Home Office

Rt Hon Kit Malthouse MP
Minister of State for Crime,
Policing and Probation

2 Marsham Street
London SW1P 4DF
www.gov.uk/home-office

Angela Constance MSP
Minister for Drugs Policy
Scottish Government

By email: Scottish.ministers@gov.scot

100122

DECS Reference: MIN/0225824/21

Dear Angela,

Thank you for your letters of 8 October and 25 November 2021 about Drug Consumption Rooms (DCRs) and the accompanying evidence paper provided. Thank you also for your letter of 22 December 2021 about our new Drug Strategy, which we are really pleased to have published. Please accept this response as a response to all three letters, and I apologise for the delay in responding to you.

In your letters you noted we discussed the issue of DCRs when we met in August last year. We have since had the opportunity to discuss it at the UK Drugs Ministerial in Belfast on 11 October. As I said on those occasions, I remain open to any further evidence on these facilities.

My officials have reviewed the evidence, and while it flagged a range of health and social benefits, evidence tended to be outdated and focused on a small number of locations. Testing the stand alone benefits of DCRs is difficult as these services do not operate in isolation, rather with a range of other support and interventions, making the impact of a DCR alone unclear.

DCRs remain controversial, and there are significant issues which the current evidence base does not address, such as the challenge for law enforcement of how to enforce the law in or around a facility and how to retain our clear approach to offences of drug supply and possession, the risks for those running a facility in the event that harm occurs to users or staff and the broader impact of DCRs on social attitudes towards drug use including whether they lead to an overall reduction in drug misuse. The primary issue remains that a range of crimes would be committed in the course of running such a facility, by both service users and staff, such as possession of a controlled drug, being concerned in the supply of a controlled drug, knowingly permitting the supply of a controlled drug on a premises or encouraging or assisting these and other offences.

To have the necessary legislative framework that establishes an appropriate system for licensing and oversight, addressing the scope of exemptions from the criminal law, and deals with issues of civil liability would require Primary Legislation, which as you know would take time. We must first and foremost look at what immediate steps can be taken to address drug misuse, especially in relation to investment in treatment. Given that this Government is not currently minded to legislate for DCRs, and were a licence application successful, it could only enable some activities to be undertaken lawfully. A valid licence

could not provide exemptions for any offences or civil liabilities that may arise under common law or other legislation.

Given the significant challenges of offences and liabilities associated with a DCR which a licence under the Misuse of Drugs Act could not overcome, how would you propose to deal with the risks under the pilot scenario you propose? For example, the risk that those operating any facility could commit criminal offences, including providing paraphernalia for drug consumption for example, or be liable for damages in negligence should an individual suffer harm or die in the operation of a DCR. These are vital considerations given the inherent risk that would be involved were any decision to be made to trial such a facility.

Another issue you raised when last we spoke is your desire to establish drug checking facilities for the most vulnerable of users in Scotland. I have asked my officials to discuss this with yours and to offer advice on the concerns we have about these services as well as support and guidance on the process of applying for a Home Office licence for such facilities. The decision on whether to issue a licence will of course be taken on a case-by-case basis taking account of the safeguards a provider can demonstrate that they have in place and may require a compliance visit by the Home Office Drugs and Firearms Licensing Unit.

You also note that heroin assisted treatment (HAT) does not feature in the new Drug Strategy. While it is not mentioned specifically, this continues to be an option open to local areas under the existing legal framework and the Government supports areas that pursue this approach where the relevant licences are obtained from the Home Office. HAT is a recognised clinical intervention in clinical guidelines for clients who have not responded to optimised oral opioid substitutes. However, commissioning and implementing HAT is very much a local healthcare decision on the basis of an assessment of local need.

More broadly, the new Drug Strategy puts evidence at the centre of our approach. As you know, the strategy is strongly informed by Dame Carol Black's review, which brought together years of research and investigation into the treatment and recovery system and we have accepted all of her key recommendations. In addition, we have committed to building the evidence base where we recognise there are gaps, including looking at how we can shift attitudes to so-called 'recreational' drug use. You will note that the strategy includes reference to the Scottish Drugs Deaths Taskforce and its work to develop evidence-based approaches, including on drug treatment.

This is a long-term strategy which we will continue to develop and refine, informed by further engagement with experts, people with lived experience, and partners in the field to do this. As recommended by Dame Carol, we remain committed to a whole-system approach which balances efforts to reduce the demand for drugs and supporting treatment and recovery with activity to cut the supply of illicit drugs.

Now that the strategy is published, UK Government officials will work with your officials to discuss the detail and ensure we have a shared understanding of any UK-wide implications.

I want to thank you for your continued dialogue on these important issues and look forward to our ongoing collaboration in tackling drug harms across the UK.

Rt Hon Kit Malthouse MP

Minister for Drugs Policy
Angela Constance MSP

Scottish Government
Riaghaltas na h-Alba
gov.scot

T: 0300 244 4000
E: scottish.ministers@gov.scot

Rt Hon Kit Malthouse MP
Minister for Crime, Policing and Justice

Via email:
ministerforcrimeandpolicing@homeoffice.gov.uk
PS.KitMalthouse@justice.gov.uk

27 January 2022

Dear Kit,

Thank you for your recent letter regarding Safer Drug Consumption Facilities, Drug Checking, as well as the UK Governments new Drug Strategy.

I appreciate the time your officials took to examine the evidence we provided around safer drug consumption facilities (SDCFs). I would however with respect, dispute the point about the evidence being outdated. The evidence paper we provided quoted trials which had taken place over the last 20 years, including one which started in 2018, lasting for 18 months and there are now studies which are based on the most recent facilities from November 2021.

Two newly opened SDCFs in New York City have shown that in their first 3 weeks, they prevented 59 overdoses. Both centres not only provide a supervised, hygienic space for people who use drugs, but also provide connections to services which include harm reduction, medical care, mental health services and drug treatment. The early data from these facilities demonstrates that they are reaching those who require the most support with their addiction. These lifesaving facilities are what we in Scotland wish to implement in order to save lives and reduce the harms that drugs cause some of our most vulnerable people.

You also mention that it is difficult to test the stand alone benefits of an SDCF as they do not tend to operate in isolation, but rather alongside a range of other supports and interventions. This is, I would suggest, almost the point of the issue. SDCFs are not supposed to operate alone. The intention is always that they provide an essential harm reduction service, but at the same time they can offer a vital way in to additional supportive services which an individual using an SDCF might not otherwise access. This is where some of the key additional benefits of an SDCF can be realised. The intention to have a range of these additional services on site has always been part of the proposal to trial an SDCF in Scotland.

I would agree with you that there are issues around law enforcement, particularly concerned with how to enforce the law in, or around a facility. I can assure you though that we are currently in detailed discussions with colleagues in Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS) about how we can resolve these issues within current legislation. The Lord Advocate is on record as saying she would be willing to consider a fresh proposal for a facility in Scotland if it were to meet that criteria.

In your letter you state that the primary issue remains the range of crimes committed by both staff and service users in the operation of a facility. However, at no time in the operation of an SDCF would any staff member be committing any of the crimes you set out. Healthcare staff would be able to assess service users, provide sterile injecting equipment, as per existing injecting equipment provision (IEP) policies, and supervise the injecting process to ensure no harm came to the individual. There would be no question that they would be involved in supplying, or permitting the supply, of controlled drugs, nor would they be encouraging or assisting in these offences. Service operating procedures, staff training and service user information would set all of this out in advance, making it quite clear what would, and would not, be tolerated in and around a facility.

You also highlight the possibility of offences being committed associated with providing paraphernalia. Again, this is something which would not be an issue as staff would only be providing the equipment currently available through IEP services. Staff in those facilities are not committing offences under the Misuse of drugs Act due to the guidelines already issued by the Home Office in cases where it will reduce harms.

On the points you raise around liability, again I can assure you that these are issues that we are well aware of. We are considering, alongside partners, the possible outcomes from incidents, such as the ones you mention, arising and the mitigations that can be put in place to prevent these.

The point you make about establishing a system for licensing and oversight of a facility is an interesting one. To our knowledge no such scheme currently exists that would provide licensing for an SCDF. I would, however, be more than happy to work together with you to discuss the creation of this. We would welcome an appropriate system that would address the scope of exemptions from the criminal law, and deal with issues of civil liability.

As you say, primary legislation would take time but in Scotland we are currently taking all possible steps to address the drugs death crisis and this can be seen in what we are doing with our National Mission which aims to provide fast and appropriate access to treatment, increased access to residential rehabilitation, better support after non-fatal overdoses and recognising the vital role of frontline organisations. SDCFs would be one additional tool which would help to increase this support and, as we have seen in other countries, save lives. As I have said to you before, we need to use all the options available to us to urgently tackle this crisis through all possible means.

I would like to thank you for you updates on both Heroin Assisted Treatment and Drug Checking. Officials have been able to discuss and offer advice on the implementation of Drug Checking Facilities in Scotland and these discussions will continue as we work to develop the licence applications to provide to the Home Office.

I look forward to your response on the above points.

ANGELA CONSTANCE MSP
Minister for Drugs Policy

Minister for Drug Policy
Angela Constance MSP

T: 0300 244 4000
E: scottish.ministers@gov.scot

Email: ministerforcrimeandpolicing@homeoffice.gov.uk

Scottish Government
Riaghaltas na h-Alba
gov.scot

Tom Pursglove MP
Minister of State for Crime and Policing

Dear Tom,

I am writing to congratulate you on your new role as Minister of State for Crime and Policing. In my role as the Minister for Drug Policy in Scotland, working directly to the First Minister, I would welcome the opportunity to meet with you and work on the areas where we are able to reduce the harms of drug use and address the number of related deaths. The number of these deaths have reached unacceptable record levels across the United Kingdom and are particularly acute in Scotland.

I am sure you will be aware of the on-going discussions between our governments on this issue. My recent discussion with Kit Malthouse included Safer Drug Consumption Facilities, the need for pill press regulations and the introduction of drug checking facilities of which I'm sure you will have received the detail.

I was disappointed to read the recent Home Office publication *Swift, Certain, Tough* that outlines new consequences for drug possession, with measures such as passport confiscation for drug possession that could apply here in Scotland. Increasing or expanding criminal sanctions have not in the past proven successful in preventing drug deaths. I would therefore oppose any decision to require Scotland to implement any of these measures and would highlight the significant risks inherent in this approach. I know that my officials have raised a number of concerns about the impact of this policy and the lack of evidence behind them.

Scotland has taken a different approach to the UK Government, implementing evidence informed measures that aim to treat drug use as a health issue. This is in line with recommendations from the evidence including from the ACMD; the recommendations of two UK Parliamentary Committees, the Scottish Affairs Committee and the Health and Social Care Committee; as well as other experts and academics.

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

The most recent report on this issue was published by the independent Scottish Drug Deaths Taskforce yesterday. It is called *Changing Lives* and I believe that the Drug Deaths Taskforce sent you the details yesterday morning. The report is available on the Drug Deaths Taskforce website. It identifies what needs to change to address Scotland's public health emergency and calls for swift and decisive action. It includes 20 evidence based recommendations all of which the Scottish Government will consider in detail and respond to as soon as possible.

A key recommendation is included for the UK Government to immediately begin the process of reviewing the law to enable a public health approach to drugs to be implemented. The detailed actions that the Drug Deaths Taskforce would like to see taken by the UK Government are highlighted in the Annex to this letter. I would be grateful if you could provide a detailed response to these actions.

As outlined above, a review of current legislation is in line with other expert groups that have examined this issue. I therefore question how much evidence will be enough. Legislative change, based on a robust evidence base of the public health approach would create a meaningful shift, like other countries have successfully delivered across the world.

In the meantime we continue to do everything in our power to implement a public health approach. The First Minister announced a National Mission to reduce drug related deaths and harms supported by an additional £50 million per annum. We will be publishing our high level plan for the National Mission next month and I would be pleased to provide you with an overview of that.

I would therefore welcome your commitment to working together to tackle drug-related harms and deaths and would like to meet to discuss what we can do collectively to respond to this public health emergency.

I look forward to your response on the above points.

Angela Constance MSP
Minister for Drugs Policy

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

Scottish Drug Deaths Taskforce **Annex A**
UK Government Recommendations and Actions

Recommendation 19**:** The UK Government should immediately begin the process of reviewing the law to enable a public health approach to drugs to be implemented. The Scottish Government should continue to engage with the UK Government to support these changes. In the interim, the Scottish Government should do everything in its power to implement a public health approach.

Action 2: The UK Government should amend the Misuse of Drugs Act 1971 and Misuse of Drugs Regulations 2000 to allow for the legal provision of a wider range of drug paraphernalia through harm-reduction and treatment services. This is essential to enabling safer drug consumption

Action 4: The UK Government should review the regulations on dispensing and prescription forms for controlled drugs to take account of clinical and technological advances since implementation in 2001.

Action 5: The Scottish Government should work with the UK Government to deliver progress on the regulation of pill presses, including developing a suitable licensing system to reduce related harm.

Action 6: The UK Government should urgently remove the exemption set out in S3.1 of the Equality Act 2010, (Disability) Regulations 2010, and make drug dependency part of the protected characteristic of disability.

Action 9: The UK Government should undertake a root and branch review of the Misuse of Drugs Act, reforming the law to support harm-reduction measures and implement a public health approach.

Action 10: If the UK Government are not willing to reform the Misuse of Drugs Act, it should commit to exploring all available options openly with the Scottish Government to enable Scotland to take a public health approach.

Action 40: The UK Government should implement legislative changes to support the introduction of Supervised Drug Consumption Facilities. In the interim, the Scottish Government should continue its efforts with stakeholders to support their implementation within the existing legal framework.

Action 44: The UK Government should permanently reclassify naloxone from a POM to a Pharmacy or General Sales List medicine.

Action 45: In the absence of a full reclassification of naloxone, the Scottish Government should work closely with the UK Government to ensure that the changes planned reflect the breadth of the Lord Advocate's Statement of Prosecution Policy in Scotland.

Action 71: The UK Government should conduct a review of the regulations on prescriptions by the end of this year. The review should take account of the changes made since the initial regulations were implemented in 2001.

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Tom Pursglove MP
Minister of State

2 Marsham Street
London SW1P 4DF
www.gov.uk/home-office

Angela Constance MSP
Minister for Drug Policy
Scottish Government
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

DECS Reference: MIN/0387258/22

25 August 2022

Dear Angela,

Thank you for your letter of 22 July congratulating me on my new role and raising a number of issues related to drugs misuse, and the publication of the report entitled *Changing Lives* by the Scottish Drugs Deaths Task Force. I am sorry for the slight delay in responding; I was only recently made aware of your letter and am grateful for your kind words.

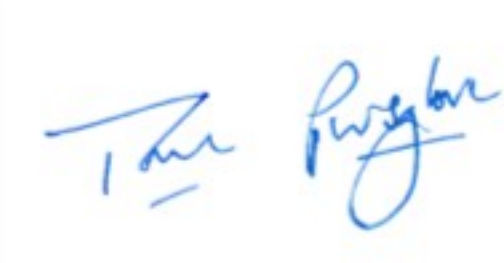
I want to start by saying that I recognise the number of drug deaths across the UK, particularly in Scotland, is extremely concerning. I know you discussed tackling drug deaths with my predecessor, the Rt Hon Kit Malthouse MP, on many occasions. I can assure you that this Government's approach remains consistent – we must prevent drug misuse in our communities and support people through treatment and recovery. In doing this, it will help to tackle crime, as well as addressing many social problems we see.

I thank you for bringing the above-mentioned report to my attention. It is clear that this is very important work. I will consider the recommendations and actions listed within it and provide a full response, which a report such as this deserves, in due course. Indeed, I look forward to discussing how we can work at all levels to tackle the issue of drugs misuse at the next UK Ministerial, which is planned for 1 November 2022.

In regard to the White Paper entitled 'Swift, Certain, Tough. New Consequences for Drug Possession', this work is aimed at so-called recreational drugs users, rather than those whose drug use would more appropriately be addressed through treatment. That said, the UK Government is clear on its position: illegal drug use is wrong and possession of controlled drugs is a crime. The White Paper proposes a range of interventions, which are not limited to criminal sanctions, to change behaviours and tackle the scourge of substance abuse in society. The Government is committed to reversing the rising trend of drug use in society and protecting vulnerable people from harm and exploitation. These measures are a step towards changing the damaging culture of drug use.

Once again, thank you for taking the time to write and I trust that this reply is helpful.

Yours sincerely,



Tom Pursglove MP
Minister of State

DIRECTORATE FOR POPULATION HEALTH
Drugs Policy Division

Email: DrugLawandHealthHarms@gov.scot

Home Office
2 Marsham Street
London
SW1P 4DF

Sent by email:
drugswhitepaper@homeoffice.gov.uk

Date: 30 November 2022

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)

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

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 polices 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.