

Response to the Public Consultation on Notes of Guidance for Section 8(d) of Misuse of Drugs Act 1971, as amended by Section 38 of Criminal Justice and Police Act 2001.

This response has been prepared by Release, the National Legal and Drugs Charity. Release has worked extensively with a large number of organisations affected in a professional capacity by Section 8 of the Misuse of Drugs Act 1971 and by the amendment by Section 38 of the Criminal Justice and Police Act 2001.

We share the Government's desire to see communities protected from drug-related harm and nuisance. However, we do not believe that the amendment to Section 8(d) of the Misuse of Drugs Act will achieve this result. In fact we believe that the result will be the opposite: more social exclusion, drug related nuisance and greater difficulty in achieving sustained rehabilitation for people who have drug problems.

While welcoming the fact that the guidance recognises the importance of harm reduction work, we have very grave concerns about the guidance, and would urge the Government to reconsider the decision to implement this piece of legislation in its current form.

We do not believe that the current guidance provides a satisfactory level of protection to organisations engaged in essential work, and leaves organisations in an untenable position.

We do not think that the effects of the legislation can satisfactorily be moderated by guidance, and assert that the only satisfactory method that such protection can be afforded is through legislative change.

We would make the following observations regarding the guidance as a whole:

- 1) The model proffered by the Guidance is one where police forces will make decisions as to whether it is deemed that prosecution is appropriate. This model is likely to lead to regional disparity, and will result in different interpretation and implementation in different force areas.
- 2) The interpretation as to how the law will be applied in Scotland appears to be erroneous. All cases will need to be referred to the office of the Procurator Fiscal and it will be the decision of this office as to whether or not prosecution is warranted.
- 3) Working within the guidelines would still mean that organisations were working illegally, even if the police decided not to prosecute. The fact that the organisation would be working illegally would:
 - a. Have implications for the charitable status of organisations who are registered charities;
 - b. Mean that managers instructing staff to work in such a manner would be inciting staff to commit a criminal act;
 - c. Have implications for organisation's insurance both for buildings and liability.

We would assert that it is not acceptable to create a situation that requires staff to work in a way that is illegal, even if the threat of prosecution is reduced. If, as the Guidance states, there is a recognition of the need for this work to continue, it needs to be undertaken in a fully legal manner.

- 4) The guidance has not taken account of the concerns raised about the presence of paraphernalia on premises, and the extent to which these may compromise organisations. This is especially pertinent with regards the presence of injecting equipment and sharps disposal bins on premises.
- 5) A number of other organisations are affected by the legislation including Children's Homes, hotels, schools and other educational establishments, prisons and hospitals. The implications for these organisations has not been addressed in the Guidance, and we feel that this omission needs to be addressed.
- 6) The guidance does not address the position regarding the use of cannabis on premises. The implementation of the guidance will leave organisations at risk of arrest and prosecution for allowing the smoking of cannabis on premises. Allowing use of cannabis would carry a maximum penalty of five years imprisonment once cannabis is reclassified to class C. Yet the *user's* offence of possessing cannabis would only carry a maximum sentence of two years.

This incongruous position needs to be rectified, to reflect the lowering of penalties attached to cannabis use.

- 7) We would stress the point that a net consequence of the legislation will be to push a greater amount of drug use into public arenas and, as such, increase the levels of public risk, through discarded equipment and exposure to drug use in public.
- 8) We are concerned that the implementation of this legislation will act contrary to the Government's strategy on reducing drug related death. We are concerned that the risk of prosecution will deter occupiers from contacting emergency services when overdoses take place on their premises. We are concerned that no consideration of this is given in the guidance.

We make the following specific comments on the guidance:

- 1) Paragraph (3) justifies the extension of the Act by arguing that there has been an increase in "closed" drug markets, and cites the recent increase in the number of "crack-houses."

This argument is wholly fallacious; Section 8(b) of the Misuse of Drugs Act 1971 already applied to the **supply** of all controlled drugs on premises, and so could be used to tackle the "closed markets" represented by crack houses.

Similarly clause 8(a) of the MDA provided for situations where any controlled drug was being produced, which would include the preparation of Crack cocaine.

We would further note that a number of local authorities including the London Boroughs of Hackney and Lambeth have had notable successes in tackling and closing down "crack houses" without the need for an amendment to Section 8.

We believe that these factors demonstrate that the amendment to Section 8 is not required to achieve the desired result – a reduction in the nuisance caused by “crack houses.”

- 2) Paragraph 6 of the guidance says that occupiers and managers who suspect drug use on their premises “*should contact local police at an early stage to prevent it. If the drug misuse continues, the failure to inform and co-operate with the police exposes individuals to prosecution.*”

We find this paragraph deeply troubling. It effectively obliges the organisation to inform the police of all suspected incidents relating to substance misuse. This obligation will make it impossible for organisations to work effectively with ongoing drug users. It will be impossible to maintain the trust of clients.

It will be unworkable in practice, as organisations working with people who use drugs encounter situations on a very frequent basis and to report each new episode to the police would create an untenable amount of work for both agencies and the police.

At present, organisations are solely obliged to stop prohibited activities. While in some situation this will also require police involvement, it is currently not a requirement to inform the police of drug-related incidents.

In essence the guidance imposes a new duty on workers, and this is not a duty that exists in the legislation.

- 3) Paragraph 7 makes the case for a defence based on public interest where harm reduction issues are involved. While we welcome this, we remain concerned that it provides an unsatisfactory level of protection for organisations. We are concerned that the definition and interpretation of “harm reduction” is not clear, and much activity may not fall under a strict “harm reduction” interpretation. We would want to see robust protection extended to any professional work with substance misuse.
- 4) Parents: this clause assumes a situation where the child is a young person, under 16 years of age. In reality many parents of older children, including those in their twenties are struggling to work with their children’s drug use.

It is not realistic to expect parents to “*address and solve their child’s controlled drug misuse problem.*”

We also note that the guidance is ambiguous here; parents are not obliged to “*solve their child’s...drug problem.*” The obligation is to prevent the use taking place in the home.

We caution that the protection here to family members is wholly inadequate. We remain concerned that the amendment to Section 8 will criminalise families of drug users, and will result in an increase in homelessness amongst young people who use substances.

- 5) Rough sleepers: we welcome the acknowledgement that people who are being housed after a period of homelessness may continue to use drugs for an (unspecified) period of time.

We would urge that this recognition is backed up by robust legal protection for organisations undertaking this work. We would also want to see this recognition widened beyond rough sleeping and to ensure that it includes a wide range of other supported housing settings such as women's refuges, foyers and other essential provision.

- 6) Drug Treatment workers: we would repeat the observations made above and further recommend that specific legal provision be made for the presence of safer injecting rooms based on the models in use in Germany, the Netherlands and Australia.
- 7) Landlords: We find this section very deeply worrying and know that it will do immense damage to strategies for housing people who use drugs including Supporting People and other initiatives.

Clearly this section of the guidance would apply as much to Registered Social Landlords as much a private Landlords. The guidance effectively obliges landlords to stop the use of controlled drugs on their premises, and offers no scope for ongoing work with people who are housed but continue to use drugs.

We firmly believe that this approach will make it impossible to house and support people who use controlled drugs but can live independently with moderate levels of support such floating support.

We further believe that the implementation of the legislation without adequate legal safeguards will act as a substantial disincentive to landlords to house this vulnerable client group.

In conclusion, we have waited a long time for this guidance to be produced, and hoped that it would provide the required level of protection for workers and individuals. The current guidance does not provide the required level of protection and as such is not adequate.

We recognise and accept that it is not possible for a guidance document to provide a suitably robust level of legal protection and, as such, would strongly argue that this piece of legislation be reviewed and amended to reflect the above concerns.

We would warn that the implementation of the current legislation with the present guidance will have severe negative repercussions for a wide range of organisations and individuals. We are convinced that these negative outcomes will far outweigh the mischief that the legislation was intended to prevent.

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