a larger impact on low incomes, in receipt of state benefits, or otherwise without means. A financial penalty for a possession offence is disproportionate, as is having to pay for the same or similar awareness courses at Tiers 2 and 3. The Home Office is silent on the perceived benefit of essentially repeating the same sanction three times. Its hope to "build on" currently unavailable evidence as to the effectiveness of drugs awareness courses undermines any suggestion that this is an evidence-based, or otherwise effective, policy. Additionally, those with means may simply be incentivised to fail to attend the course, pay the Drugs Enforcement Notice, and therefore evade this part of the proposed system entirely, completely undermining the Home Office's aim to level the playing field.

16. Do you agree that drug awareness courses should be different for first time offenders and repeat offenders?

Don't know

17. Will your organisation be impacted by the proposals on drug awareness courses in Tiers 1 and 2?

Yes, please explain why and how

Release provides legal support to people who are affected by the drug laws through our national (unfunded) helpline. The helpline is staffed by our legal team and volunteers who can advise on police powers, what happens on arrest and the process through the criminal justice system. The proposals outlined in the White Paper will inevitably lead to a greater number of people coming into the criminal justice system, which will lead to a greater number of people contacting us for support. This will place an increased strain on our limited resources.

18. Do you think that mandatory drug testing could have a positive, negative or no impact on reducing illicit drug use and re-offending?

Drug Use - no impact

Re-offending - no impact

19. Do you know of available evidence on mandatory drug testing and its ability to reduce illicit drug use or re-offending? If yes, please share any evidence.

Yes, the referenced papers and articles in the Bibliography of the White Paper outline the limited effectiveness of mandatory drug testing, with the majority stating that mandatory drug testing has no impact on drug use or re-offending. Please see our response at Q32.

20. Do you agree that those caught in possession of drugs for a third time should attend a drug awareness course?

Strongly disagree

Please refer to our response at Q7 and at Q14 on the lack of evidence for drug awareness courses. It is hard to understand that if someone has already attended a course, possibly on two occasions, what would be achieved on a third attendance.

In addition to attendance at the drug awareness course, it appears that there would be parallel criminal proceedings which would, if a person is found guilty, involve a penalty (currently outlined in the Sentencing Council Guideline on Drug Offences), attendance at a drug awareness course and a civil order. This is a disproportionate and un-evidenced approach to drug possession offences, and is likely to increase

harms rather than reduce them as people will be afraid to seek help if they find themselves in a risky situation with their drug use.

Arguably if someone has been caught on a third occasion then this could be an indicator that their drug use is linked to dependency and, as such, they should never have been part of this framework in the first place. If this is the case, will individuals have the right to have their previous punishments, including a criminal record linked to a diversionary caution at Tier 2, expunged? Will financial penalties paid by individuals in relation to a DEN or attendance at a course be reimbursed? This is just one example of why the proposed framework is simply unworkable.

If the person caught on a third occasion does not have dependency issues, then it is likely they come from a community or demographic that is overpoliced. One of the aims of the proposals is to reduce inequitable treatment of racialised communities, it is hard to see how this is achieved in the framework. As stated previously, the supposed linear approach is meant to mitigate the experience for Black and minority communities however the risk of over policing, and the discretion that is allowed in the proposals, is likely to result in higher numbers of people coming into formal contact with the criminal justice system.

21. Do you agree with the proposal to include a drug awareness course in each tier?

Strongly disagree

Please see our response at Q7, Q14 and Q15ii.

The requirement to attend further courses is not evidence based, it would also place more pressure on the drug treatment system, which is already dealing with shortages of skilled staff. If the Government was to support drug diversion schemes then this should apply to all people caught in possession of drugs, regardless of the number of occasions they are caught and it should never result in a criminal record. Eliminating the risk of criminalisation and punishment will reduce barriers to treatment and to emergency help, for those that need it - this is the only way the legal framework can improve health outcomes and potentially reduce drug related deaths. As outlined at Q7 decriminalisation of drug possession and use in Europe is happening in countries with lower rates of drug related deaths (and in many cases lower rates of drug use) compared to the UK.

22. Do you agree that those caught in possession of drugs for a third time should receive a Drug Court Order, which includes one of the following interventions:

An exclusion order - **Strongly disagree**

A drug tag - **Strongly disagree**

Passport confiscation - **Strongly disagree**

Driving license disqualification -**Strongly disagree**

Drug Court Orders (DCO): The courts will be given power to impose these orders alongside conviction. Our position as an organisation is that conviction alone is a disproportionate punishment which has measured discriminatory impacts and there is no evidence to suggest the threat of prosecution correlates to a reduction in drug use. DROs are an unjustifiable addition to an already broken system. Each DCO represents a disproportionate and unjustifiable punishment for a possession offence and an unjustifiable infringement of Article 8 of the European Convention on Human Rights as implemented by the Human Rights Act 1998.

1. **Exclusion orders (up to 12 months):** The Home Office recognises that policing recreational drugs use is hindered by the tendency for people to use drugs in private places. The Home Office also recognise that the evidence for the effectiveness of exclusion orders is weak. Simply put, people that want to use drugs can go to other nightclubs or areas to do it. On this basis alone, exclusion orders, by potentially preventing an individual from being able to visit a geographical area or other place for up to 12 months, have a disproportionate impact but fail to discernibly advance any policy objective,
2. **Drug tagging (up to 4 months)**: The Home Office recognise that this technology simply does not exist and that there is, therefore, no evidence to support its efficacy or, indeed, that it is a proportionate sanction to accompany a criminal conviction.
3. **Passport confiscation (Between 3 and 24 months)**: The Home Office sets out that passport confiscation "*might be applied where necessary and proportionate*" without considering the circumstances that would justify a confiscation. For a possession conviction, there is no discernible objective associated with confiscating a convicted person's passport and, on that basis, this sanction is disproportionate. It is also worth noting that the one paper cited by the Home Office on the impact of passport seizures for people caught in possession of drugs, found that 9 out of 10 people subject to this punishment continued to use controlled substances.
4. **Driving licence disqualification (Between 3 and 24 months)**: these are already provided for in law in relation to driving offences. The Home Office's position is that "*this restriction might be applied, where necessary and proportionate, to prevent future drug possession offending if, for example, there is evidence that driving is likely to result in future drug use and disqualification would deter such use*". It is not clear at all how being unable to drive a car might *deter* a convicted person from possessing drugs. While it is not set out, the Home Office may be seeking to *prevent* convicted persons from driving to collect drugs but this is not the same as a *deterrent*. Plainly, if this is the objective, it is undermined by the existence of public transport, walking and cycling and, on this basis, this sanction is disproportionate.

There is a risk that Drug Court Orders will have the effect of extending the time it takes a conviction to become spent, as is the case with Ancillary orders for other offences (for example restraining orders or Sexual Harm Prevention Orders). For example, an indefinite restraining order has the effect of prolonging the period of a conviction until the order has been amended or discharged.

23. Should there be circumstances where an offender receives a Drug Court Order without having first received a Tier 1 and Tier 2 intervention? (in essence, skipping to Tier 3 straight away) If yes, please outline what you think those circumstances should be.

No

For the reasons set out under question 22, we strongly oppose the introduction of Drug Court Orders on the basis that they are disproportionate, absent of any discernible policy objective or lacking an evidence base to support their efficacy. The proposal is silent on what circumstances might justify an individual being subject to a Court Order without first having been prosecuted. As our position is that DCO's are unjustifiable (and unjustified) additions to prosecution, they cannot be, and have not been, justified as a sanction at an earlier stage.

24. Do you think the minimum and maximum periods proposed for each Drug Court Order intervention are appropriate?

i. Exclusion order for a maximum period of 12 months - too long

ii. Drug tagging for a maximum period of 12 months - too long

iii. Passport confiscation for a minimum period of 3 months - too long

iv. Passport confiscation for a maximum period of 24 months - too long

v. Driving licence disqualification for a minimum period of 3 months - too long

vi. Driving licence disqualification for a maximum period of 24 months - too long

For the reasons set out under question 32, we strongly oppose the introduction of Drug Court Orders on the basis that they are disproportionate, absent of any discernible policy objective or lacking an evidence base to support their efficacy. Our position is that these are unjustifiable and disproportionate sanctions and that, on that basis, there is not a period that can be justified for their imposition.

25. Do you think there are other conditions that should be available to the court to include as part of a Drug Court Order?

No

Our position as an organisation is that conviction alone is a disproportionate punishment which has measured discriminatory impacts. For the reasons set out under question 22, we strongly oppose the introduction of Drug Court Orders on the basis that they are disproportionate, absent of any discernible policy objective or lacking an evidence base to support their efficacy. On this basis, we do not see there being a case for a court being able to impose additional conditions.

26. Do you agree that the consequences for breaching a Drug Court Order are appropriate? The consequences we propose are considering the breach as a separate criminal offence which may attract a custodial sentence.

Strongly disagree

Our position as an organisation is that conviction alone is a disproportionate punishment which has measured discriminatory impacts. For the reasons set out under question 22, we strongly oppose the introduction of Drug Court Orders on the basis that they are disproportionate and unjustifiable punishment for a possession offence and an unjustifiable infringement of Article 8 of the European Convention on Human Rights as implemented by the Human Rights Act 1998, absent of any discernible policy objective or lacking an evidence base to support their efficacy. Additionally, the Home Office has failed to suggest a justifiable basis for considering the breach of a DCO as a separate criminal offence, nor for the potential imposition of a custodial sentence. Our position is that there is no justifiable basis for this approach as DCOs suggested in the consultation are disproportionate, absent of any discernible policy objective or lacking an evidence base to support their efficacy.

27. Do you think the proposed changes will impact on you/your organisation?

Yes

28. How significant do you think the impact of the proposed changes will be on you/your organisation?

Significant - please see our response at Q17

29. What impacts, if any, do you think this new regime will have on:

a. Police

As highlighted above at Q7 this will have a number of impacts on police, including having to determine whether a person is dependent on drugs or not, officers simply do not have the competency to do this. It will involve a significant increase in police stop and searches, this will inevitably result in more policing of communities that are already overpoliced, creating even greater tensions in community-police relations.

b. Courts

Courts are already overburdened and stretched, this approach will do little to alleviate the situation. Police officers are already able to issue community resolutions and cautions for drug possession offences. Crown Prosecution Service guidance states prosecution for possession of Class B and C drugs should apply to more than a "minimal quantity", therefore an out of court sanction should be used in the first instance where the quantity is minimal. The increased number of people coming into contact with the criminal justice system, the various points in the tiered framework where breaches can occur, the possibility of running a defence of being dependent to a charge brought under this framework, are just some examples where courts, the CPS and defence lawyers will be placed under increased pressure. There is also a very

real risk of increased rates of imprisonment for breach of a DCO. Considering the level of interference caused to personal and civil liberties created by a DCO and the risk of imprisonment for breach, the argument for legal aid would be significant. Currently, most possession cases attract no legal aid, this could change in the circumstances outlined, placing greater pressure on the public purse.

c. Employers

The impact on employers could be vast. Confiscation of passport and/or driving license could result in job losses, as employees are unable to perform their roles. Drug testing, with only 24 hours' notice, could disrupt people's ability to go to work. Depending on the security of the job, this could result in wages being deducted, or for those in the gig economy not receiving payment and, potentially, being financially penalised. At the best of times this could seriously undermine a business, but we are currently in a labour shortage crisis meaning this could be highly damaging to business. The impact of criminal records at Tier 2 and Tier 3 has the potential to limit employees continuing in their roles in certain sectors. It is estimated that a cannabis conviction results in a 19% reduction in lifetime earnings, so the use of criminal records can have a deleterious impact on income, as well as tax receipts.

d. Third sector

The Third sector are also employers so would face the same challenges outlined at c. Many drug treatment agencies are third sector organisations, and as already highlighted, after ten years of cuts they have seen the workforce depleted and de-skilled. Diverting resources away from a sector that is trying to rebuild so that they can support people who have drug dependency issues, will undermine the broader aim of the Drug Strategy and will limit the potential to reduce drug related deaths. If the Government is serious about addressing the drug related death crisis, it should support services to get people into treatment, currently 50 per cent of people who die of an opioid related death have not been in contact with services for the last 5 years. Criminalisation, and threat of punishment, acts as a barrier to accessing support, as evidenced by a number of UN reports and a recent UK report that stated 16 per cent of students who found themselves in a "scary situation" with drugs did not seek help for fear of punishment. Release is concerned that if enacted these proposals could lead to increased drug related deaths, contrary to the Government's pledge to reduce fatalities. Not only could these proposals contribute to increased harm for people who use drugs, but if Third sector organisations are expected to deliver drug awareness courses and broader referrals linked to Tier 2 and Tier 3 conditions this will significantly undermine their ability to support people accessing their services. The sector needs to have the space and time to rebuild a skilled workforce.

30. Do you believe that our proposals to create a tiered drug possession regime will have an impact (both positive or negative) on individuals with a protected characteristic under the Equality Act 2010? If yes, please describe the potential impact. Protected characteristics under the Act are disability, gender reassignment, age, pregnancy and maternity, race, marriage and civil partnership, sex, sexual orientation and religion or belief.

Yes, please describe the potential impact

Please see our responses at Q7 and Q38 which detail the negative impact drug law enforcement has on minority communities driving racial disparities within the criminal justice system. The proposals in the White Paper will result in greater numbers of Black and ethnic minority people coming into contact with law enforcement, creating more harm to communities, and do nothing to address the racist application of the law by police.

Age - Firstly, it is not clear how the Government intends to address those aged 17 and under, over 1300 children aged 10 to 17 were prosecuted for possession of a drug in 2020, with nearly 900 being sentenced - over 6000 children were convicted of this offence in the last five years. Secondly, the largest age group to be prosecuted and sentenced for possession offences are those aged 18-24 years old, accounting for 29 per cent of those prosecuted for possession of a controlled substance in 2020, a pattern that reflects previous years. Whilst this is also reflective of patterns of drug use, in that this age group is more likely to consume controlled substances, the damage it can do to a young person's life opportunities is significant. Considering that one of the repeated statements from Government is that the use of criminal sanctions is to "send a message" to young people so as to deter them from using drugs, it seems counterintuitive that it is young people - many from ethnic minority and deprived communities - are bearing the brunt of criminalisation.

Gender - womxn already find it challenging to access support services, the fear of punishment and criminalisation is increased for womxn with children who are concerned that social services may get involved, even in absence of risk to the children. In addition, womxn are often required to attend group therapy as part of treatment programmes, for those who have suffered sexual violence, this can be re-traumatising. Similar experiences could arguably occur in drug awareness courses. Ultimately, fear of punishment will reduce the likelihood of seeking support or emergency help when needed.

LGBTIQA+ - drug use is reported to be higher amongst the Queer community, and as such they are at higher risk of being punished. As with other groups, this will act as a critical barrier to accessing emergency help or support when needed.

31. Where you have identified potential negative impacts, could you suggest ways to mitigate them?

Yes, please suggest potential mitigations

As highlighted above, decriminalisation of all drug possession offences should be at the core of all Government policy. The fact this policy is a "critical enabler" to access health and support services, the fact we know that young people do not access support when in "scary situations" for fear of punishment, is why the Home Office should urgently move towards a policy of decriminalisation of drug possession. The UK drug related deaths are at an all-time high, across all countries, and have been rising year on year for the last 10 years. The proposals contained in the White Paper will do nothing to reverse that trend, and will in all likelihood, contribute to more deaths. Decriminalisation is core to ensuring we create an environment where people feel confident to seek help.

Decriminalisation can also reduce racial disparities in the criminal justice system. Studies from the US, in States that have decriminalised cannabis, have shown that the overall rate of arrests for African Americans falls from just under 700 per 100,000 of the population to 400 over a 20 year period (the fall in States that have regulated cannabis is far more pronounced, with a fall in the arrest rate from 500 per 100,000 of the population to just a handful of arrests).That being said, racial disparities still persist, drug law reform will not solve the issue of structural and institutional racism, but it can remove one of the tools used by police to harass Black and Brown communities, and reduce the actual number of people coming into contact with the CJS.

The Executive Order issued by President Biden on 06 October 2022 pardoned the records of thousands of people who have federal convictions for cannabis possession. In his statement, President Biden said "Criminal records for marijuana possession have…imposed needless barriers to employment, housing and educational opportunities. And while white and Black and brown people use marijuana at similar rates, Black and brown people have been arrested, prosecuted and convicted at disproportionate rates…It's time that we right these wrongs." Release reasserts that the proposals contained in this White Paper are going in the opposite direction of many countries in the world, and the UK looks like it is wilfully ignoring the evidence of the failure of the current criminal justice approach. This is contrary to the claims of creating a "world leading evidence base" that is contained in the Government's Drug Strategy.

42. Do you agree with our proposal to expand the range of illicit drugs which can be tested for under Drug Testing on Arrest legislation?

Strongly disagree

See answer to Question 15i on Drug Testing.

The proposal justifies expanding the range of Class A drugs "*to ensure individuals can be directed towards treatment, or another relevant intervention*". It is unclear why the proposal is justified in this way as the consultation outwardly claims to be targeting "so-called recreational drug users", who would not require treatment. At present, drug testing on arrest can follow a 'trigger offence;' or when a police inspector, or higher rank, has reasonable grounds for suspecting that the offence was linked to the use of a specified Class A drug, and authorises the taking of a sample. Trigger offences are acquisitive offences and the relationship between cocaine, crack cocaine and opiate use and acquisitive crime to fund substance dependence was used as a justification for the introduction of drugs testing on arrest for those offences. Diversion into treatment is a preferable alternative to prosecution and the Home Office recognise this in the consultation.

The Home Office suggests that the inclusion of all class A drugs "*would increase…understanding of how many drugs drive criminality. Through the inclusion of so-called party drugs such as MDMA and LSD, we would better understand how they drive night-time economy offences. We would also be able to divert users into treatment where their drug use may have caused their criminal behaviour*". The Home Office fails to specify what "*night-time economy offences*" are or how the use of MDMA or LSD "*drive*" them. Without this causal link, there does not appear to be any justification for expanding the range of class A

drugs that can be tested for on arrest. If the proposal is relying on the prevalence of violent or sexual offences in bars, pubs and clubs, there is plainly a complex causal matrix with offending that very often includes alcohol consumption. Testing all suspects arrested for those offences for Class A substances would be both incredibly resource heavy and place an unnecessary burden on the police, and would fail to achieve any discernible policy goal. Again, the proposal relies on an absence of evidence, and a perceived need to accumulate some, as a justification for the measure. Again, the proposal's suggestion that those tested be diverted to treatment runs counter to its stated purpose of targeting "so-called recreational drug users".

Similarly, in relation to expanding drugs testing on arrest to Class B substances, namely cannabis, the Home Office fail to set out a coherent policy position or justification for introducing the measure. It says the measure "*would enable us to improve the picture of how cannabis use, and other class B drugs drive criminal behaviour*". Again, there is a complex causal matrix that exists in criminal offending and the Home Office has failed to set out which offences are believed to be linked to, or caused by, cannabis use. The proposal relies on an absence of evidence, and a perceived need to accumulate some, as a justification for the measure. Again, the proposal's suggestion that those tested be diverted to treatment runs counter to its stated purpose of targeting "so-called recreational drug users".

It is worth noting that the research referred to by the Home Office in the Bibliography of the White Paper highlights the lack of evidence for the use of drug testing on arrest. McSweeney, Hughes & Ritter in their 2016 paper, found that "compliance was also not found to be associated with reductions in the rate and volume of reoffending after 12 months." The study itself called "into question the efficacy of mandatory testing". Finally, the UK Drug Policy Commission Report from 2008, that is also cited by the Home Office, literally states:

"Furthermore, extending the use of drug testing in police custody suites by expanding the range of trigger offences or testing for a wider range of drugs is likely to suffer from diminishing returns (greater costs for every additional drug user identified) and the identification of more recreational drug users, which might have a negative impact on the quality of subsequent assessments and interventions."

33. Which drugs do you think are important to be able to test for under Drug Testing on Arrest?

Other, please specify

None - please see our response to Q32.

34. Do you agree with our proposal to expand the range of offences which police can drug test for under Drug Testing on Arrest legislation ("trigger offences")?

Strongly disagree

35. The current trigger offences are: theft and attempted theft, robbery and attempted robbery, burglary, attempted and aggravated burglary, handling stolen goods and attempting to do so, taking a conveyance without owner's consent/authority and aggravated taking conveyance without the owner's consent

authority, going equipped for burglary or theft, fraud and attempted fraud, possession of articles for use in frauds, begging and persistent begging, possession of a specified Class A controlled drug, production or supply or possession with intent to supply of a specified Class A controlled drug.

Are there any other offences you think should be included as a trigger offence?

No

The Home Office are proposing to amend the list of trigger offences in Schedule 6 of the Criminal Justice and Court Services Act 2000 to capture "*the general terms of domestic abuse, crimes of violence against women and girls including rape and other sexual offences, stalking, and child abuse/neglect, as well as many others. Other offences are under consideration, and evidence will be gathered for inclusion in the list.*" Additionally, it intends to "remove the need for…reasonable grounds" for suspecting that an individual's drugs use caused or contributed to an offence, and the need for an officer of the rank of Inspector or above to authorise drugs testing for a non-trigger offence.

This represents an unjustifiable extension of police power. The proposal would have the effect of allowing any police officer to test on arrest for a, currently unspecified, list of offences without a reasonable suspicion that the offending behaviour was in any way linked to the suspect's use of drugs. The Home Office fails to justify or evidence any need for this increase in police power, which removes the necessity for there to be some nexus between offending behaviour and drug use and withdraws the procedural safeguard of having an officer of the rank of Inspector or above to authorise the exercise of police power outside usually permissible limits. This policy would have the effect of allowing the testing of an individual, likely an infringement of Article 8 of the ECHR as implemented by the HRA 1998, but without a discernible justification or rationale that the infringement is proportionate. Additionally, the policy lacks clarity around the circumstances in which a police officer might be expected to test on arrest and leaves open the possibility that *all* arrests in relation to the offences listed will be amenable to drugs tests without requiring the officer to even suspect a link between offending behaviour and the use of drugs. This grant of unfettered police discretion, free of existing safeguards, creates a blanket policy that is plainly disproportionate in its approach and, at present, lacking in any discernible rationale or objective,

36. Do you believe that our proposals to expand the Drug Testing on Arrest programme will have an impact (both positive or negative) on individuals with a protected characteristic under the Equality Act 2010? Protected characteristics under the Act are disability, gender reassignment, age, pregnancy and maternity, race, marriage and civil partnership, sex, sexual orientation and religion or belief.

Yes - Please see our response to Q30.

37. Where you have identified potential negative impacts, are you able to suggest ways to mitigate them?

Yes - Please see Q7, Q31 and Q39.

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38. Do you have any other comments on our proposed changes to Drug Testing on Arrest?

No

39. Do you have any further comments you would like to share with us on the white paper?

See introduction.

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