

DRUGS, CRIME AND DECRIMINALISATION

ASSESSING THE IMPACT OF DRUG DECRIMINALISATION POLICIES ON THE EFFICIENCY AND INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM

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Executive Summary

The first real principle which should guide anyone trying to establish a good system of prisons should be to prevent as many people getting there at all.

Winston Churchill, House of Commons 1910

In recent decades a number of countries have moved away from a prohibitionist model of drug control towards policies that prioritise harm reduction and rehabilitation, with the goal of reducing demand and minimising the social and individual harms caused by drug abuse. In Portugal and the Czech Republic, low-threshold possession of any drug is a misdemeanour rather than a criminal offence, diverting users away from the criminal justice system and in the case of Portugal, providing support through newly created Dissuasion Commissions. The authorities in Uruguay have long decriminalised drug possession and are now on the cusp of regulating the supply and distribution of cannabis. Drug use and abuse continues in all three countries but demand has remained stable and notable successes have been observed.

In the UK there are also growing calls from frontline practitioners and officials in the criminal justice system for a similar process of diversion and regulation, and we have now reached a stage where significant numbers in the police, courts, prisons and probation services are critical of both the effectiveness and intellectual coherence of the drug laws they are charged with upholding. Set in this context, the report considers how the criminal justice system may be affected by the removal of criminal penalties for possession-only offences, as well as a longer-term shift to supply-side regulation. Drawing on meetings with officials in Portugal, the Czech Republic and Uruguay it explains some of the lessons we can learn from their experiences, as the government works to support recovery and reduce demand in the UK. There are four main findings to this report that together reinforce arguments in support of the diversion of possession cases away from the criminal justice system;

Enhanced efficiency and streamlined processes All the different strands of the system (police, courts, prisons, and probation) should to differing extents make efficiency gains, see a gradual fall in their caseload and a longer-term trend of enhanced trust with the individuals they are working with. The police in particular are likely to see their work dealing with drug users simplified. These improvements depend on reform being enacted with a proper prioritization of diversion to health and social support, attention to practical detail and clear strategic vision.

Feasibility A diversionary system would in the first instance require limited statutory change and fairly minor adjustments to staff procedures, and the UK is in the strong position of being able to draw on and expand existing pilots and national schemes supporting rehabilitation.

Opportunities for greater strategic and structural coherence Effective rehabilitation in Portugal was enabled by a strategic shift towards multidisciplinary oversight, reflecting the complex needs of problematic users and the diverse impact of drug abuse on areas such as health, employment, education and housing. The diversion of possession offences is unlikely to have a significant impact on rehabilitation rates unless combined with a broader set of reforms that allow health and welfare agencies to better identify and provide support to problematic users. There is a case for adjusting oversight responsibilities in the UK in a similar way, to better align policy with responses on the ground.

International alignment There is a clear international shift towards a reassessment of approaches to drug control. We know that reform is best achieved incrementally. The UK is now in a strong position to reform its possession laws, better preparing the country for a possible future of supply-side regulation. Proactive engagement would allow the UK to feed in its well known rule of law expertise in helping to shape multilateral decisions that could have a huge bearing on the nation's own domestic landscape.

Introduction

Over the past three years the UK government has been challenged to an unprecedented level over its approach to controlling illicit drugs. Frontline practitioners, charities and lobby groups have for many years flagged the unintended consequences of prohibitionist policies but increasingly calls for reform are coming from criminal justice agencies themselves. In addition to the arguments made by experts in the UK Drug Policy Commission and Home Affairs Committee, substantial numbers in the police, courts, prison and probation sectors are now openly calling for a rethink.¹ Recent trends have reinforced the difficulties and costs of attempting to deter drug taking through a criminal sanctions regime. The rise of New Psychoactive Substances (NPS) and internet supply routes are challenging conventional law enforcement approaches while simultaneously exposing users to greater unknown risks, reflected in a spike in NPS overdoses in 2013. Death from prescription drug abuse now outweighs that from illegal drugs and rising numbers are dying from newer substances such as tramadol and mephedrone.² Many are asking whether there are better ways of dissuading individuals from taking drugs and more effective means of providing support to problematic users to improve rehabilitation rates and in turn reduce the criminal and social damage that often accompanies addiction.

Most public, private and third sector groups lobbying for drug policy reform have the same objectives as the government. There is a shared goal of reducing demand for addictive drugs and the harms associated with their use, including enhancement of the health of the individual and the security of the public. For the state authorities a second objective in the current climate of austerity is to streamline the administration of criminal justice and to ultimately reduce costs without undermining public security. These goals are mutually reinforcing; if the UK is better positioned to rehabilitate addicts there will likely be fewer crimes committed, reduced recidivism and alleviation of the burden currently weighing on many parts of the criminal justice system.

The UK's existing drugs strategy attempts to balance prohibition with parallel measures to provide health and social support, drawing on a nationwide network of external providers and state welfare services. Under the coalition government, austerity reforms are underway across the criminal justice sector, while the Ministry of Justice is prioritising the rehabilitation of offenders with the goal of tackling historically high reoffending rates. Many experts argue that the criminalisation of users is undermining both goals, absorbing a substantial proportion of criminal justice resources while also prematurely weakening an individual's capacity to lead a drug free life and contributing to reoffending.³ Their arguments suggest excessive prioritisation of crime in the drug policy debate is serving to undermine the government's own criminal justice goals and limiting innovation in harm reduction. A disjuncture may also be noted between the legislation and the realities of enforcement on the ground and claims of the uneven application of possession laws, particularly in relation to stop and search techniques, are fuelling public resentment towards the UK justice system. Enforcement agencies and community policing principles are not the only victims of a breakdown in confidence. A judicial system needs victims to testify in court and prison staff to cultivate relationships with inmates in line with models of dynamic security, while probation officers crucially rely on a relationship of trust to help rehabilitate offenders.⁴ When messages pushed by the state don't

¹ As well as the British Medical Association, the National Association of Probation Officers and Prison Governor's Association have also issued statements supporting a review. Leading criminal justice figures arguing for change include Durham police Chief Mike Barton and Judge Nicholas Green. The latest EU drug strategy 2013-2020 also urges government to develop alternatives to traditional law enforcement measures.

² UKDPC (2012) *A Fresh Approach to Drugs* p8,17

³ For an example see Collins, J (ed.) (2012) *Governing the Global Drugs Wars: Special report SR014* London School of Economics p11

⁴ Dynamic Security can be defined as a control approach developed via interaction between staff and prisoners and formed through mutual respect as opposed to harsh discipline and an austere regime. The development of clear parameters in an environment of respect is an effective way of supporting good behaviour and rehabilitation, crucially contributing to the security of both offenders and staff.

match with individuals' own experiences, trust in a range of state institutions is undermined. And when the realities of enforcement don't chime with statutory rules, broader respect for the rule of law is ultimately at risk.⁵

Experiences of decriminalisation in Portugal and the Czech Republic suggest that the state has viable alternative options in tackling drug abuse. Governments can continue to condemn drug taking under a civil misdemeanour regime for possession offences, while simultaneously enhancing the relationship between the public and judicial authorities, delivering clearer, more nuanced messages about the dangers of different drugs and providing comprehensive treatment to a public that is better aware and less fearful of accessing it. Findings from this report suggest that a change to legislation in relation to the decriminalisation of the possession of all illicit drugs, if properly handled, will require fairly minor changes to UK criminal justice processes, while holding the potential to generate considerable improvements in the longer-term rehabilitative capacity of UK authorities both within and outside of the criminal justice system. The systems analyzed in this paper are not perfect but there are clear lessons that we can draw on to anticipate some of the problems that will inevitably arise during a process of change. The UK is in a strong position to implement policies for the diversion of possession offences, having developed world renowned treatment facilities and laws that promote community sentencing and drug rehabilitation, with the aim of keeping low level offenders out of prison.

Thus far the UK has also remained distanced from the high profile and growing debate around supply-side reform at the international level, despite holding strong rule of law expertise and a world-class reputation for judicial integrity and even application of the law. By addressing domestic possession laws now, the UK can better contribute to a debate that will inevitably impact upon the country's own approach to drug control, in a way that has the potential to generate substantial criminal justice improvements if carefully enacted and properly regulated. By looking at how officials in Uruguay are conceptualising and enacting a regulatory framework for cannabis, the UK can better understand how a similar process of reform here may be best enacted and what the anticipated benefits and drawbacks might be.

Methodology

The purpose of this research is to shed light on how criminal justice agencies might be affected and can best adjust to drug policy reform in the UK, drawing on the experiences of other jurisdictions and a broad literature review. A second goal is to consider how a changing policy framework might be implemented for the diversion of possession offences and what existing programmes and structures could be utilised in the UK context. This paper is a direct response to calls from groups such as UKDPC for more evidence and contextual understanding of models of international drug control and is independent of the Home Office's own international review of drug policy currently underway.⁶

The findings of this report are based on conversations held with a range of state officials, experts and NGO workers in three different countries that have dropped penalties completely or adopted non-criminal sanctions for drug possession. Portugal, Czech Republic and Uruguay have witnessed distinctive drug abuse problems within their states but have commonly approached the issue by implementing decriminalisation models at different points over the past 30 years. As Portugal and Czech Republic continue to consolidate and refine their civil penalty models for possession offences, Uruguay is now on the cusp of being the first country to regulate the supply and distribution of cannabis. Interview details can be found jmagson2013wcmt.wordpress.com

The research takes as its guiding approach a principle of end-to-end justice that considers how changes to one part of the system will have a knock on effect elsewhere. By breaking down different functions and institutions (police/prosecution, courts, prison and probation/support services) we can anticipate how procedures for each sector may change under a process of reform. The experience of the offender is also given central priority in this

⁵ UKDPC (2012) *A Fresh Approach to Drugs* p14

⁶ UKDPC *A Fresh Approach to Drugs* p13

report, in line with the best practice evidence suggesting rehabilitation (and with it reduced offending) works best when support can be tailored to individual needs and circumstances.

While statistical information has been included where relevant, the findings of this report are premised on the interviews held in the three countries and with officials in the UK. Research released by the Independent Drug Monitoring Unit has tried to quantify some of the cost savings related to cannabis regulation, arguing for significant potential savings in areas such as legal aid (£47m) and probation (£141m).⁷ Another study was more recently released by The Institute for Social and Economic Research and similarly focused on a licensed cannabis market model.⁸ It flagged a range of savings that could be generated by a new approach to drug control, but also set out the real difficulties researchers face in developing estimated cost savings when evaluating a social issue that is affected by such a wide range of unpredictable variables.⁹ There is also a high risk that any cost savings will evaporate if the system does not function effectively and if the processes and responsibilities of staff working in the justice and health services are not clear. This report therefore focuses less on quantifying any potential cost efficiencies and more on setting out the observations of those delivering justice and treatment support to users. The hope is that the experiences of those working in other countries will provide useful insight for best managing drug policy reform, allowing us to maximise the potential benefits generated and anticipate unintended consequences to create a system that best fits the UK context.

A combination of general and service specific questions were drawn up in consultation with a number of UK experts to form a basis for interviews in each of the three case studies:

QUESTIONS

Does diversion of possession offences help to reduce the burden on the different arms of the criminal justice system?

Is trust between the state authorities and the public enhanced under a system of decriminalisation and if so how has this affected the work of criminal justice workers?

Can a strategic approach focused on harm reduction and treatment support help to control drug abuse and reduce the criminal activity associated with its use?

How have other states worked to support offenders with an addiction problem?

As international support for supply-side regulation grows, what might be the impact of regulatory reform in the UK on crime and the administration of justice?

Police

Q1: Has the work of police officers been streamlined and if so how?

Q2: Do the police have more discretion as to appropriate punishment when possession moves from being a criminal to a civil offence and has this generated any problems?

Q3: Have changes reduced police capacity to go after the larger suppliers?

Courts

Q1: How do court processes change under a system of decriminalisation? For example is the overall case burden

⁷ Starting with the baseline that cannabis offences comprise around 4% of the annual total the report sets out savings of £200m for the police, around £12m for forensics, £26m for the CPS, £26m for the courts and £54m for the prison services. Atha, M & Davis, S (2011) *Taxing the UK Cannabis Market* Independent Drug Monitoring Unit, commissioned by CLEAR p23

⁸ Release is also due to publish a report in 2014 that will look at the economic costs associated with policing and prosecuting the possession of drugs in the UK.

⁹ Bryan, M, Del Bono, E and Pudney, S (2013) *Licensing and regulation of the Cannabis Market in England and Wales: Towards a Cost-Benefit Analysis*, Institute of Social and Economic Research, University of Essex p2

reduced and how are models like Portugal's dissuasion commissions set up and staffed?

Q2: Is judicial discretion in sentencing increased or decreased? What has been the level of integration of rehabilitation methods into sentencing policies elsewhere?

Prison

Q1: How has the work of prison officers been affected by decriminalisation, are changes in procedure necessary with reform?

Q2: How does in-house drug treatment provision compare to the UK?

Probation/External support services

Q1: How have reforms affected the work of probation officers and their capacity to help their clients?

Q2: How do other countries use their probation systems to support rehabilitation and continuity of care arrangements?

Structural

Q1: What structure of oversight have other states adopted?

Q2: How is cooperation between different departments sustained, including that between support services and criminal justice authorities?

Q3: What has been the broad public response to reforms and how has reform been publicised and buy-in generated?

Supply-side reform

Q1: What model of regulation is Uruguay planning to adopt and to what extent does crime reduction form an objective of Uruguay's latest cannabis supply regulation bill?

Q2: Why do experts in Uruguay anticipate criminal justice benefits with the regulation of the supply of cannabis and what might be the impact of regulation across the criminal justice system?

UK Context

Drug Consumption Trends

The UK is consistently identified as one of the largest consumers of illicit drugs in the world, topping EU prevalence rates for cocaine, ecstasy and ketamine use in the latest data released by EMCDDA and sustaining a more varied and diverse market compared to many of its neighbours.¹⁰ Most popular are cannabis, cocaine and ecstasy, with a sharp increase since around 2005 in the use of a wide variety of NPSs.¹¹ According to Public Health England an estimated 8.9% of adults used an illegal drug between 2011-2012 in England and Wales, rising to 19.3% for young people aged 16-24. As of 2012-2013 31% of adults said they had used cannabis at some point in their lives.¹² The majority of consumers are recreational users and UNODC estimates that only around 10% of all global users develop an addiction, with large variations in the type of drug used.

In the UK around 170,000 heroin and crack cocaine addicts are in therapy in any one year out of an estimated total of 320,000 total users.¹³ Mirroring trends in the US, the UK is witnessing the growing problem of prescription abuse, with the Office of National Statistics reporting that fatal overdose from prescription abuse is now higher than that from heroin and cocaine. The total number of drug-related deaths in 2012, excluding alcohol, was 2597, with increasing rates of overdose from newly emerging drugs: PMA (20 deaths in 2012 compared to 1 in 2011), mephedrone (6 in 2011 to 18 in 2012) and tramadol (83 in 2011 to 175 in 2012).¹⁴ In common with the rest of the EU, the majority of overdoses in the UK relate to some form of polydrug use.

Policy

UK drug enforcement and rehabilitation services are currently undergoing comprehensive change as part of the coalition health and justice reform programme, reflected in the creations of Public Health England, Police and Crime Commissioners, the National Crime Agency and pursuit of Payment by Results models. These changes will impact upon the budgetary and oversight mechanisms used to administer drug policies but overall responsibility continues to rest with the Home Office, using as its guide the 2010 Drug Strategy *Reducing Demand, Restricting Supply, Building Recovery*.¹⁵ Much of the strategy relates to rehabilitation and dissuasion techniques rather than criminal justice enforcement, in recognition of the priority of offering *a route out of dependence by putting the goal of recovery at the heart of all we do*.¹⁶

Policy direction is led by the Home Secretary and ultimately the Prime Minister. They are advised by an inter-Ministerial Group on Drugs which meets every few months. This group oversaw and gave endorsement to the 2012 *Putting Full Recovery First* document, which aims to set out the government's approach to treatment provision under the newly formed Public Health England. While many practitioners have expressed legitimate concerns around key sections of the document (see p37 for more details) positive observations include the multiagency approach taken, stronger expert consultation through the 'Recovery Partnership' model and greater harmonisation between alcohol and drug addiction.¹⁷ A Drug Strategy Group and Drug Strategy Implementation

¹⁰ European Monitoring Centre for Drugs and Drug Addiction (2013) *European Drug Report: Trends and Developments* European Union p33-40, Trace, M, Roberts, M and Klein, A (2004) *Assessing Drug Policy Principles and Practice*: Beckley Foundation Drug Policy Programme: A DrugScope Report p11

¹¹ House of Commons Home Affairs Committee (2013) *Drugs: new psychoactive substances and prescription drugs, Twelfth report of session 2013-2014* House of Commons p8

¹² UNODC *A Fresh Approach to Drugs* p44

¹³ Home Office (2010) *Drug Strategy: Reducing Demand, Restricting Supply, Building Recovery: Supporting People to Live a Drug Free Life* p4, UKDPC *A New Approach to Drugs* p38

¹⁴ House of Commons Home Affairs Committee (2013) *Drugs: new psychoactive substances and prescription drugs, Twelfth report of session 2013-2014* House of Commons p6,9

¹⁵ UK Drug Policy Commission (2012) *A Fresh Approach to Drugs* p8

¹⁶ Home Office *2010 Drug Strategy* p4

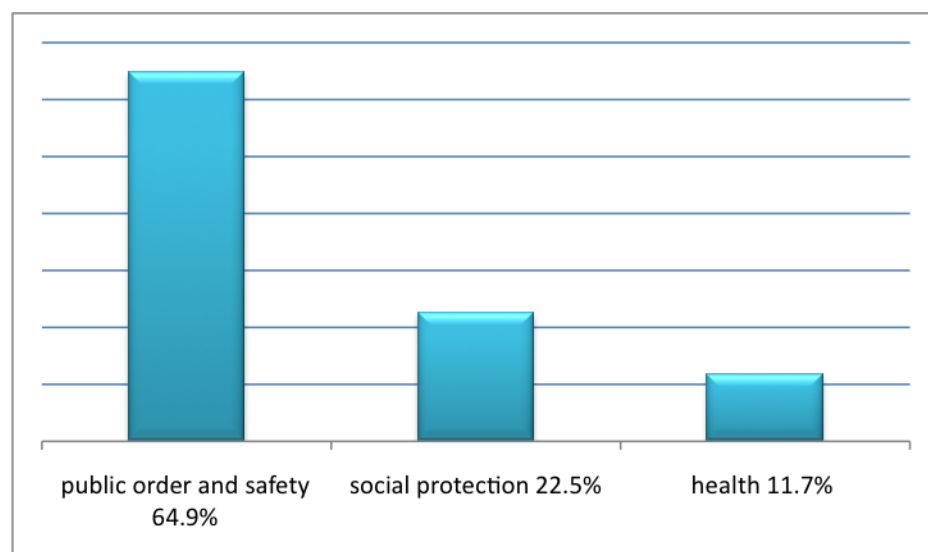
¹⁷ Home Office (2011) *Putting Full Recovery First* HMGovernment

Group also work to help develop policy. External parliamentary scrutiny is the remit of the Home Affairs, Social Justice and Public Health Committees. Different responsibilities are divided between Westminster and the devolved authorities but strategies in Scotland, Wales and Northern Ireland are broadly aligned with the Home Office and similarly criminalise the possession of controlled drugs.¹⁸

The UK has historically taken a cautious approach to drug policy reform that has been rooted in a prohibitionist model since the enactment of the 1971 Misuse of Drugs Act. Yet at the same time provision for treatment and social support has expanded, following on from efforts to centralise drug policy coordination in the early Blair years.¹⁹ The Cabinet Office unit set up in his first term and tasked with developing effective strategy broke down as a result of personality clashes and political loss of appetite, but some of the work they started has continued and the team played an important role in helping to kick-start the expansion of service provision across the UK, laying the groundwork for initiatives such as the cannabis warning system introduced in 2004. Applied to first time offenders, cannabis warnings are an administrative detention though a record remains on local intelligence systems for around 5 years and must be declared on application to some categories of work. Further encounters with the police results in escalation to a Penalty Notice for Disorder or arrest.

While tools such as the cannabis warning show how clear steps towards a rehabilitative approach have been taken over the past two decades, the law as it currently stands remains firm in its criminalisation of the possession, supply and distribution of all drugs registered under the ABC classification system, as well as those registered by temporary order for NPS. This is reinforced by the budgetary allocations set out below. The UK does allow some provision for the medical prescribing and research into prohibited drugs, premised on control schedules that feed into a Home Office licensing process. Licenses are subject to strict conditions and for drugs such as the cannabis-derived Sativex, doctors prescribe at their own risk.²⁰

2010 Breakdown of Total Drug-related Expenditure²¹



¹⁸ The UK government is responsible for setting the overall strategy and for its delivery in the devolved administrations only in areas where it has reserved power. In the Drug Strategy 2010, policies concerning health, education, housing and social care are confined to England; those for policing and the criminal justice system cover England and Wales

¹⁹ HM Inspectorate Probation (2006) *Half Full and Half Empty: An inspection of the National Probation Service's substance misuse work with offenders* HM Government p14

²⁰ Sativex is, produced only by GM Pharmaceuticals under license since 2006. The drug is sometimes prescribed by doctors primarily for Multiple Sclerosis sufferers. Since 2013 Sativex has been separated from cannabis despite the chemical composition being almost identical. The UK government still refuses to acknowledge any medicinal benefits of the controlled administration of cannabis, contrary to evidence produced in medical journals such as The Lancet.

²¹ EMCDDA Country Overview: UK Accessed 9/01/14 at <http://www.emcdda.europa.eu/publications/country-overviews/uk>

Practical Burden of Drug Use on the Criminal Justice System

Drug abuse places a burden on the criminal justice system from a variety of angles. There is a complex and as yet incomplete understanding of the relationship between drug use and crime, but most point to a clear correlation in the UK, particularly in relation to acquisitive crime and dependant users.²² The Home Office estimates an annual cost of around £13.3 billion each year as a result of crime related to illicit drugs.²³ Possession and supply also constitute criminal activity in and of itself. Data for England and Wales records a total of 217,737 drug offences in 2011-2012, broken down into the following:

Trafficking in controlled drugs	29,939
Other drug offences	1,057
Possession of controlled drugs (excluding cannabis)	35,782
Possession of controlled drugs (cannabis)	150,959
Total	217,737 ²⁴

These figures show that cannabis possession forms a significant majority of the total, but ambiguity remains as to the outcome of these offences. 188,285 drug seizures (excl. Hants and Surrey) were conducted in 2012/13, compared to a low of 112,923 in 2004. Of this total, 149,456 related to cannabis seizures. Over the past ten years the focus on cannabis production has remained fairly stable, totalling between 75-80% of all drug seizures.²⁵

From the existing data it is difficult to say with any accuracy the proportion of crimes committed for which drug use and abuse was a contributory factor, but the NTA suggests that between a third and a half of all acquisitive crime is committed by users of heroin, cocaine or crack cocaine.²⁶ The way in which this caseload is managed varies across the different parts of the criminal justice system, with common overarching goals of detecting use, helping overcome addiction and maintaining public security.

Police and CPS

The police come into frequent contact with drug users, either as a result of drug possession or supply infringements, or more commonly in relation to other offences committed. Their physical location on the streets means they are usually the first link made between the justice system and an individual. The current prohibitionist model requires police to actively respond to evidence of use, and to prosecute where the evidence is strong. As well as the burden on police officers, whole units in the NCA (formerly SOCA) are dedicated to disrupting major trafficking networks and intercepting incoming supply, working with teams in HMRC and the Border Agency.

²²Acquisitive crime relates to that committed to source and finance a habit, including shoplifting, burglary, robbery, car crime and drug dealing.

²³ HMGovernment website <https://www.gov.uk/government/policies/reducing-drugs-misuse-and-dependence> Accessed 04/01/14

²⁴ DrugScope, Accessed at <http://www.drugscope.org.uk/resources/faqs/faqpages/what-do-drug-seizures-tell-us> 19/11/13

²⁵ <http://www.theguardian.com/news/datablog/2013/nov/01/drug-seizures-england-wales-drop-falls-in-cannabis-cocaine-heroin>

²⁶ National Treatment Agency for Substance Misuse (2012) *Estimating the Crime Reduction Benefits of Drug Treatment and Recovery* NHS p3

While UK laws are clear about criminalising drug possession, enactment in practice is at variance with the tone of the law and this has helped to alleviate the burden of drug abuse on some parts of the system. According to research collected for the EMCCDA a large number of drug possession cases are disposed of at the police/prosecution stage and before reaching the courts, but it remains unclear whether these cases are dismissed by the police or first referred to the CPS and thereafter rejected. Very few convicted of a possession offence receive a custodial sentence and for a majority caught the penalty is a fine of £50 or less. The police, in conjunction with the CPS, can also use a Drug Related Conditional Caution for lower level users, which diverts prosecuted users to treatment. While voluntary, participants risk sanctions if they do not attend the required number of sessions.

As well as theoretically enforcing prohibition rules and disrupting and solving crime associated with problematic use, the police are also responsible for the first stage of support provided to users when they enter the criminal justice process. In England and Wales Criminal Justice Intervention Teams (CJITs), formed of probation, police and health professionals, were the lead partner for the Drug Intervention Programme (DIP), an initiative set up in 2003 to provide problematic users (Class A drugs only) within the criminal justice system with treatment and support. One of three strands of a nationwide Integrated Offender Management System (IOM), DIP imparted three pre-sentence responsibilities on CJITs; providing drug advice, developing an initial care plan and conducting a triage assessment. Mechanisms under the scheme are both voluntary and mandatory.²⁷ Police officers are responsible for referring users as part of a *Tough Choices* scheme that requires testing on arrest in the custody suite. Individuals who test positive must complete a two-part *Follow-up Required Assessment* by CJIT/DIP teams.²⁸ The police are also involved in a second IOM strand, the Prolific and Priority Offenders programme (PPO), to provide intensive support to a core of repeat offenders, many of whom also suffer from addiction.²⁹ While today similar processes remain in place, the centralised Drug Interventions Programme was terminated in April 2013, with responsibilities and budgets devolved to the Community Safety Fund for Police and Crime Commissioners, ending the ring-fencing of drug support service provision.

Courts and Judiciary

Many defendants across the court estate suffer from some form of addiction and the judiciary face the difficult task of balancing the potential rehabilitation needs of an offender with the requirement to punish criminal activity and ensure victim restitution. Despite the high number of early disposals by the police, 43,406 people were found guilty of drug possession in 2010, primarily in relation to cannabis, with 11,069 convicted of supply or possession with intent to supply in the same year.³⁰ The total burden of all criminal cases driven by problematic use is impossible to estimate with current data but is likely to be substantial.

In terms of process, problematic use is usually identified in the pre-sentence reports drawn up by the probation service and presented to court to help it decide on the most appropriate outcome. In determining the sentences for those convicted, the courts are instrumental in ensuring that sentences are proportionate to the damage done while also tailored to help the individual rehabilitate. There are a variety of tools at the disposal of judges and magistrates, including the increasingly used Drug Rehabilitation Requirements (DRR - replacing Drug Treatment and Testing Orders), and Restrictions on Bail, which allow courts to permit bail on the condition of undergoing treatment. DRRs as a form of community sentence can last from six months to three years. Offenders see their probation officer once a week, attend a drug treatment agency, are tested twice a week and go back to court every month for a progress report. Orders have three levels intensity, the allocation of which is based upon the

²⁷ More coercive measures for treatment were introduced in the 2005 Drugs Act and included an expansion of the test on arrest and restrictions on bail procedures, as well as required assessment.

²⁸ Maximum penalties for non attendance or refusal of testing are up to three months in prison or a £2500 fine

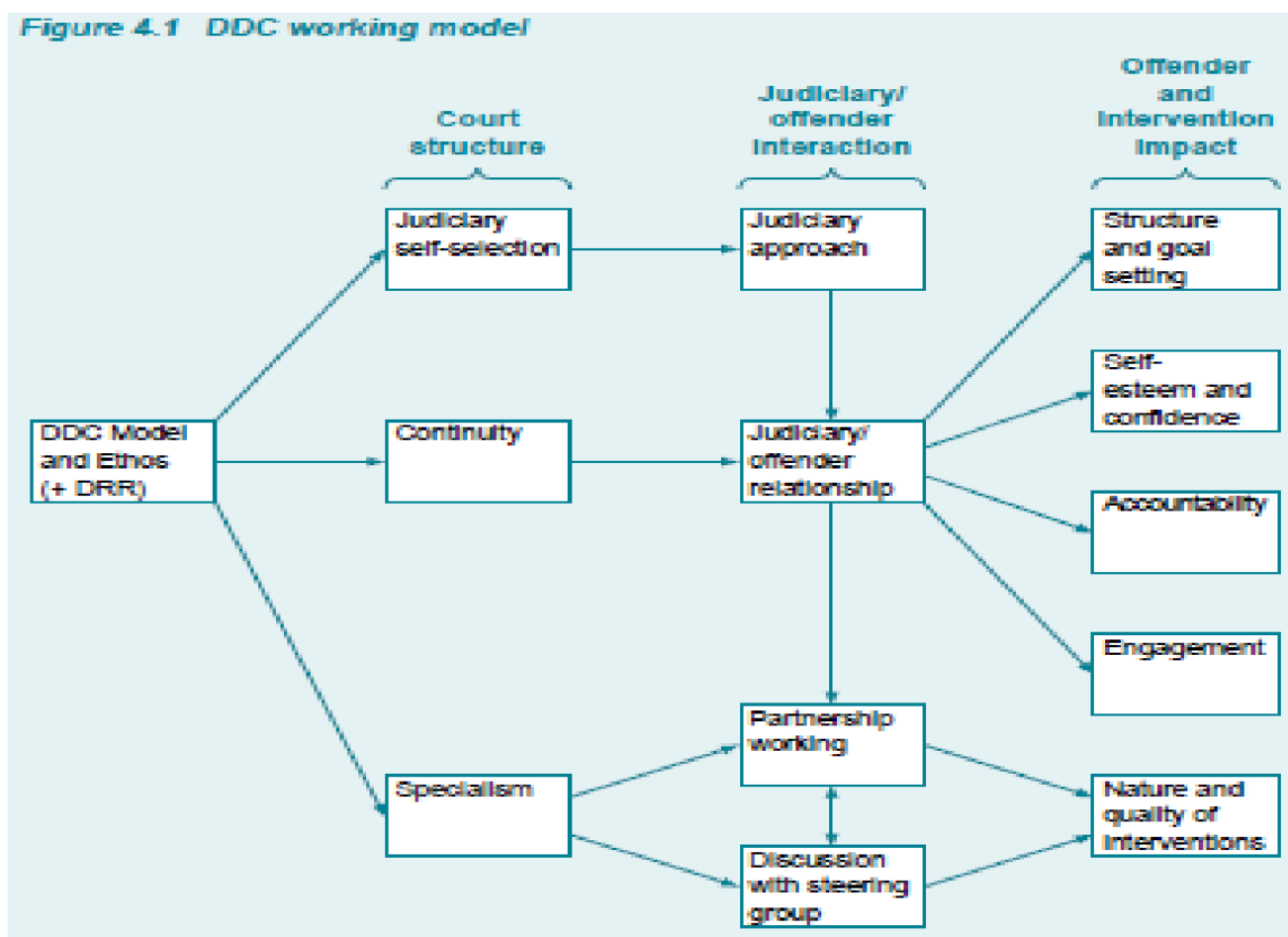
²⁹ Home Office (2011) *Drug Interventions Programme: Operational Handbook* HM Government p4

³⁰ Eastwood, N, Shiner, M & Bear, D (2013) *The Numbers in Black and White: Ethnic Disparities in the Policing and Prosecution of Drug Offences in England and Wales* Release p13

severity of the crime rather than the extent of problematic use. Over recent years, the number of sentences that include a DRR order has grown significantly.³¹

The judiciary is guided in its work by the Sentencing Council's Drug Guidelines. The latest version was released in 2012 and includes three progressive revisions that are now applied for consideration in court; the feasibility of a non-custodial sentence for users who share with friends, the inclusion of medical cannabis use as a mitigating factor in sentencing and a reduced sentencing structure for drug mules. Beyond the general circuit, the UK has also begun to establish Dedicated Drug Courts (DDCs) that exclusively handle offenders with drug misuse problems. DDCs are distinct from dissuasion in that they are working with offenders who have committed a crime in addition to that of drug possession. The model aims to provide continuity from conviction through to completion of a community sentence or DDR, which allows for a relationship of trust to develop between judges and the offender and enables more nuanced sentencing by a bench that has drug abuse expertise.

Figure 4.1 DDC working model



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An MoJ commissioned evaluation looking at six initial pilots identified positives in terms of improved partnership working, low set-up costs and better continuity of care, but it is not currently clear whether the government plans to roll the programme out to other parts of the country.³³

³¹ HM Inspectorate Probation (2006) *Half Full and Half Empty: An inspection of the National Probation Service's substance misuse work with offenders* Home Office p2

³² Kerr, J et al. (2011) *The Dedicated Drug Courts Pilot: Evaluation Process Study* Ministry of Justice p24

³³ Kerr, J et al. (2011) *The Dedicated Drug Courts Pilot: Evaluation Process Study* Ministry of Justice pi, Prof. Lord Patel of Bradford OBE (2010) *The Patel Report: reducing drug-related crime and rehabilitating offenders* Prison Drug Treatment Strategy Review Group p18

Prisons

Almost half of the prison population has an addiction to drugs and 69% of those who enter prison have taken drugs in the past 12 months.³⁴ As well as managing this burden, prison staff are tasked with keeping drugs out of the estate and away from vulnerable users while also working to offer rehabilitation support through what were until recently called CARAT (Counselling, Assessment, Referral Advice Throughcare) teams.

The high proportion of drug-related offences acts as a major burden on the prison system and its oversight body, the National Offender Management System (NOMS), constituting around 14% of the total sentenced prison population as of June 2013.³⁵ The size of the overall prison population in England and Wales has been fairly stable since 2012, following on from a decade in which numbers almost doubled between 1993 and 2012 (45,000 to over 86,000). The Ministry of Justice's own figures show that much of this increase has been driven by a 166% rise in the number sentenced to custody for drug offences. As custody and inmate numbers have increased, the sentencing structure has also become more severe, resulting in longer sentences (from an average custodial length of 28.3 months for drug offences in 1993 to 31.3 months in 2011).³⁶

The prison service operates an Integrated Drug Treatment System (IDTS) to support offenders with a drug problem. IDTS aims to increase the volume and quality of substance misuse treatment available to prisoners, with an emphasis on early custody, improving the integration between clinical and CARAT Services and reinforcing continuity of care from the community into prison, between prisons, and on release into the community. Under the IDTS model a senior manager is appointed to lead and oversee delivery, ensuring all drug or alcohol dependent prisoners arriving at a prison are offered immediate admission to a stabilisation unit. Prisons must facilitate 24 hour access by healthcare professionals for clinical assessment and/or clinical treatment interventions. Casework files and medical records should be sent with the prisoner or arrive on the day of transfer, and policies must be in place to address the effects of withdrawal, including mitigation of the risk of suicide or self-harm.

Under coalition reforms the CARAT model has formally been dismantled but the role of new and existing service providers such as RapT and Phoenix Futures has been expanded to fill its place. These teams will continue to identify drug misuse and carry out needs assessment, rehabilitation referral and case management, as well as acting as a source of information for users. Working across the prison estate, the teams liaise with police and probation staff as part of the principle of continuity of care. While acknowledging the positive contribution made by the various agencies involved, both the Patel and the Home Affairs Committee's 2012 reports argue that there remains scope for improvement, with the former noting a particular problem relating to understaffing within the prisons and subsequent restrictions on CARAT/service provider access to prisoners.³⁷

The prison service continues to struggle to maintain a drug free regime and recent reports suggest that access is easy inside many UK prisons.³⁸ Alongside efforts to better disrupt the internal trade, new initiatives to support offenders have also been set up, most notable being the formation of eleven pilot drug free prison wings which are currently under evaluation. They are designed to help prisoners serving short sentences of fewer than 12 months who need intensive support during the early stages of their recovery from addiction. Early reporting from sites such as HMP Leeds suggests the initiative has been a success. An evaluation of the effectiveness of the scheme is currently underway.

³⁴ Home Affairs Committee (2012) *Home Affairs Committee Ninth Report: Drugs, Breaking the Cycle* House of Commons p76

³⁵ Berman, C & Dar, A (2013) *Prison Population Statistics June 2013 SN/SG/4334* House of Commons Library p21

³⁶ Ministry of Justice (2013) *The Story of the Prison Population 1993 - 2012*, HMGovernment Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/218185/story-prison-population.pdf

³⁷ Prof. Lord Patel of Bradford OBE (2010) *The Patel Report* p22

³⁸ *Drugs in Prisons: Supply and Demand* The Economist Nov 7-13th 2013 p36

Probation

Probation has to tackle drug use from two angles; as a factor for consideration when conducting a risk assessment and as a key problem to overcome as part of a process of rehabilitation. Teams link up with a range of different agencies, including the courts, CARAT and local council Drug and Alcohol Action Teams (DAATs), as well as with external social providers, and play an important role overseeing Drug Rehabilitation Requirements.

As a part of drawing up the pre-sentence reports for courts and indeed throughout their contact with an individual, probation officers periodically conduct risk assessments of their clients, based on the OASys assessment system. In terms of treatment support probation officers act as a conduit to help users identify and access the most appropriate social and health services for their needs, normally provided by charities and third-sector groups. While facilities vary by region, officers in the UK can draw on a comparatively wide network of employment, housing, family and drug treatment support when developing a rehabilitation plan with an individual.

The development of a level of trust is critical to ensuring the client is open about their problems, to allow officers to identify where they are abusing drugs and adjust rehabilitation needs and risk as appropriate. As of June 2013 there were 605,966 individuals under supervision by the probation services. This represents a fall in the total since 2008 but staff cut-backs mean there are now fewer probation officers to meet this demand. Despite longstanding calls to reduce officers' caseloads and allow them to spend more time supporting each client, recent years have witnessed a reduction in staffing, with 66% of probation trusts across England and Wales reporting a reduction in staffing between March 2012-2013.³⁹ Under a major shake-up of offender supervision in England and Wales, new regional rehabilitation contracts are currently being tendered by the government, which will confer responsibility for the supervision of many offenders onto a range of private and voluntary sector partnerships. State-run probation services will continue to monitor high risk offenders and oversee pre-sentence reporting, but the responsibility for rehabilitating the majority of drug-using low-level offenders will lie under the new structure for service provision.

³⁹ Ministry of Justice (2013) *Workforce Information Summary Report Q12012/2013* HMGovernment

Country Contexts

Portugal, Czech Republic and Uruguay share in their modern histories years of authoritarian rule followed by peaceful transition to democratic governance. Rapid exposure to international markets and outside cultural trends has resulted in a rise in the use and variety of drugs available and corresponding social problems that have risen up the political agenda as a result of public concern. In all three countries there have been champions of reform at the very top of the political hierarchy who have persevered in driving forward the reform process and raising awareness of the possible benefits of change, often by deferring to independent practitioners and experts in the field who are able to point to clear evidence regarding the success or limitations of a particular policy idea.

Portugal and the Czech Republic have each established independent oversight bodies that rest close to the executive and manage the collaboration of a range of departments to help address rehabilitation needs holistically. Health and rehabilitation experts rather than staff from criminal justice sectors head up the organisation. Monitoring bodies that work quasi-independently help to ensure data collection is comprehensive and impartial.

In none of the three countries visited was there any discussion of reverting back to a prohibitionist model. Many of the strongest opponents of new laws in Portugal, including the police, are now conceding that the 2001 reforms have had a positive overall impact, while in the Czech Republic discussion at the Council of the Government for Drug Policy is focused on rolling out medical cannabis regulation and holding further debate on the idea of regulating for recreational use. Experts in all three countries felt that alcohol abuse was a substantial problem that had been insufficiently examined or resourced, partly because of an artificial delineation set out between licit and illicit drugs which undermined public appreciation for the dangers of excess consumption of a range of licit substances and as a result limited the prioritisation of funding for its tailored treatment.

Funding constraints and under-resourcing of treatment provision was a concern in all three countries visited, augmented by current state austerity measures. Safeguarding existing services was accordingly the general priority of Portuguese and Czech policy leads, though many agreed in principle with the idea of supply side regulation and/or the further expansion of diversionary services.

Portugal

For the Portuguese government intravenous heroin use has been a major concern, growing rapidly in the decades following the 1974 Carnation Revolution. Troops returning from colonial wars in Angola and Mozambique brought back with them some of the habits and substances tried abroad, while democracy brought with it exposure to international cultures and trade. By 1998 around 1% of the population was using heroin intravenously, with addiction cutting across social strata, affecting a wide demographic and resulting in spiralling rates of HIV and drug-related AIDS.⁴⁰ By 1998 drug abuse, and the social and health concerns around it, was the number one public concern noted by Eurobarometer surveys. Since 1993 the police have rarely prosecuted drug users but it was not until 2001, off the back of independent research conducted by an appointed expert group in 1998, that the formal decriminalisation of small-scale possession of all drugs was enacted. The 1999 National Drugs Strategy upon which the new law was based has a number of key principles embedded within it, including identification of the drug user as a diseased citizen endowed with the constitutional right to health, that imprisonment doesn't solve drug abuse and is too often counterproductive and recognition of the drug user's individual needs. The dissuasion model set up to realize these goals aims to provide an opportunity for early, specific and integrated intervention for drug users.

The Portuguese approach recognises that effective rehabilitation requires holistic support and this was reflected in the formation of the multidisciplinary Institute on Drugs and Drug Addiction (IDT, now SICAD). At the same time

⁴⁰ Hughes, CE & Stevens, A (2010) *What Can We Learn From the Portuguese Decriminalization of Illicit Drugs* British Journal of Criminology 50 p1001. By 1999 Portugal had the highest rate of drug-related AIDS in the EU

as possession laws were altered, the health budget was increased to provide more treatment support and dissuasion commissions (CDTs) were set up, with police asked to refer users to CDTs when caught in possession of a drug.

Portugal still classifies illicit drug possession as a misdemeanour offence but has taken away the application of criminal sanctions for possession only offences. Police issue users with a CDT notice, confirming the time and day of their appointment with their nearest dissuasion commission. Failure to attend may result in administrative sanctions such as fines or license revocation being decided in their absence, helping to ensure high attendance rates.⁴¹ The CDT system provides a 'yellow card' warning to users, as well as enabling effective promotion of health and harm reduction messages at the earliest possible stage and before entry into the criminal justice system. Linked to a nationwide network of support services, CDTs can refer users to a range of services, including treatment, health and training centres. The range of sanctions at their disposal is also broad and includes community service, imposition of exclusion zones, interdiction to travel, formal warnings and a monetary fee. Officials and enforcement agencies do not use a classification system to distinguish between harder and softer drugs and the trafficking of cannabis carries the same penalties as heroin trafficking. The principle of the offenders' full responsibility was also reiterated in the 1999 drug strategy and there has been no change in the penalties for crimes committed under the influence of drugs since 1993.

Public concern around drug abuse has fallen considerably since 2001 and a variety of other positive trends since 2001 have been noted by the Chair of SICAD, Dr João Goulão.⁴² While small increases in use have been reported amongst adults there has been reduced use among adolescents since 2003 and a notable reduction in the prevalence of injecting drug use and opiate related deaths. The criminal justice sector has meanwhile noticed a reduced burden of drug offenders, increased efficiency of police and customs forces and a general rise in the amount of drugs seized by the authorities. Stigmatisation of users has also declined, although officials remain nervous about a slight reverse trend in the current economic climate and amidst high levels of unemployment.

⁴¹ Domoslawski, A (2011) Drug Policy in *Portugal: The Benefits of Decriminalising Drug Use* Open Society Foundations, Global Drug Policy Program p26

	Issues and Approaches	Lessons for the UK
Portugal	<p>Issues</p> <ul style="list-style-type: none"> ➤ High intravenous heroin injection and growing HIV epidemic ➤ Prison overcrowding ➤ Transit country for drugs coming into Europe ➤ 1997 Eurobarometer survey identifies drug abuse as the number 1 public concern <p>Approaches</p> <ul style="list-style-type: none"> ▪ Multi-agency approach to rehabilitation, that prioritises health-based harm reduction measures, with structures moulded by extensive expert consultation. ▪ Diversion of all low threshold possession offences, with threshold limits constituting around 10 days' supply ▪ Close coordination to tackle supply with neighbours (especially UK, Spain) through Maritime Analysis and Operations Center, refocusing of police resources on the 'big fish'. ▪ Simplification of police processes has freed up time to focus on other crimes and drug supply, with benefits filtering down through the criminal justice system. ▪ The 2001 law helped to reduce overcrowding but prisons remained stretched. 	<ul style="list-style-type: none"> ▪ Decriminalisation should not be viewed as a standalone policy decision, but rather part of a broader package of reform where treatment, education and social support are prioritised ▪ Change should be incremental and based on observation of long-term impact of reform measures. ▪ There are notable benefits to drawing upon the expertise of practitioners in the design and delivery phase of reform. This approach is reflected in the formation of a central overarching body led by health experts and distinct monitoring centre for data collection and analysis ▪ There are ways of drawing on existing support programmes to limit the disruption caused by reform. Could expertise from UK Drug Courts, CJITs and CARATs in prisons be used to inform a tailored approach for the UK? ▪ Portugal has mitigated certain risks by banning the commercialisation of drugs and clamping down on head shops selling NPSs. Contrary to expectations Portugal does not suffer from a high rate of 'drug tourism.'

Czech Republic

Under the communist regime of the former Czechoslovakia, public use of drugs up to 1989 was either denied or repressed through criminal sanctions and compulsory treatment. The typology of users at this time was arguably limited to intellectuals, artists and resisters of the regime, though this is hard to confirm in the absence of historic data. A closed market meant that those drugs used were domestically produced, the two most common being *brown* (an opiate) and *pervitin* (a homemade methamphetamine). Use rose in the years following Czech independence but, since the country's independence in 1993, state authorities have rarely prosecuted possession only offences. Attempts to make possession laws more severe in the late 1990s were scaled back following on from the results of a major evaluation into the impact of the new laws.⁴³ The report argued that criminalisation policies had not resulted in a decline in availability or use of drugs, while the period in question had seen a rise in younger users, generated greater health problems and a significant rise in the costs of law enforcement and incarceration. Further revisions in 2010 clarified threshold amounts and most recently legislation was introduced to allow for the medical supply of cannabis, though access remains difficult.⁴⁴ Government reports suggest cannabis use has declined among adolescents though this is seen less as a result of the 2010 amendments and better situated in the context of wider trends across the EU.

Today Czech possession offences are classified as a misdemeanour offence in a similar way to Portugal but without a mechanism for treatment referral akin to the dissuasion commission. Nonetheless health-based support has received strategic priority and the government took an approach that gave medical practitioners and frontline staff the space to shape central policy decisions. Their 2010-2018 strategy and action plan holds treatment and social reintegration as one of its policy cornerstones, though many of those interviewed felt more needed to be done to realise this goal, including greater state (rather than EU) funding for providers, reduced red tape and better tailoring of treatment options.

Supply remains prohibited in the Czech Republic but disruption of the trade is made harder by the simple methods of pervitin production, allowing production close to consumers rather than through importation from abroad. A snapshot of current Czech police priorities shows how hard it is to control the manufacturing and supply of illicit drugs in a country of many borders that has recently signed up to the EU Schengen Agreement. Precursor chemicals are largely sourced from Poland where pharmaceutical companies have pressured the government not to restrict over the counter sales of drugs which can be broken down and used. Large scale production laboratories are now emerging along parts of the Czech border for distribution into Germany and Austria, while the domestic market is largely provided for by local suppliers who are often operating on a smaller scale. The situation shows how migration and a globalised economic market enable traffickers to exploit the legal differences between neighbouring states to maximise profits and minimise the risks in a way that mirrors many legitimate production and distribution businesses.

⁴³ Cseste, J (2012) *A Balancing Act: Policymaking on illicit Drugs in the Czech Republic* Open Society Foundations, Lessons for Drug Policy Series p20-23

⁴⁴ Government Council for Drug Policy Coordination (2010) *National Drug Policy for the Period 2010-2018* Government of Czech Republic p8

Czech Republic	Issues and Approaches	Lessons for the UK
	<p>Issues</p> <ul style="list-style-type: none"> ➤ Rising intravenous pervitin and black market subutex abuse ➤ High and stable rates of cannabis use – up to 80% population have tried cannabis ➤ Increasing politicisation of drug policy in late 1990s and growing stigmatism towards users ➤ Growing public health calls for reform (first presented in the Christmas Memorandum submitted to government by experts in 1992) <p>Approaches:</p> <ul style="list-style-type: none"> ▪ Low threshold possession as a civil misdemeanour rather than criminal offence, with reduced penalties across the law for cannabis related drug offences and limited enforcement of civil penalties for cannabis users. ▪ NGOs and frontline practitioners have been encouraged to feed into the design and formation of state agencies such as the Probation and Mediation Service and are integrated into the staffing of the Council on Drug Policy Coordination ▪ Many of the NGOs and treatment services in the country are funded by the EU's Social Development Fund – central state funding remains limited and difficult to access. ▪ Despite high levels of public stigmatism towards drug addiction, the government has stuck with an approach focused on harm reduction. Problems remain in getting local authority clearance for services such as drop-in centres but this has not stopped Czech authorities from discussing new initiatives, including consumption rooms. 	<ul style="list-style-type: none"> ▪ Government approaches to reducing drug abuse do not need to be framed in terms of a left/right political debate. In Czech Republic and Portugal conservative politicians have been some of the strongest supporters of reform ▪ Drug policy development will benefit from more proactive engagement with delivery charities and NGOs, who can feed in the experience and insider knowledge of frontline staff ▪ Misunderstanding around the goals of treatment support can generate opposition to services from local authorities. There is potentially a need for the central government to take a proactive role in generating public endorsement for discrete treatment services and incentive schemes for local areas where need is high. ▪ Treatment services are able to operate more effectively and flexibly when they are given the space to innovate. Red tape should be kept to a minimum where possible to reduce the administrative burden on smaller NGOs with limited numbers of office staff. State funding provision should be secure and long-term, also reflecting the length of time needed to achieve recovery. ▪ In addition to health based treatment, stable employment and housing are key preconditions for longer-term reintegration. Provision of work opportunities in prison was seen as key to supporting rehabilitation and reintegration on release. Public stigmatism continued to make offender employment difficult, but organisations such as Rubikon and Sananim have benefited from innovating with social enterprise models and shifting their approach to give greater thought to the needs and interests of employers, as well as the potential employees they are looking to place.

Uruguay

Uruguay has a longstanding and proud history of social liberalism that contrasts with many of its neighbours and was reflected in reforms such as the introduction of universal primary education in the late nineteenth century. More recently the growing popularity of the left-wing Frente Amplio coalition and the accession of President Jose Mujica in 2010 has helped to spur a new wave of progressive laws relating to issues such as abortion rights and the decriminalisation of gay marriage.

Decriminalisation of low-threshold possession for all drugs in Uruguay took place in 1974 under military dictatorship. Since the fall of the regime in 1985, and in line with broader international trends, drug abuse grew in the 1980s and 1990s, again partially enabled by the opening of the state to economic and cultural exposure. Today *Paco* is the main issue of concern, a form of crack cocaine imported from neighbouring states. Strong criticism of *Paco* consumption is contrasted with widespread social acceptance of cannabis use. Around 150,000 out of the 3.3m population are regular consumers of cannabis and it is not unusual to see people smoking outside bars and on the street. Since 2010 a reform campaign has been underway, supported by a cross-section of political and civil society groups, calling for state regulation of the cannabis market and the decriminalisation of self-cultivation. The possibility of helping to alleviate chronic prison overcrowding and court backlog in the country has helped to fuel support at the political level, and while a probation service has recently been set up, many are hoping that a regulatory model will further enhance provision for rehabilitation, treatment and welfare support. The idea is championed by President Mujica and has been driven through the political process by his Frente Amplio coalition. While there is a strong and cohesive lobbying campaign working to raise awareness of the possible benefits of reform, support amongst the public is split and the outcome of a possible referendum on the issue remains uncertain.

Under the bill being discussed there would be 4 main access points to cannabis;

- Medical provision via the Ministry of Health
- Home grown provision of up to 6 plants
- Social clubs with a maximum of 99 plants and 45 members
- Licensed sales through pharmacies

Users must sign up for registration cards as part of efforts to avoid drug tourism, and the state will track and limit purchases (40 joints/month). The system will monitor THC levels, the component in cannabis that has been linked to mental health, and impose a tax on producers. While a majority of those interviewed for this research supported the reforms, the common key concern lay in ensuring the set-up of a strong and effective regulatory authority.

The legislation, which has now received parliamentary approval, will include a complete ban on advertising, no sales to minors and the integration of health education into the school curriculum. Treatment for addiction of all drugs, including alcohol, would receive greater resourcing while a new interagency body would be set up to oversee distribution and adherence to the new laws. The bill is part of a wider package of security reforms, demonstrating that crime reduction is a key driver for the government, set in the context of continued regional instability as a result of the illicit drugs trade. While the proportion of profits generated by cannabis sales is contested, there is a widespread belief that the diversion of funds to the state (and into health provision and administration of regulatory bodies) could have a significant impact on the strength and capacity of organised criminal groups in the area. It is also hoped that cannabis users will be diverted away from suppliers of *Paco*, to cut off the possibility of a supply-side gateway into harder drugs. Underpinning the security bill are multiple theoretical drivers for decriminalisation of supply in Uruguay, including the principle of civil rights, harm reduction, health promotion and enhancing public security. They are mutually reinforcing rather than exclusive.

The authorities in Uruguay have also been bolstered by wider regional support for a change to international approaches to drug control, driven by the Organisation of American States and resulting in agreement for a Special Session on the subject at the 2016 UN General Assembly.⁴⁵ While in the past high ranking officials usually only acknowledged their support for drug policy reform after leaving office, it is the serving presidents of countries like Colombia, Mexico and Guatemala that are now calling for a regulatory international model. As a first step, some in the region are amending their domestic legislation to remove criminal penalties for possession offences, with the goal of alleviating major judicial problems such as high rates of pre-trial detention, prison overcrowding and court backlog.⁴⁶

⁴⁵ See the OAS Report on the Drug Problem in the Americas May 2013, which will form a foundation for talks at the UN General Assembly in 2016

⁴⁶ Countries that have fully or partially decriminalised drug possession since 2000 include Mexico, Brazil, Ecuador and Argentina.

	Issues and Approaches	Lessons for the UK
Uruguay	Issues <ul style="list-style-type: none"> ➤ Rising Paco abuse and experimentation among younger users ➤ Supply-side gateway theories, criminalised supply forcing users to mix with unscrupulous dealers ➤ Ambiguity of threshold amounts and excessive judicial discretion make application of decriminalised possession laws problematic ➤ Fears of a rise in organised crime and corruption of state institutions, as drug suppliers move in from other South American states 	Lessons for UK Context
	Responses <ul style="list-style-type: none"> ▪ Dualistic approach to drug policy that distinguishes between soft and hard drugs. ▪ Supply-side regulation of cannabis is likely to be up and running in 2014 with the aim of redirecting police resources to the disruption of the Paco supply chain. They aim to reduce cannabis user interaction with illicit dealers, offset the profits of organised criminals and undermine the power of traffickers. ▪ The package of reforms will include increased funding for treatment services and a comprehensive education campaign, modelled on a successful anti-tobacco initiative in 2006. 	<u>Possession</u> <ul style="list-style-type: none"> ▪ Thresholds delineating between possession and supply need to be clear, training for judiciary and police is essential to ensure predictability of enforcement. ▪ As in Portugal and Czech Republic, official and medical experts in Uruguay believed alcohol abuse remained under-examined and poorly resourced. There is a clear logic to linking strategies relating to addiction to drugs and alcohol, as well as that of prescription drugs. <u>Supply</u> <ul style="list-style-type: none"> ▪ There are a range of potentially significant advantages to supply-side regulation for the criminal justice system, and reform in this area could help to critically undermine one the primary funding mechanisms used by organised criminals and terrorist groups across the globe. ▪ Most believe that effective supply-side regulation is contingent upon a strong and influential regulatory authority that holds enforcement powers. ▪ The utility and evidence base in support of greater medical use and testing of controlled substances was reinforced in Uruguay, with experts pointing to a succession of reports released in the <i>Lancet</i> journal. ▪ Reform in Uruguay is taking place before amendments to the UN Single Convention on Narcotic Drugs are made and in spite of INCB opposition. If the policy is effective, other countries may follow suit irrespective of decisions made at the UN General Assembly in 2016.

Impact of Reforms on Criminal Justice Institutions

The decriminalisation of possession offences in the three cases studies has been carried out with relatively little disruption to the procedures of the different arms of the criminal justice system. This is partly due to a lack of enforcement prior to a formal change in the law. In Portugal, for example, possession cases reaching the court were almost unheard of from 1993.

The shift to civil rather than criminal offence codes has generated a range of benefits, weighted towards the police and prosecution services in the years immediately following reform and set out in more detail below. In the longer term, most officials interviewed argued that all strands of the criminal justice system have benefited from enhanced state-public trust and stronger mechanisms for referral to support services, which in the case of Portugal has in turn helped to reduce some forms of acquisitive crime and increase rehabilitation rates. Given the huge range of variables and lack of counterfactual for comparison, researchers are finding it extremely difficult to establish how decriminalisation in isolation has impacted upon crime rates, particularly in the absence of sufficient data.⁴⁷ What is certain is that overall crime figures have stayed relatively stable, hovering between 34 and 43 recorded offences per 1000 inhabitants, with no peak or surge generated by a change in the law. This compares to 2009 offences of 32/1000 for the Czech Republic, while the UK ranks last at 78/1000.⁴⁸

While the impact of supply side regulation is as yet untested, experts in Uruguay anticipate a range of benefits for the criminal justice system and enhanced public security. Crime reduction is one of the primary goals of the Uruguayan bill and there are logical reasons to suggest supply-side reform may help to disrupt a wide range of criminal activity and have a significant bearing on the workloads of criminal justice staff.

Possession Only

Police

Streamlined processes

Chief Inspector Joao Figueira of Portugal's Drug Squad Unit described a simplification of police processes that took place as a result of the 2001 reforms. The police continue to play a vital part in administering the new system but it is now more informal and based on CDT referral, threshold assessments and decisions on the best approach to dealing with small scale suppliers, many of whom may be funding an addiction themselves. While initially being opposed to reform the police in Portugal have found that they have at their disposal a tool that can allow them to give support to the addicts they encounter. Scheduled sessions are held soon after the offence has been recorded, helping to sustain high attendance rates and thereby limiting the police time devoted to following up non-attendance. The system has streamlined processes for a range of enforcement roles including frontline police officers, duty officers and forensics teams, as set out on the next page.

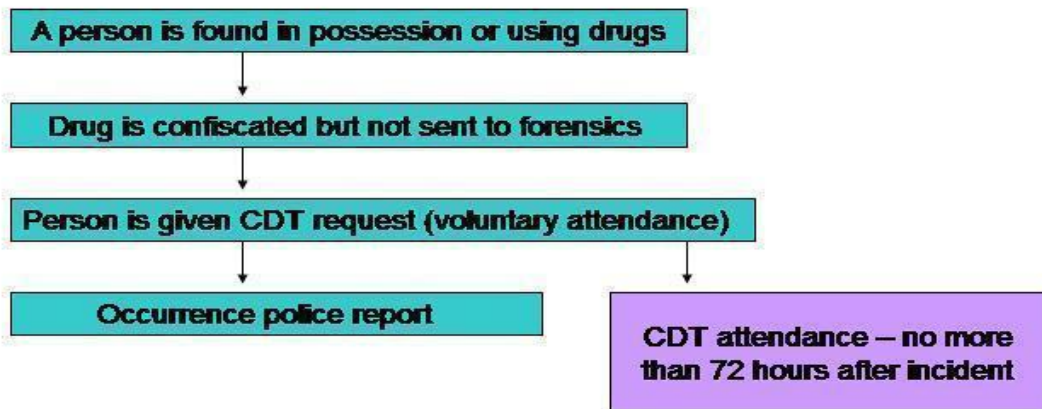
⁴⁷ Hughes, CE & Stevens, A (2010) *What Can We Learn From the Portuguese Decriminalization of Illicit Drugs* British Journal of Criminology 50 p1010

⁴⁸ European Crime Prevention Network (2012) *European cross-country statistics, surveys and reports* EUCPN Secretariat p9

Portuguese Police Procedure Pre-2001



Police Procedure After 2001



Since 1993, police in the Czech Republic have rarely prosecuted simple possession offences and the various amendments to laws over the past 15 years have had relatively little impact on day to day police processes. Cannabis use is often ignored while the system of misdemeanour offences is more rigorously applied for other drugs. In contrast to Portugal, the lack of a semi-judicial health body to provide support means that fines are the normal penalty for a misdemeanour offence. Many addicts are not in a position to pay them back and the system itself has flaws that make it difficult to monitor an individual's progress. There is no central register for misdemeanours, for example, and no incremental sanctions structure for repeat misdemeanour offences.

The Portuguese and Czech experiences suggest that consumption is unlikely to increase by any significant rate under a diversionary system, while for groups such as under 18s it may fall over time. The police are therefore unlikely to be burdened by additional crime generated by higher rates of problematic use, assuming health and rehabilitation support is adequately resourced. In Uruguay the police have a large amount of discretion in deciding what breaches a threshold for possession and a number of interviewees cited problems with individuals being erroneously prosecuted for supply, and excess focus on self-cultivation. Uruguay's problems matching enforcement to the law flag the importance of ensuring frontline staff across the criminal justice system are adequately trained in the application of new measures, and that the rules and thresholds are clear.

Negligible impact on bargaining power

Officials interviewed in the Portuguese and Czech police and probation services flagged the original concerns of national police forces when reforms were first enacted. Many in the service were worried that without a possible penal sanction to leverage information from a drug user, identification of higher level suppliers may be undermined.⁴⁹ This theoretical loss of bargaining power has not played out in reality and reform has had a negligible impact upon police intelligence gathering. Use of this method of extracting information was originally exaggerated and new sources of public information have evolved, aided by a reduced public fear that they may be penalized for possession if they provide information about suppliers. Other concerns held by the police at the time of reform have since been allayed. For example far from creating more burden on the police, the CDT model has reduced administrative duties for the police, helping to explain why the Portuguese police authorities are today supportive of the reforms. Some officials suggested that the change had allowed for a stronger community policing approach which was welcomed by the public and had resulted in greater trust towards the police forces, better reporting of crime and more reliable witness attendance.

Courts

CDT model effective as means of supporting rehabilitation

The formation of dissuasion commissions in Portugal represented a major shift in criminal justice thinking, drawing together the benefits of judicial authority and the legitimacy of a court-based environment with health expertise and sanctions that target rehabilitation. Comments from all the officials interviewed as part of this research suggested it works as an effective diversion mechanism for drug users, opening up an avenue for the provision of support that is focused on physical, social and psychological development, and identifying problematic users before entry to the criminal justice system. Judges sitting on the panels are able to draw on social worker and practitioner expertise in developing holistic solutions focused on rehabilitation. The work of the courts is supported by a range of risk and harm reduction projects, including outreach teams, drop-in centres, substitution programmes and refuges, coordinated under the National Network of Harm and Risk Reduction. While many felt that tweaks to the system were necessary, the dissuasion model was widely lauded by officials in the country as an effective compromise that directed users to the support they needed in a way that respected their rights.

⁴⁹ Domoslawski, (2011) Drug Policy in Portugal, Open Society Foundations p33

CDT Procedure

Police Authority

A person is found at a public place in possession or using drugs

- Occurrence police report
- The user is brought to the commission in a maximum delay of 72 hrs

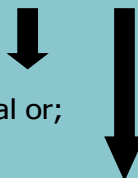


Dissuasion Commission:

- Psychological evaluation
- Hearing the user
- Decision

Factors considered:

- Addiction?
- Situation regarding drug use
- Psychosocial situation assessed
- Previous register



Disposal or;

Execution of penalties and file proceedings

Completion: when the suspension period expires and the user has stopped using drugs without record of relapse, or if penalties were carried out

Sanctions available to the commissions include;

- provisional process suspension (largely for non-addicted cannabis smokers)
- periodic presentation to the CDT
- admonition warning
- community service
- forbiddance of attending certain places
- apprehension of objects
- interdiction to travel
- interdiction of receiving subsidies or other monetary social grants
- monetary fee

The lack of a similar body for users in the Czech Republic and Uruguay has arguably resulted in a lost opportunity to identify problematic use at the earliest possible stage and undermines efforts to ensure that treatment rather than monetary fines become the standard mechanism for judicial authorities when dealing with problematic users. The absence a systematised treatment option also risks limiting state rehabilitation support. Health experts in Uruguay argued that state provision and resourcing for treatment was insufficient and identification of problematic users too slow, while in the Czech Republic many NGOs working with offenders and addicts are concerned at the extent to which their funding relies on EU rather than domestic central and municipal budgets. As Prague's development continues, it is possible that some areas will soon be too wealthy to qualify for some grants under the European Social Fund and the government was being urged to make plans to ensure key services continue to be supported.

Reduced caseload

While rarely prosecuting simple possession cases in the years prior to adopting civil penalties, the number of people arrested for criminal drug offences in Portugal fell from over 14,000 in 2000 to around 5250 annual offenders by 2009, with a corresponding reduction in court cases.⁵⁰ Most of this decline is reflected in the figures for CDT attendance, which saw 6617 new cases in 2010.⁵¹ Criminal justice costs and effort is probably lower in Czech Republic and Uruguay, in the absence of a diversionary system, but is likely to reduce any positive impact of noncriminal sanctions on longer-term rehabilitation rates.

Importance of judicial training

In Uruguay a number of experts argued that excessive judicial discretion combined with poor training to result in inappropriate sentencing decisions and a reluctance to risk granting bail, fuelling pre-trial detention rates of around 64% of the total prison population in a prison system that has been repeatedly criticised for breaching basic prisoner rights.⁵² The CDT model in Portugal allows judges to develop expertise in drug abuse while also having a broader range of sanctions at their disposal. Judges there have been given more comprehensive training and are encouraged to work closely with social services and probation.

Prisons

The complexities of balancing security with individual rights in prisons, combined with ongoing austerity cuts, meant that all the prison systems in the countries visited were facing challenges in the administration of offender rehabilitation. Uruguay's prisons in particular are perhaps the weakest section in its chain of judicial administration and concerns around poor conditions and overcrowding have been repeatedly raised in the national media.⁵³ In Portugal and the Czech Republic conditions and processes are better, but their respective systems have also been criticised in recent years, particularly following on from funding cutbacks and subsequent reductions in staffing.⁵⁴ Nonetheless there were some excellent examples of drug support that reinforced arguments for expanding the UK's drug-free pilot wings. Officials in both countries were working to support in-house employment schemes and curtail inward supply while in Lisbon Prison a separate drug-free wing had been established for those undergoing rehabilitation. In contrast to the UK, those eligible for admittance were usually serving longer sentences and had successfully completed an initial course in the main prison. The possibility of a place at the centre acted an incentive to complete the course and once in, daily activities were focused on building self-esteem, fostering cooperation and preparing individuals for release.

The agencies involved in law enforcement are diverse and include the courts, security forces, health services and prisons among others. It can be observed from this report that the implementation of the PCNDT allowed the procedure to operate more effectively, while at the same time ensuring enforcement of the law

Portugal 2013

External Evaluation: National Plan
Against Drugs and Drug Addictions
2005-2012

⁵⁰ Hughes, CE & Stevens, A (2010) *What Can We Learn From the Portuguese Decriminalization of Illicit Drugs* British Journal of Criminology 50 p1009

⁵¹ Goulão, J (2013) *PowerPoint Presentation: Official Visit of the Narcotics Control Committee of the Macao SAR Government* SICAD

⁵² International Centre for Prison Studies *World Prison Brief* Accessed at: <http://www.prisonstudies.org/country/uruguay>

⁵³ For examples see the Latin American Herald Tribune Accessed at:

<http://www.laht.com/article.asp?ArticleId=351801&CategoryId=23620>

⁵⁴ For examples see the New York Times http://www.nytimes.com/2012/11/27/world/europe/prison-hardships-rise-in-portugal-as-economic-crisis-drags-on.html?_r=0 and Radio Praha <http://www.radio.cz/en/section/curraffrs/prisoners-rebelling-against-worsening-conditions-in-czech-prisons>

Enhanced inmate treatment and support

Recognition of the health needs of users has had a positive effect on approaches to tackling drug abuse in prison, with a renewed attention to pilot initiatives such as the needle exchange programme in Lisbon prison and the expansion of inmate employment schemes in Czech Republic. Some of these pilots have been effective while others have been less successful, but the piloting process in itself has been helpful in allowing the authorities to develop an evidence base for what does and doesn't work.

The issue of inmate employment remained a concern for most of those interviewed. For example, while official statistics in the Czech Republic suggest around 30% of inmates are in employment, underemployment meant many worked only a few hours a week, if at all. The problem of limited availability is compounded by the inability of inmates to keep a job if they are known to be using drugs and there were different views as to whether addicts should be encouraged to seek treatment first, or whether employment itself acted as a key part of the rehabilitation process and should therefore be encouraged at the earliest stage. Many NGO officials felt that inmate employment schemes should also be broadened out to better match the potential employment areas of prisoners on their release, including a greater focus on computer literacy.

Small impact on overcrowding

Given that both Portugal and Czech Republic had not effectively enforced criminal sanctions for drug possession prior to reform, legislative change did not have a major impact on prison population rates, though Portugal has seen a fall from around 128/100,000 population in 2001 to 109 in 2010.⁵⁵ Another trend noted by Hughes and Stevens has been the fall in the proportion of the prison population whose offence was committed under the influence or to fund drug consumption - 44% in 1999 to 21% in 2009.⁵⁶ Recent falls in the prison rate in the Czech Republic can mainly be attributed to an unexpected general amnesty overseen by the outgoing President in the spring of 2013.

Dynamic Security improved?

In light of current state austerity measures and associated cutbacks to prison services, it was difficult to ascertain whether the relationship between guards and prisoners had improved as a result of the 2001 Portuguese laws. The service is experiencing increased overcrowding as finances are cut and media reports have suggested tensions within prison have risen as a result. Prohibition rules have remained in force within the Portuguese and Czech prison estates, and overall impact has been limited to the set up of new programmes and facilities specifically for drug users.

Probation and Support Services

While the probation services in the Czech Republic and Portugal are comparatively young, they have both worked to expand alternative sentencing and support rehabilitation services while also drawing extensively on the experience of the NGO and charity sectors. Coupled with legal reform, the weight given to pre-sentence reporting and identification of addiction has been reinforced. Probation officers in Portugal now have an expanded role supporting the CDTs, though they also continue with their normal duties monitoring and advising offenders. Caseloads for officers remains heavy but those interviewed noted since 2001 greater openness on the part of many of their clients and a corresponding strengthened capacity to carry out risk assessments and provide rehabilitation support.

Greater honesty between officer and offender

Probation experts interviewed for this research believed that they had a more constructive dialogue with their clients since decriminalisation of possession was enacted. Offenders are more forthcoming about admitting and

⁵⁵ International Centre for Prison Studies Accessed at : <http://www.prisonstudies.org/country/portugal>

⁵⁶ Hughes, CE & Stevens, A (2010) *What Can We Learn From the Portuguese Decriminalization of Illicit Drugs* British Journal of Criminology 50 p1010

discussing the extent of their addictions when there is no fear of being penalised for it. Despite a level of confidentiality applying to probation/client discussions, offenders were often cautious in the past and unclear of the rules. Many of those coming through the criminal justice system will be naturally antagonistic towards state authorities and probation officers need to break through this wall of distrust to start an open dialogue where the offender can discuss their intimate problems. The more open atmosphere generated by the removal of criminal sanctions for possession offences has allowed officers to pick up on problematic use at an earlier stage, diverting them to the relevant treatment body and incorporating consideration of drug abuse into the risk assessment process. Czech prison authorities continue to conduct mandatory drug assessments under the current model as part of an offender's risk assessment, suggesting that a civil rather than criminal sanctions regime does not necessitate constricting prison and probation capacity to identify problematic use.

Continued heavy caseloads

In all three countries severe burdens on officer time meant many were in favour of reducing the caseload of probation staff to enable them to offer greater support to each of their clients. A key problem in Portugal lay in the rapid reduction in support for addicts on release from drug free wings in prison, where treatment and access is intensive. This unevenness in offender continuity of care, at a time when drug users are potentially at their most vulnerable, risks undermining the time and effort put into prison treatment and support. New systems and technologies were helping but probation and charity workers suggested that methods such as electronic tagging should be seen as a tool rather than a replacement for personal sustained support.

Since being set up in 2001 the Portuguese and Czech probation services are increasingly gaining support in their respective countries for their work promoting alternative sentence mechanisms to reduce overcrowding in prisons and rehabilitation to reduce recidivism. Portugal's dissuasion commission approach means that the state directly oversees the rehabilitation of offenders and probation staff play a central role in supporting users and directing them to the treatment they need. In the Czech Republic the state relies more on external charity and NGO organisations such as Rubikon Centrum and Sananim to support ex-offenders to find housing, employment, therapy and debt management support.

Supply-side Regulation

While the diversion of possession cases can help to streamline and enhance criminal justice services in the ways set out above, exponentially greater opportunities rest with supply-side regulation in terms of both tackling crime and in reducing the burden on the justice and security sectors. The principle of enhancing public security is central to Uruguay's reform plan and there are two primary justifications used by advocates for change.

Targeting the resources of organised crime

A key aim underpinning the regulation of the cannabis industry in Uruguay is to undermine the power of organised criminals and cut off high profits which are fuelling corruption in neighbouring states.⁵⁷ By disrupting their trade, the goal is to effectively divert income that is currently enabling some criminals to leverage power and influence and contributing to a range of other criminal activities. If the theory holds, regulated supply policies will result in a gradual reduction in the resources and influence of many organised criminal groups.

The separation of the cannabis market from harder drugs such as Paco also enables a stronger health response, disrupting any supply-side gateway between softer and harder drugs and stabilising THC content levels, while excess use by registered users can be spotted and support offered at an early stage. The hope is therefore not

⁵⁷ For example there are concerns around Paraguay's growing prominence as a key transshipment point for cocaine from Bolivia and Peru, which coupled with its status as the foremost marijuana producer in the region is resulting in the embedding of organised crime. For more details see Insight crime article 26 September 2013 *Locals Taking Control of Paraguay Drug Trafficking: Minister* Accessed at: <http://www.insightcrime.org/news-briefs/locals-increasingly-prominent-in-paraguay-drug-trafficking>

only to rein in the power and strength of large organised groups, but also to further help those at risk of problematic use from entering a downward spiral. In the longer-term there is scope for acquisitive crime and drug-related violence to decrease, including that between gangs competing for territory and custom. There are also arguments to suggest that price controls under regulation can help to reduce acquisitive crime.⁵⁸ In line with this principle and in order to avoid encouraging a black market, Uruguay has opted to charge a modest \$1 a gram for cannabis sold by the state, which roughly corresponds to current street prices.⁵⁹

Criminal justice efficiencies

Even under a system of decriminalised possession laws in Uruguay, police forces there continue to spend a substantial amount of time disrupting cannabis supply. The Uruguayan National Drug Board argues that a high proportion of police operations relate to marijuana involving quantities of less than 100 grams. Supply-side regulation would radically cut the number of police cases relating to cannabis supply, though there would be a continued role in policing the regulatory system and enforcing punishment of breaches. Assuming there is a filter-down effect, a regulatory system can help to address UNDP reports over-criminalisation across large swathes of Latin America that is resulting in growing numbers incarcerated for drug-related crimes and severe overcrowding across large parts of the region.⁶⁰ There is a possibility of an increase in the number of civil cases brought to the court under the new legislation with potential benefit in expanding resourcing for those areas that oversee breaches of the regulatory model. The cost of regulating rather than policing cannabis is likely to be significantly lower than at present, with some opportunity for revenue generation through taxation. The long-term reduction in police workload could largely offset the costs of establishing an effective regulatory agency.

"Decriminalisation can aid the penal system by ensuring better orientation of police resources (at present 60% of our seizures still have to do with small amounts of a drug) and also reducing trafficker-related violence and organised crime, particularly that associated with the struggle for sales territories in the suburbs"

Frente Amplio Congressman Sebastian Sabini, Uruguay



⁵⁸ Some researchers also argue that, contrary to expectations, increases in law enforcement activity against the drug trade increases rather than decreases violence in a state. See International Centre for Scientific Drug Policy (2012) *Effect of Drug Law Enforcement on Drug-related Violence: Evidence from a Scientific Review* p5

⁵⁹ The Guardian (22nd October 2013) *Uruguay sets price of legalised cannabis at \$1 a gram* Accessed at: <http://www.theguardian.com/world/2013/oct/22/uruguay-legal-cannabis-1-dollar-gram>

⁶⁰ United Nations Development Programme (2013) *Regional Human Development Report 2013-2014: Citizen Security with a Human Face: Evidence and Proposal for Latin America* UNDP p11

Implications for the UK

The experiences of Portugal, Czech Republic and Uruguay demonstrate that the diversion of low threshold possession offences can bring benefits to the criminal justice system without requiring a radical overhaul of processes. Potential efficiencies in the criminal justice system rest predominantly with the police and prosecution services but broader trends relating to increased public trust and more resonant messaging could have a significant longer-term impact on the work of the courts, prisons and probation, as well as for the NGOs and charities working with problematic users. For the UK, an approach that seeks to enhance police-public relations is particularly pertinent at a time when the integrity of the police forces has been in the spotlight. The government is also in the strong position of having already laid the groundwork for necessary adjustments to criminal justice administration, and can utilise a comprehensive existing framework of treatment and support provision. In the short term drug abuse rates may rise slightly, as was seen temporarily in Portugal, but this statistical measure should not be used to invalidate the efficacy of diversion. A key goal is to ensure more of those people, who would otherwise have stayed off the record books, are seeking support.⁶¹

Based on the recommendation of developing a dissuasion model for possession offences in the UK, some key factors for consideration are set out below. A shift to civil misdemeanour penalties for low-threshold possession, combined with a dissuasion commission system that is designed to fit UK needs, would help to identify problematic users at an early stage and offer support while at the same time avoiding the risk of prematurely criminalising individuals and contributing to a downward spiral. This domestic approach could strengthen the UK's voice in international discussions regarding supply-side regulation and position its domestic structures to be able to accommodate such a framework, in the likely event that the idea is endorsed at the multilateral level. It is impossible to consider these reforms without also looking at the UK's oversight mechanisms and strategic approach, which by comparison to the case studies in this report are weighted too heavily towards the criminalisation of users.

Practical changes to CJS administration

Despite polemical debate surrounding drug policy reform, decriminalised approaches to drug control would necessitate comparatively little change for criminal justice staff. Processes would remain largely unchanged and the bulk of costs would relate to the set up of dissuasion commissions and training programmes to raise awareness of drug abuse and the application of any legislative amendments. It is particularly important for the police and judicial authorities to develop this expertise, and for adequate resourcing to be allocated to coordination and continuity through the offender journey, to ensure efforts made in one section of the criminal justice system are not lost elsewhere. The formation of a CDT model in the UK would involve start up costs but there are already institutions such as the new Dedicated Drug Courts, from which expertise can be drawn.

Police

Would crime rates fall? Research by the National Treatment Agency suggests drug treatment in the UK prevented around 4.9m offences in 2010-2011. They argue that crime committed by addicts falls by almost half when they complete a treatment programme or stay on it for more than two years; *the longer a drug user stays in treatment the bigger the drop in his or her offending*.⁶² In Portugal and the Czech Republic, trends in crime rates suggest there is a more complex reality; some crimes have fallen while others have risen slightly.⁶³ Nonetheless and in light of the NTA's 2012 findings, it is likely that the diversion of users in the UK, when coupled with comprehensive treatment provision, will similarly help to gradually reduce crime rates, assuming other

⁶¹ Hughes, CE & Stevens, A (2010) *What Can We Learn From the Portuguese Decriminalization of Illicit Drugs* British Journal of Criminology 50 p1005

⁶² <http://www.nta.nhs.uk/uploads/vfm-crimepresentationvfinal.pdf> Accessed 8/12/12

⁶³ United Nations Office on Drugs and Crime (2013) *World Drug Report* United Nations

variables remain stable. A reduction in crime would naturally generate efficiencies for the police and again filter down to alleviate pressures on the rest of the criminal justice system.

Process changes and likely efficiencies While enforcement in the UK is already more relaxed than the law prescribes, we know that tactics such as stop and search continue to be used extensively, generating significant resentment from sections of the public. Under a diversionary scheme, stop and search could continue to be used when there is suspicion of weapons or stolen property searches but justification by suspicion of drug possession would end or at a minimum be restricted to those cases where there was reasonable suspicion of possession over the thresholds set out. This would make a significant dent in the million or so stop and searches carried out each year in England and Wales. As well as the time saved by this scale-back, relations with local communities, particularly those of some ethnic minorities, are likely to improve. Under the current system more than a million stop and searches were carried out in 2011/2012, half of which were for drug possession. Despite lower rates of drug use among black and ethnic communities, black people are six times more likely to be searched and diversionary models hold the potential to address this imbalance and reduce perceptions of state sanctioned discrimination.⁶⁴

While the UK police force would likely see other efficiencies generated by reform, savings may not directly compare with Portugal. For example the improvements seen in forensics services may have less impact here following the roll out of Evidential Drug Identification Testing (EDIT) which enables UK officers to test for substances at the police station. This only relates to simple possession cases where the individual has acknowledged guilt. When the charge is contested police are obliged to send drug samples to a specialist forensic team for analysis and some freeing up of forensic resources is therefore still likely.⁶⁵ Moreover EDIT may have localized testing for some offences but the process still takes time. Duty station efficiencies would be likely if low-threshold possession cases were diverted away from the police entirely, eliminating the need for the majority of in-house testing procedures. Administration time across the service is also likely to drop, with the referral mechanism requiring less processing time than the pursuit of criminal charges. The 48,000 cases that are still taken to the prosecution stage each year would naturally fall away. In the medium term and while supply remains prohibited, resources could be redirected to targeting high level trafficking or other forms of crime.

Operation Reduction, Brighton -A diversion model to build on?

Sussex Police, Crime Reduction Initiative and the Brighton Drug and Alcohol Action Team initiated a pilot in 2005 that sought to address persistent offending by a small group in the area. Brighton consistently held one of the highest drug abuse rates in the country, coupled with a corresponding number of drug related deaths linked to heroin and crack cocaine abuse. As part of a renewed drive to offer intensive support, Operation Reduction identified persistent low-level offenders in the area whose offending was driven by drug abuse and redirected them to treatment services. Over the project's lifetime around 450 low level offenders were directed to treatment services, while a separate strand of the project worked to crack down on higher-level supply. High rates of rehabilitation, at around 70% of those referred, have been posited as a significant success. The achievements of the initiative were noted by the Independent Drugs Commission for Brighton and Hove which argued that it was an effective approach to reducing crime and reoffending. In 2006 the scheme won the Tackling Drugs Supply Awards and an independent evaluation found that re-offending dropped by 69% among those targeted by demand-side initiatives.⁶⁶ While it is difficult to establish the impact of Operation Reduction in isolation, Brighton's gradual fall down the rankings for drug abuse indicates that the programme generated positive results.⁶⁷

⁶⁴ Eastwood, N, Shiner, M & Bear, D *The Numbers in Black and White* Release p14, UKDPC (2012) *A New Approach to Drugs* p12

⁶⁵ CPS Guidance http://www.cps.gov.uk/legal/d_to_g/drugs_evidential_drug_identification_testing_in_police_stations/

⁶⁶ Independent Drugs Commission for Brighton and Hove (2013) *Safe in the City: 2013 Report and Recommendations* p13
DrugScope 2010 outline Accessed at: <http://www.drugscope.org.uk/prism/projects/brighton-and-hove-operation-reduction>

⁶⁷ Ghodse, H et al. (2013) *Drug-Related Deaths in the UK: Annual Report 2012* International Centre for drug Policy Research and St George's University of London p14

Avoid net widening from low level supply Any new strategy that diverts possession cases needs to provide the police with clear thresholds between possession and supply amounts and guidance on options for dealing with cases where thresholds are breached but police suspect a possession only offence. This would help to avoid the problems faced in Uruguay around the poor application of thresholds for drug possession. Excess rigidity risks criminalising dependant users even more severely than before and could result in a rise rather than fall in prosecutions. Similarly any increases in penalties for supply-related offences should be avoided, despite the possible temptation to offset concerns about looking soft on drugs. The civil penalties structure meanwhile needs to be carefully designed to foster rehabilitation and avoid pushing an individual towards a downward spiral. Practical questions that are worth considering when developing a new sanctions structure include; is it worth handing a fine to someone who is homeless and doesn't have the means to pay it? Is it sensible to confiscate a drug off a user, if they are addicted and have no money, given the strong possibility of a crime being committed to gain the necessary funds to buy more?

Courts

Recommended piloting of dissuasion models Portugal's strong and effective CDT model has much potential for being mirrored in the UK, with slight adjustments to fit the context. Any new CDT model would need to draw on the expertise of drug court staff, social services, probation and charity workers. The panel structure adopted in Portugal provides a good example for the UK and by combining the expertise of judges, social workers and health professionals, more targeted and effective rehabilitation requirements can be developed. Other successes in the Portuguese approach include the speed with which users are required to attend a CDT session and financial support for transportation to the CDT (recently cut under austerity measures) to facilitate attendance by those who are homeless or on low incomes.

There are ways in which the UK could tweak the CDT model to anticipate and hopefully avoid some of the problems encountered in Portugal. Coordination between the courts and any new CDT body needs to be strong and prioritised in the design phase. Portugal has faced problems ensuring that cases wrongly assigned as possession or supply are subsequently redirected away from or towards the formal courts. To anticipate and avoid this problem there would be utility in developing clear processes that refer those users, caught over the threshold but wrongly assumed to be supplying, back away from the courts. Portugal's CDTs also process a high number of non-addicted cannabis users, most of whom have proceedings suspended with no sanction or need for treatment. To avoid this the UK might consider requiring cannabis possession to be identified by police at least twice before formal referral.

The Dedicated Drug Courts currently piloted in the UK need to be understood as distinct but complementary to dissuasion commissions, which are focused on possession-only offenders. The UK would benefit from looking at how to expand DDCs and draw on programmes such as that being tested as part of the Seattle's Law Enforcement Assisted Diversion Programme (LEAD) as well as domestic initiatives such as Brighton's Operation Reduction that linked up the police with treatment services to directly target those involved in low-level crimes. Similarly drug training for judicial staff should be applied across the system where possible, given the number of users convicted for other crimes.

A reduction in UK caseload? While the bulk of possession cases are already disposed of before reaching the courts, it is likely that the majority of the 43,000 possession cases prosecuted each year would fall away under diversion.⁶⁸ In the longer-term it can be reasonably assumed that increased rehabilitation and a fall in acquisitive crime will have a positive impact on caseload for court staff and the judiciary.

⁶⁸ Eastwood, N, Shiner, M & Bear, D *The Numbers in Black and White* p13

Prisons

Recommended expansion of drug-free wings In line with positive feedback from the pilot drug-free wings in the UK, their application abroad has also been viewed as a success. The fact that over half of UK CARAT caseload was driven by self-referral suggests many problematic users are eager to undergo intensive treatment. The model used in Portugal provides rehabilitative support while also incentivising abstinence, providing the carrot of good conditions and a supportive environment with the threat of a return to the central prison estate if drug use is detected. The UK might accordingly consider expanding the programme to those serving longer-term sentences, although current concerns around the support provided for those serving of 12 months or less makes the focus on this group understandable. As it stands, scarce spaces mean that longer-term inmates are likely to receive priority on waiting lists for specialised units, but it is those committing low-level persistent crime that are more likely to be suffering from an addiction problem.

Would the UK witness a reduction in the prison population? Assuming the UK avoids any net-widening effects by evading pressures to push up supply-side penalties, the elimination of custodial sentences for possession only offences will have some knock on effect on prison numbers. The effect may be greater than that seen in Portugal and the Czech Republic, where possession cases were historically rarely taken to court. Given that few prisoners are incarcerated for possession offences alone, it is likely that any fall will be relatively small during the first years of reform. In the longer term a greater focus on rehabilitation and treatment support might have knock on effect on custody rates for other crimes as well, assuming other variables stay equal.

Existing rules prohibiting smuggling and inmate consumption of drugs can remain in force Portugal and the Czech Republic continue to attempt to disrupt inward supply and the laws prohibiting inmate use have continued. Drug use in areas such as the drug-free G-wing of Lisbon prison was totally prohibited with the punishment being a return to the main section of the prison. UK rules, such as the *disciplinary offence of drug misuse* (applied when an inmate fails a mandatory drug test) does not necessarily need amendment. Occasional cannabis use in prisons is already treated slightly differently to other drugs, with positive testers rarely being referred to treatment teams due to lack of resources.

Intercepting supply Despite the laborious steps already taken to prevent drugs from entering UK prisons, inmates continue to report easy access to a range of illicit substances, aided by advances in technology. Many in the service, including the Head of the Prison Governor's Association, Mr McLennan Murray, are calling for supply-side reform to allow prisons to better manage drug distribution and to eliminate the violence and debt connected with the trade.⁶⁹ The evidence from Portugal and Czech Republic suggests that decriminalised possession laws will have little effect on availability but there other additional steps, beyond drug policy reform, that the UK could take to help to protect the prison estate from internal drug supply. Many of these were set out in the 2006 Blakely Review and further endorsed in a Policy Exchange paper in 2010. The proposals suggest that the prison service needs to acknowledge and address staff corruption and cases of blackmail which are allegedly responsible for a sizable minority of the drugs entering the system. Greater resourcing for the prison services Corruption Prevention Unit, the scrapping of mandatory testing and increased emphasis on getting people off substitution therapy are some of the other suggestions that have been put forward to reduce the supply and demand for drugs in prisons.⁷⁰

⁶⁹ The Economist *Drugs in Prisons: Supply and Demand* Dec 7-13th 2013 p36

⁷⁰ See the Blakely Review (2006), page. Chambers, M Coming Clean Report. p6 and Transparency International UK's own assessment at <http://www.transparency.org.uk/our-work/corruption-in-the-uk/prisons>

Probation and Support Services

Enhanced prison - probation coordination and support on release The UK is clearly not alone in struggling to effectively manage the transition period for offenders on release. As states develop their capacity to provide inmate treatment through mechanisms such as drug-free wings, there is a need to ensure that the progress made in prison does not evaporate in the community. The UK is already looking at developing new mentoring systems and expanding post-prison supervision for those who have served up to two years and enhanced coordination between services in prison and the community is a stated objective. While the concept of additional support is endorsed by many, however, organisations such as DrugScope are cautioning against excess statutory imposition of rehabilitation and warn of the negatives of forcing those given short custodial sentences to over a year of criminal justice supervision, including the likelihood of an increase in breaches.⁷¹

The problem of probation caseload: Resourcing pressures on probation services have been cited by officials both in the UK and abroad as a key barrier to the effective rehabilitation of offenders.⁷² The principle of continuity of care is again important here. While there are upstream personnel costs in ensuring greater support on release, the very high costs of processing people through the criminal justice system means that these are likely to be ultimately outweighed by longer-term reduced costs in terms of prison numbers and criminal justice burden. The probation staff interviewed for this research were passionate in their goal of helping supervised offenders but encumbered by excessive caseloads that prohibited them from devoting the necessary time to each of their clients. This restricted their capacity to develop a strong relationship of trust and limited the help they could offer individuals in sourcing housing, employment and schemes for social reintegration. The diversion of possession cases in isolation is unlikely to have a significant impact on probation procedure or caseload, but would potentially provide a boost to treatment and support service provision, giving probation officers greater capacity to refer clients to tailored support.

Compatibility with Payment by Results As of December 2013, the UK government is in the process of outsourcing large sections of the probation service to private companies, charities and third sector groups under a system of Payment by Results (PbR). A number of concerns have been expressed by practitioners in relation to issues such as the feasibility of separating low and high risk offenders as well as the level of risk and upfront costs that will need to be taken on by any new suppliers.⁷³ In principle, however, a diversionary process for drug possession offences could be achieved under this alternative framework, and there are new opportunities for charities with an expertise in providing treatment to take a prominent role in offender rehabilitation. *Recovery Providers* (the external charities and organisation that provide the bulk of treatment, housing, employment and debt support) will also be subject to PbR conditions, and the government is urging all involved to innovate and build the evidence base for best supporting rehabilitation.⁷⁴ The risks with this approach lie in tension between evidence supporting the effectiveness of long-term, individualised support and the high initial costs of such provision. There may be a temptation for organisations to prioritise short-term abstinence over longer-term rehabilitation in order to demonstrate their success and secure continued funding. There will also be an incentive to prioritise working with offenders who are easier to help, leaving those most dependant potentially being the least supported.

Under this new model responsibility is essentially being shifted onto local authorities, PCCs and support services, with success premised on full recovery and abstinence. They are being asked to do this at a time when their funding is being cut substantially and are being urged to move away from substitution therapy when part of the reason for its popularity up to now has been its cost effectiveness. In the face of such challenges to effective

⁷¹ DrugScope (2013) *Briefing on Offender Rehabilitation Bill for House of Commons Second reading* Accessed at: <http://www.drugscope.org.uk/Resources/Drugscope/Documents/PDF/Policy/DrugScope%20briefing%20for%20Offender%20Rehabilitation%20BillCommons%20second%20reading.pdf>

⁷² Solomon, E (2009) *Rethinking Prison and Probation: how to cut both reoffending and costs* Centre Forum

⁷³ Mulheirn, I (2013) *Paying for Results? Rethinking Probation Reform* Social Market Foundation p1

⁷⁴ Home Office (2011) *Putting Full Recovery First* HM Government

delivery, the government should be looking for ways to best enable the innovation and drive they are expecting both public and outsourced service providers to demonstrate. When we know that contact with the criminal justice system can undermine recovery, the move to a civil penalty scheme for possession-only offences gives services providers both a better chance to achieve their targets and greater space to innovate when piloting new initiatives.

Amendments to Statute and Guidance

The legislative changes necessary to permit the diversion of problematic users do not need to be far-reaching. Amendments or adjustments to existing documentation would likely be sufficient, especially given that measures such as cannabis warnings are already available. While these changes may be fairly minor, other states have often presented them to parliament as part of a wide package of reforms, reflecting a renewed overarching drive to tackling at source the problems generated by drug abuse. This more structured approach sends a clear moral message and ensures that necessary reforms across the spectrum of impacted sectors are given full consideration and resourcing at an early stage (including health, social support, and justice). The preparation of any legislative amendments would ultimately be one of the main responsibilities of a new central drugs authority but some revisions that might be considered include;

Amendments to the 1971 Misuse of Drugs Act , 2003 Criminal Justice Act 2003, 2005 Drugs Act and 1984 Police and Criminal Evidence Act

Changes regarding the diversion of possession offences do not risk placing the UK in contravention of UN International Conventions

Expansion of cannabis warning system

- 1) Removal of declaration requirement for cannabis 1st warning for all jobs in accordance Home Affairs Committee recommendations⁷⁵
- 2) Expansion of cannabis warning system to other drugs
- 3) Removal of escalation to a criminal offence for repeat users – this serves to criminalise addiction
- 4) Formation of referral mechanism for police to new CDT-style dissuasion commission

Amendments to Sentencing Guidelines

While most sections of the Drug Offences Definitive Guidelines, set by the Sentencing Council, could remain the same, Section 5 (2) Misuse of Drugs Act 1971 relates specifically to possession of a controlled drug.⁷⁶ It could be taken out completely or amended to prohibit possession in designated areas such as schools. Current sentencing guidelines rely heavily on the A, B, C classification system, which many have criticised for failing to accurately reflect the real damage and risk associated with different drugs. There would be likely benefits to simplifying the guidance⁷⁷ but under a system that only diverts possession offences, the relevance of the ABC assessment would be limited to supply-side offences. In the short term, legislation for the diversion of possession offences would be operable under the existing classification system.

Clear penalties to prohibit sales to minors

Additional measures can at the same time be taken to prohibit possession near schools, playgrounds and in prisons.

⁷⁵ House of Commons Home Affairs Committee (2013) *Drugs: new psychoactive substances and prescription drugs, Twelfth report of session 2013-2014* House of Commons p27

⁷⁶ Sentencing Council (2012) *Drug Offences: Definitive Guidelines* p29

⁷⁷ UKDPC is one of many groups calling for a major review of the ABC classification system (UKDPC *A Fresh Approach to Drugs* p20)

Achieving Structural Coherence

While a diversion scheme for possession offences could be enacted under the UK's existing oversight structure, reform in this direction would make the current Home Office lead even more incongruous than at present. A large proportion of the current 2010 strategy relates to services that are led by agencies outside of the Home Office and, despite recent efforts to develop cross-government approaches to recovery, this set up is arguably undermining evidence-based policy development and restricting innovation in harm reduction and rehabilitation. While the Department of Health takes the lead in submitting EMCDDA annual reports, it is the Home Office that retains responsibility for policy direction and oversight, thereby leading on a policy that is dominated by health and social service delivery on the ground. Government defence of the status quo has so far been unconvincing and experts from across the criminal justice and health sectors continue to argue for a change in the oversight structures.⁷⁸ Far from validating a continued Home Office lead, the high proportion of funds devoted to public order and safety (as set out on p11) reflects how policy priorities are potentially poorly matched to the most needed delivery services.⁷⁹ The multiagency approach taken in drawing up documents like *Putting Recovery First* is a positive step but also one that reinforces the point that drug policy is multifaceted, with crime constituting an important but partial component. Clearer delineation of authority under a centralised multidisciplinary unit, as seen in Portugal and the Czech Republic, could bring a range of benefits and would mitigate some of the risks around weakened strategic clarity that may be generated by the fracturing of responsibilities resulting from the current government's localism drive.⁸⁰

Models in Portugal and Czech Republic

Both the Czech and Portuguese approaches trump the Home Office focus currently in force in the UK and in line with the arguments set out by UKDPC this report found that the structures and models used in other countries reinforce the value of moving responsibility for drug policy away from the Home Office. Portugal and the Czech Republic are in a position to draw on and garner commitment from all the relevant Ministries, as well as integrating NGO and practitioner experience more closely into policy development. Their structures are in both cases headed by addiction experts with frontline experience. A level of independence helps to ensure that they are not swayed by politics, as does their focus on evidence gathering and broad consultation. The potential benefits of a similar structure in the UK include securing high level political access, impartiality and a focus on the evidence. Provision of an independent budget would help to plug potential gaps in provision from funds administered by local authorities which are now no longer ring-fenced. Under this model the Home Office would remain an important partner Ministry alongside the Departments of Health, Education, Communities and Local Government, Work and Pensions and the Ministry of Justice, amongst others.

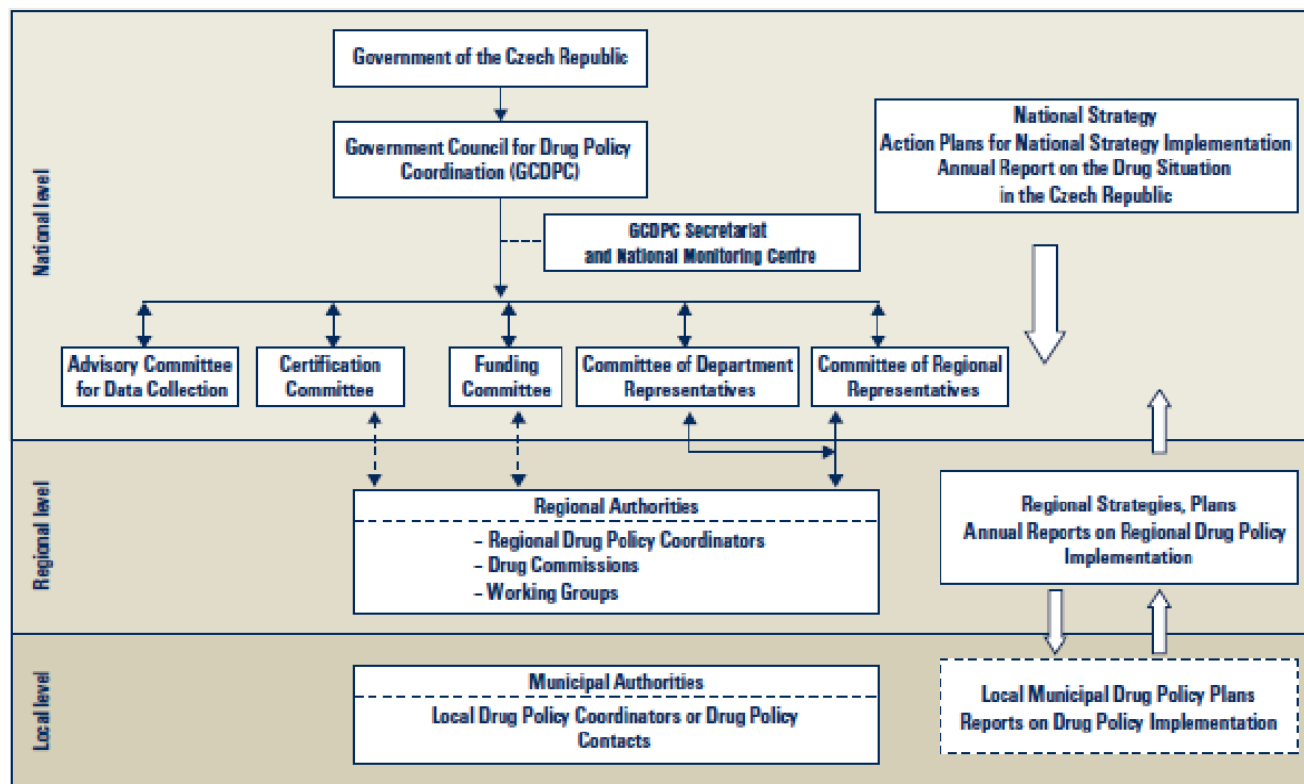
If we look at the Czech system for drug policy coordination, clear responsibilities are set out across the different tiers of government, as well as drawing in representatives from the Ministries of Interior, Health, Education, Labour and Social Affairs, Defence, Finance and Human Rights, as well as the Prime Minister and Head of the Association of Non-Governmental Organisations. A diagram of structures in the Czech Republic is set out on the following page.

⁷⁸ UKDPC *A Fresh Approach to Drugs* p22

⁷⁹ See Home Office response to the ninth report from the Home Affairs Committee Session: *Drugs: Breaking the Cycle* p5 Accessed at: <http://www.parliament.uk/documents/commons-committees/home-affairs/27248%20Cm%208567.pdf>

⁸⁰ UK Drug Policy Commission (2012) *Delivering Drug Policy at a Time of radical Reform and Financial Austerity* p11

FIGURE 1: The system of drug policy coordination in the Czech Republic



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A clear delineation of roles from the local to the national helps towards developing coherent, more holistic strategies that are practicable on the ground. There is a greater capacity to consider how changes in one part of the system may impact on others and it allows for a strategic approach that integrates closely related problems around alcohol addiction, which is currently the greater contributor to crime and public disorder.⁸² It is alcohol that is associated with the majority of murders, stabbings and domestic assaults and the combining of strategic approach would help the UK authorities to better grapple with the country's historically high alcohol consumption rates. It would also reduce erroneous perceptions of reduced damage associated with alcohol and tobacco (and increasingly prescription abuse) compared to the consumption of illicit drugs. For this multidisciplinary approach to work it is essential to have a strong framework for cooperation, not only between the relevant ministries but also with the key frontline providers of services. The complexity of managing this cooperation needs to be reflected in the resourcing and authority allocated to the oversight body.

While the Czech Government Council for Drug Policy Coordination reports directly to the Prime Minister, Portuguese reformers gave the Department of Health a clearer lead role by placing a multidisciplinary team (IDT, now SICAD) under the remit of the Minister for Health. SICAD is directly responsible for the implementation of the national drug strategy. It plans, implements and coordinates drug demand reduction interventions and collects, analyses and disseminates information on drug use and its responses. Since 2006 its remit has expanded to include all alcohol-related issues.

There are options as to how a new oversight structure might look in the UK. A central unit under the prime minister could leave the issue too close to political influence but at the same time helps to draw in the cooperation of a wider range of departments and provides strategic long-term vision. While the Department of

⁸¹ *Czech Policy and its Coordination* 2009 National Monitoring Centre for Drugs and Drug Addiction p9

⁸² Boland, *British Drugs Policy* p175. The problem of alcohol abuse has been noted by a number of authors and treatment within the criminal justice system is lacking according to a 2006 report from HM Inspectorate of Probation.

Health arguably takes on the burden of dealing with substance misuse, many other departments are also affected and policy development would benefit from the experiences and resources of other parts of government. A shift to the Department of Health meanwhile ensures that health, rehabilitation and evidence-based decision making are the priorities in policy development and probably makes the difficult task of governance of the drug policy regime slightly easier. In both Portugal and the Czech Republic, the Ministries of Interior are given a lead in supply-side enforcement and retain a strong voice in relation to possession, particularly for those entering the criminal justice system with a history of substance misuse.

A second structure given priority in Portugal and the Czech Republic has been an independent research, monitoring and evaluation function. While the UK already conducts some independent data collection there is scope for streamlining this work under a central unit to ensure evidence is considered holistically and presented objectively. This independence is reinforced in the two countries by a political acceptance that the expert view is a credible one. When the UK government rejects recommendations from specialists in the Advisory Council on Substance Misuse, the British Medical Association or UK Drug Policy Commission it does little to reassure the public that decisions are not being made on the basis of political expediency.

SUMMARY OF STRUCTURAL REFORM RECOMMENDATIONS

- Shift oversight of possession policy to reflect the expertise needed - Department of Health or unit embedded into the Prime Minister's Office/Cabinet Office
- Medium-term continued Home Office (National Crime Agency) lead on disruption of supply
- Lead positions occupied by health rather than criminal justice expertise
- Statutory emphasis on multidisciplinary approach and proactive cooperation at all levels of planning and delivery
- Greater utilisation of frontline expertise and structural integration of practitioner input into policy development
- Establishment of an independent monitoring body and prioritisation of M&E

Strategic Assessment

Some of the weaknesses found in the UK's strategic approach can be attributed back to the structural problems identified above; the probability of clearer, longer-term strategic development is greater when those who lead on delivery and have greatest exposure to users are able to shape policy design. Beyond this there are further lessons to be learnt from Portugal and the Czech Republic if the UK wants to develop strategies that are realistic, honest and premised on addressing the underlying causes of both recreational and problematic use. Just as prohibition can be seen to stifle rehabilitation, the UK's current emphasis on criminal justice is adding to the burden on the country's judicial agencies. It also risks damaging receptivity to government health and dissuasion messages while painting a simplified and distorted picture of the causal relationship between drug use and crime.

Despite some similarities in the rhetoric used, there are notable differences in the strategic approaches adopted in Portugal and the Czech Republic, when compared to that of the UK. At a practical level the latter two countries have outlined a long-term strategy that clearly visualises what it seeks to achieve through a detailed action plan with timeframes included as well as indicators of success. The UK's 2010 strategy is not underpinned by an action plan, a timeframe or measurable indicators to monitor progress against targets. Annual reviews are produced but their content is limited in scope and unlike Portugal's latest independent evaluation of its National Plan Against Drugs and Drug Addictions 2005-2012 (PNCDT) they are carried out internally.⁸³ A monitoring logframe that was developed to track progress against objectives is meanwhile no longer in use. These tools are arguably central to the development of good policy decisions that can be measured over time but the gaps are understandable in the current UK context, where officials have been forced to work under a confused strategic approach which doesn't match the reality of policies pursued on the ground and amidst exaggerated criminal justice rhetoric in public and political debate.

While the UK's 2010 strategy gives a central role to recovery and community development, regular references to crime mean the government message is confused, and remains weighted more heavily towards criminal justice than its Portuguese or Czech counterparts. The term 'crime' is used over thirty times in the UK strategy but infrequently in the Portuguese and Czech equivalents and then only in relation to supply-side reduction. The rhetoric used by the government in press releases and in parliament reinforces this point.⁸⁴ By contrast, officials elsewhere are not afraid to centre their arguments on harm reduction and the treating of addiction as a chronic health issue, while also recognising the limitations in relying on criminal justice as a method of dissuasion.

"Analyses of contemporary drug policy under the Labour government have indicated processes of 'criminalisation' of drug police, a preoccupation with the link between drugs and crime, a growing merger between treatment and criminal justice, and a repositioning of treatment to serve crime reduction and public protection goals."

Duke, 2012
From Crime to Recovery

GUIDING PRINCIPLES: RECOMMENDATIONS

- Change should be incremental and staggered over a period of around 10 years, subject to positive piloting. The government would be ill advised to rapidly divert possession cases away from the criminal justice system while simultaneously opening up the regulation of supply.
- Effective policy is driven by a clear overarching strategy, agreed tangible outcomes set within a time-bound

⁸³ Home Office (2012) *Drug Strategy 2010: Annual Review* HMGovernment

⁸⁴ For example most of the speeches relating to drug abuse and given by Home Secretary Theresa May refer only to the disruption of drug trafficking, avoiding reference to substantial policing time devoted to identifying possession, wording rhetoric in a framework of guns, gangs and thugs.

action plan and a long-term commitment to resourcing the agencies that need it.

- The framing of decriminalisation policies as a left/right issue is an artificial construct. People of all political persuasions are essentially fighting for the same goals; to reduce demand and to minimise individual and social harms generated by problematic use. This point should be used to develop cross-party consensus and be central to any new communications strategy. Excessive politicisation in the UK can be reduced by openly relying more on expert advice and the evidence of what works.⁸⁵
- Statutory change is only one part of effective reform. We have seen how other states are struggling to ensure that police and judicial enforcement is aligned with the law, reflecting how legislative amendments do not automatically result in practical change on the ground. Staff across the relevant agencies need to understand the strategic goals of reform, be sufficiently trained and adequately resourced so that they can do what is being asked of them.
- Policy reform will always generate unintended consequences but these have been exaggerated in the case of the diversion of possession offences and there are identifiable steps the UK can take to anticipate them, if policymakers devote time to anticipating problems at an early stage.
- Short and medium drug strategies need to recognise the reality of mitigating rather than eliminating risk. Problematic drug use does not operate in a vacuum but is a partial by-product of a complex interplay of social problems.

The Benefits of Moving Away from a Criminal Justice Focus

The findings of this report suggest that looking at drug policy with a criminal justice lens can distort objective policy development and inhibit a state's capacity to effectively dissuade users and rehabilitate addicts. There also remains a question as to whether UK rhetoric which exaggerates the drug-crime nexus is contributing to public stigmatisation of addiction. An overemphasis on the idea that addiction *turns law abiding citizens into thieves* fails to establish a more complex causal relationship between social deprivation in its various guises, drug taking and crime.⁸⁶ Officials interviewed in Portugal and Czech Republic cited a range of benefits in redirecting the strategic focus onto health, rehabilitation and harm reduction. These go beyond the report's primary focus on criminal justice administration, but remain relevant given their potential impact on rehabilitation, public trust in the state justice system and international judicial cooperation and enforcement.

More Effective Communication and Outreach

When the criminal justice threat is downsized in drug deterrence, the experience of Portugal in particular suggests that the state is able to impart more authoritative messaging, bolstering trust between the public and judicial authorities and generating greater public receptivity to information around the risks of drug use.

We know that around 90% of those taking drugs are recreational users and that the bulk of drug-related crime is committed by the minority 10% of problematic users, normally to finance a habit. An exaggerated emphasis towards criminal justice is therefore very often at odds with the experiences of the drug taking community, with messaging perhaps better reflecting the experiences of criminal enforcement officials themselves. When this happens, messages too often fail to resonate or act as an effective deterrent. Taking cannabis as an example, in 2012 a number of police forces distributed scratch and sniff cards designed to enable the public to identify the

⁸⁵ Any new strategy would also benefit from being developed and delivered in coordination with colleagues in Scotland, Wales and N Ireland.

⁸⁶ Home Office *Tackling Drugs, Saving Lives: Keeping Communities safe from drugs, drug strategy progress report 2004* HMGovernment p3

smell of cannabis and spot potential residential production in their neighbourhood. The front picture presented a damning combination of cannabis plants and guns.

While the image is trying to convey the dangers associated with some of the criminal gangs involved in cannabis production, it contrasts with reports that cannabis producers will normally try to keep as low a profile as possible and an alleged surge in the number of small scale self-cultivators in the UK.⁸⁷ As a dissuasion tactic it is difficult to align the picture with broader imagery surrounding cannabis use. For the vast majority of those who have tried it, their experience will have had no connection at all to guns, crime or violence. Rather than shocking the audience into reporting cannabis use and averting potential users, the extent to which this image contrasts with experience mainly discredits the distributing agency. It also fails to capture the more relevant long-term chronic health implications of regular cannabis use. The contradictions are reinforced when the damage caused by alcohol abuse or the extent of prescription drug addiction is exposed. By contrast, dissuasion messages that recognise and respect individual choices but flag the health implications of consumption are likely to be better received and the rise in numbers seeking treatment in Portugal and Czech Republic, when combined with stable user rates, is arguably a reflection of this.⁸⁸ This approach sits much more comfortably under a decriminalised model for possession offences.



A perception that the public want the state to look tough on crime helps to drive campaigns that emphasise the criminal justice implications of drug consumption. But again the evidence paints a more complicated picture. A 2013 Ipsos Mori poll suggested that 67% of the UK population were in support of a comprehensive review of the country's approach to drugs and 53% already support calls for some form of cannabis decriminalisation, while the BMA's latest report on the subject *Drugs of dependence: the role of medical professionals* states that in 2011 over half of the UK population believed the government's approach to illicit drug use is totally ineffective.⁸⁹ Ipsos Mori surveys also point out that a majority in England and Wales are in favour of out of court disposals for minor offences and understand the need for flexibility in terms of setting penalties.⁹⁰ This indicates that public responses to the early diversion of possession offenders under a civil penalty regime may be more positive than is commonly assumed. As more experts speak out against prohibition and clearer evidence emerges to support the rationale for change, it is highly likely that public calls for reform will increase over time, reinforced by emerging trends in other states. As with subjects such as the death penalty, the government could be encouraging the public to better understand the nature of addiction and the complexity of drug dependence, collecting and setting out the evidence rather than aligning comments to fit with stereotyped projections, even when those assumptions are widely held.⁹¹ Czech moves towards decriminalised possession laws have taken place partly to help overcome heavy public stigmatisation of users and to encourage the population to understand the causes and misperceptions held around drug abuse.

⁸⁷ The Independent Drug Monitoring Unit estimates that there are up to 500,000 people growing cannabis in the UK. Atha, M & Davis, S (2011) *Taxing the UK Cannabis Market* Independent Drug Monitoring Unit, commissioned by CLEAR p11

⁸⁸ Uruguay also plans to launch a major health education campaign around drugs in the months before cannabis regulation is introduced, modelled on a successful anti-tobacco initiative launched in 2006

⁸⁹ For further details see the Ipsos Mori website, Public Attitudes to Drug Policy (published February 2013), BMA *Drugs of dependence: the Role of Medical Professionals* p35

⁹⁰ Ipsos Mori (2006) p32 Accessed: <http://www.ipsos-mori.com/Assets/Docs/Publications/sri-crime-what-do-the-electorate-think-of-the-key-crime-policies-may-2010.pdf>

⁹¹ Taylor, S (2008) *Outside the outsiders – Media Representations of Drug Use* Probation Journal 55-369 p370

At the root of theories questioning the utility of criminal justice deterrence lies an uncomfortable truth for the government; the influence of the state over public behaviour is limited, as is the deterrence effect of the law, particularly when it comes to contested ideas such as drug taking. Almost all of the frontline practitioners interviewed for this report suggested that legal changes, like that in relation to the classification of cannabis in the UK from Class C to B, have had little effect on public consumption patterns. People are arguably better dissuaded by peer groups, social norms and the input of family and friends. Diversion to treatment meanwhile creates the environment where an individual's support networks, as well as individuals themselves, are less fearful of looking for support when trying to address addiction.

A final factor to consider in relation to state communications strategies is the way prohibitionist rhetoric may be inhibiting the government's ability to promote and generate public awareness of its successes in treatment provision and substitution therapy, despite holding a strong international reputation in this field. While political capital in Portugal was generated by the promotion of health-based reforms, in the UK a fear of public backlash is resulting in new initiatives, such as the Dedicated Drug Courts, being introduced with little public fanfare. The downside of this approach is that it means many people remain unaware of new initiatives and may continue to be fearful towards the state in a way that holds them back from seeking support for addiction.

Greater Congruence with Rule of Law Principles

There have been numerous attempts to contest drug laws in the UK courts. Organisations such as the Drug Equality Alliance (DEA) set out some of the legal challenges faced by the government, with many cases focusing on inequality of treatment and discriminatory administration under the Misuse of Drugs Act of 1971.⁹² Most claims have been rejected by the courts, who argue that it is the responsibility of the government, rather than the judiciary, to create the laws they are charged with upholding.

Irrespective of the failure of these legal challenges, many argue that drug prohibition sits uncomfortably with a range of concepts that form key tenets of the UK approach to upholding the rule of law. Even if not contestable in court, the tension between the effective enforcement of prohibition and public conceptions of freedom risks undermining the authority of state judicial processes. Many increasingly feel that the offences committed do not justify the costs and intrusiveness required to effectively enforce prohibition, especially as technology such as drone surveillance raises the prospect of increasingly sophisticated enforcement measures. Two principles set out in Judge Tom Bingham's final work *The Rule of Law* merit consideration here:

1) Accessibility to the law

*If you and I are liable to be prosecuted, fined and perhaps imprisoned for doing or failing to do something, we ought to be able, without undue difficulty, to find out what it is we must do or not do on pain of penalty*⁹³

Anecdotal evidence suggests that UK public understanding of drug laws is confused. The proliferation of new laws, particularly relating to the ever evolving temporary orders for NPS makes it difficult, as does the variation in enforcement of the law. It is not easy for the average person in the UK to understand what the law is around drug prohibition or how predictable its application will be. For example when we look at the realities of enforcement it is extremely unlikely that you will end up in court for a single possession offence; the police do not have the time and resources to process what would be a very high number of offences, despite the strong terminology criminalising use. This ambiguity in terms of what the law is and how it is applied arguably contributes to public misunderstandings of the laws they are meant to be abiding by.

2) Human Rights and Proportionality

*'It is accepted that the rights of the individual may have to be curtailed for the benefit of the wider community, but only if three conditions are met.....and it must be not merely desirable, useful or reasonable but necessary in a democratic society and proportionate'*⁹⁴

⁹² see <http://www.drugequality.org/cases.html> for further details

⁹³ Bingham, T (2010) *The Rule of Law* Penguin Books p37

When there is strong evidence from other state contexts suggesting that drug consumption does not significantly rise with decriminalisation can we honestly say that the deprivation of an individual's freedom, widely seen as the most fundamental of all rights, is necessary? Bingham's comments on the need for the proportionality of penalties in a criminal justice system are also relevant.⁹⁵ Few problematic users have originally set out to become addicts, to cause harm or social disruption to others. Can the UK therefore justify the very heavy sentencing structure currently in place where sentencing guidelines in theory apply a maximum of 7 years in prison for class A possession?

There is a counterfactual that is worth considering. There are some that support the idea of more intensive enforcement of existing prohibition laws. It may be right to assert that drug use will fall under a system that effectively enforced the current laws, as was seen under authoritarian rule in the 20th Century. But the invasiveness necessary to enforce this type of system is such that key pillars of the British democratic system would be critically undermined. There are likely health implications to pushing use underground and the growth in use of NPS suggests that we would witness a rise in the abuse of other substances. The ramifications for the criminal justice system would be huge and in addition to a lack of economic feasibility, the idea is all the more unappealing when there are other effective models of control at our disposal.

Stronger positioning for likely international supply-side reform

As has been noted in this report and elsewhere, drug policy reform is most effective when it is incremental, allowing both the government and the public to assess and understand the impact of changes as they develop. Models for the regulation of supply should be considered as a next step that would build upon the principles underpinning the diversion of possession offences. Already however the concept of regulation is gaining significant international credibility and UK officials should be watching developments closely.

Following on from the *Report on the Drug Problem in the Americas*, produced by the Organisation of American States in May 2013, states such as the Czech Republic are now working to garner international support for a draft legal amendment to the UN 1961 Single Convention on Narcotic Substances, to be presented at the 2016 General Assembly Special Session. By diverting possession offences at the domestic level now, the UK can better position itself to adapt to and help to shape likely reforms around drug control at the international level. Already officials should be considering the implications of a model based on supply-side regulation in the longer term, including whether it would be feasible to continue with a prohibitionist approach to supply if other countries adopt a different tactic. Officials will be well aware of the difficulties of controlling drugs in isolation and authorities here rely heavily on the interdiction efforts of police in states like Colombia, Peru and transit countries in the EU to stem the inward flow. If supply-side regulation becomes the dominant model over the next 10-20 years, the impact on UK governance could be substantial, reaching well beyond the criminal justice, health and social sectors into areas such as military security, development and international trade. Departments leading on these areas will have to consider how they need to adapt to this new model and the implications for international development and diplomacy. In this way, the UK is better able to identify the extensive opportunities that theory suggests are implicit with the regulation of controlled drugs, as well as mitigate the inevitable risks. There is a window to capitalise on a strong international reputation for effective rule of law to proactively contribute to the debate, and while engaging in the discussion does not necessitate final UK support for regulation, participation will demonstrate a nuanced understanding of the complexity and problems generated by the international drugs trade and fuelled by high demand from countries like the UK.⁹⁶ Failure to engage risks damaging UK credibility, particularly if the government is seen to oppose measures which are aimed at disrupting destructive levels of violence and corruption in other states.

⁹⁴ Bingham, T (2006) *The Rule of Law* p75

⁹⁵ Bingham *The Rule of Law* p11

⁹⁶ UNDP's November 2013 report notes how justice systems across the region are struggling to deal with heavy prison overcrowding and court backlog resulting from the criminalisation of the trafficking and possession of drugs, accompanied by high homicide rates in a number of states.

Detailed research into potential regulatory frameworks for the UK itself has already been undertaken by organisations such as the Transform Drug Policy Foundation and their reports point to the feasibility and desirability of such a system, if carefully managed and resourced.⁹⁷ In the UK context the growing problem of prescription abuse, coupled with the fracturing of supply chains and rise of internet sales, makes the interception of drugs increasingly problematic without resort to constrictions on public privacy. The UK's high rates of use and overdose from NPSs could also improve under a regulatory model, which effectively undermines the appeal of untested drugs and allows the government to impose clear conditions around testing and quality. Given that between £7 and £8 billion are generated each year by the UK drug industry, the opportunities to cut into the profits of organised crime in the UK are also substantial.⁹⁸ We have seen how in Uruguay supply-side regulation aims to effectively undermine organised criminal activity and reduce the violence generated by the drug trade, as seen in neighbouring countries and across Latin America. The international composition and activity of organised crime means that improved security and governance in one region is likely to have a positive effect elsewhere. While the UK currently avoids most of the state capture and corruption associated with the narcotics trade, the impact of these forces on governments in other countries undermines UK capacity to work with these administrations and helps to generate social unrest that has a knock-on effect across boundaries.⁹⁹ The potential benefits of supply-side reform are therefore sufficiently substantial to at the very least justify the commissioning of further research into the likely consequences of the growth of supply-side regulation.

SUMMARY OF STRATEGIC RECOMMENDATIONS

- Review of strategic priorities, prioritisation of harm reduction and recognition of the limitations of criminal justice as a driver of social change
- Drug policy is inherently complex and the government has a difficult task in trying to shift and alter social behaviours. Positive changes will be slow to reveal themselves and will not fit neatly into a political cycle. As a result there would be huge benefit in securing some level of consensus across the political parties of the need to try alternative methods of drug dissuasion, in light of the potential for substantial long-term gains that make careful amendments to the system worth trying.
- There needs to be proper consideration at the strategic level of the impact of legislative reform on operational activity, practitioner consultation and effective training of the relevant delivery agencies
- Alignment of alcohol and drugs addiction strategy and greater attention to polydrug use
- A nuanced communications strategy and public health campaign that recognises and understands the motivations of both recreational users and addicts. Dissuasion by setting out health consequences over and above the risk of prosecution
- Active engagement in discussion at the international level regarding the feasibility of supply-side regulation, including implications for cooperation between state enforcement agencies. Consideration now in the UK around the implications of reform in Uruguay and a growing number of US states, active contribution to debate at the 2016 UN General Assembly Special Session

⁹⁷ Rolles, S *After the War on Drugs* Transform Drug Policy Foundation p72

⁹⁸ Daly, M & Sampson, S (2013) *Narcomania: How Britain got Hooked on Drugs* Windmill Books p49, 129

⁹⁹ Nowhere is this more evident than for the UK's military campaign in Afghanistan's Helmand, where opium farming remains pervasive and fuels the Taliban campaign. Despite years of eradication efforts by coalition forces, the latest data on opium production was at its highest rate since 1994, with production in Helmand alone rising by 34%, and the profits have worked to directly undermine the UK's own efforts to stabilise the country. United National Office on Drugs and Crime (2013) *Afghanistan Opium Survey 2013 Summary Findings* p5

Conclusion

This report has sought to take the public debate around UK drug policy reform one step further by considering the practical implications of the diversion of possession offences and supply-side regulation on the work and effectiveness of the criminal justice system, premising success on compliance with the coalition government's goals of higher rehabilitation rates and lower administration costs.

The feedback from a large majority of the experts and officials interviewed in Portugal, Czech Republic and Uruguay reinforces arguments supporting the piloting of diversion and a renewed focus on addressing the underlying harms and addictions that fuel problematic drug use, over and above the partial by-product that is drug-related crime. The UK has already moved a long way towards this approach, reflected in initiatives such as the DDCs, drug-free prison wings and a longstanding commitment to alternative sentencing and rehabilitation support. Taking the next step by diverting low-threshold possession offences away from the criminal justice system is not only manageable but also offers the prospect of more streamlined criminal justice procedures that filter down across the different arms of the system. Reform also offers the chance to better align UK statutory rules with the enforcement approaches taken on the ground, generating greater predictability and providing police with an effective tool to help the users they encounter.

For reform to be effective, states that have already undergone the process help us shed light on what to anticipate. We know that legislative amendments need to be grounded in an understanding of what they mean practically for users, that the training of criminal justice staff needs to be prioritised and that decriminalisation in isolation is unlikely to have the hoped for effect on rehabilitation rates. The multidisciplinary oversight approaches taken by Portugal and the Czech Republic also appear to have enhanced cooperation and broadened the strategic approach to better prioritise health and social support services which have been proven to be key to long-term rehabilitation both within and outside of the custodial estate.

Irrespective of political affiliation officials, MPs, NGOs and frontline staff in the UK share the common goal of reducing the individual and social harms associated with problematic drug use. A level of cross-party consensus, driven by a champion at the highest level of government and founded on a growing evidence-base could be the key to overcoming the political divisiveness that the topic appears to generate. This can be premised on a broad recognition that, while public security lies at the heart of the function of the state, effective delivery requires a system that is legitimate, predictable and trusted by the public. The revised role of the police in supporting rather than criminalising problematic users in states like Portugal has helped to strengthen the relationship between the public and the state and this approach feeds into longstanding UK endorsement of community policing principles and the use of the criminal justice system to rehabilitate as well as punish offenders.

As it looks to enhance drug policy at the domestic level, the UK would benefit from paying greater attention to developments outside of its borders. The movement towards supply-side regulation of cannabis is strong and growing, spearheaded at the national level by Uruguay but also taking hold across states in the USA and on the table for discussion in countries closer to home. Advocates of reform are premising their arguments on legitimate theories that point to the feasibility of making major inroads against international organised crime while also further helping the state to identify and support problematic use at the local level. While it may be premature for the UK to act before multilateral discussions take place, it can nonetheless seriously engage in the debate and enhance its diplomatic credentials in the process. The UK has a world renowned legal system and changes here hold important precedent and influence over other states in the Commonwealth and beyond. The government has a chance to capitalise on this by feeding in expertise and helping to shape multilateral decisions that will have a huge bearing on the nation's own domestic landscape.

About the author

Before starting the Churchill fellowship Jessica Magson worked at the International Directorate of the UK Ministry of Justice for 5 years, analysing the effectiveness of criminal justice systems in other countries and managing projects to support the evolution of court, prison and probation services abroad. She holds an MA from Edinburgh University in History and Politics and an MSc from Birkbeck University in International Security and Global Governance. The views set out in this paper reflect the views of the author and not the UK Ministry of Justice or Churchill Memorial Trust. Further information about meetings in each country can be found at jmagson2013wmct.wordpress.com

Abbreviations

BMA: British Medical Association

CARAT: Counselling, Assessment, Referral Advice, Throughcare teams (prisons, UK)

CDT: Dissuasion Commission (Portugal)

CJIT: Criminal Justice Intervention Teams (UK)

CJS: Criminal Justice System – refers collectively to the different parts of the UK criminal justice system, including police, courts, prisons and probation services.

CPS: Crown Prosecution Service (UK)

DAAT: Drug and Alcohol Action Team (UK)

DIP: Drug Interventions Programme (UK)

EMCDDA: European Monitoring Centre for Drugs and Drug Addiction

HMG: Her Majesty's Government (UK)

IDPC: International Drug Policy Consortium

IDT: Institute on Drugs and Drug Addiction - now SICAD (Portugal)

IDTS: Integrated Drug Treatment System (UK)

LEAD: Law Enforcement Assisted Diversion programme (Seattle)

NOMS: National Offender Manager System (UK)

NPS: New Psychoactive Substances (also known as legal highs)

UKDPC: UK Drug Policy Commission

SICAD: General Directorate for Intervention on Addictive Behaviours and Dependencies (formerly IDT)

Drug Terms

Brown: A Czech, domestically produced opioid similar to heroin

Diamba: The term used in Portugal for cannabis, African derivation

New Psychoactive Substances, NPS: General term given to new range of new drugs that are not controlled by the UN conventions but may have a similar effect to those that are. Examples include spice, mephedrone and PMA

Paco: A term used to describe cocaine paste In Uruguay and neighbouring South American countries.

Pervitin: A domestically produced methamphetamine similar to crystal meth and consumed widely among problematic users in the Czech Republic

Sativex: Cannabinoid drug produced by GM Pharmaceuticals, limited availability on prescription in the UK for Multiple Sclerosis sufferers.

Subutex: Replacement drug used in the UK as an opioid substitution. Can be used recreationally, usually through inhalation

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