Written evidence from Drug Equality Alliance

What is the extent of health harms resulting from drug use?

First terminological error: ‘Drugs’. Do you mean use from the current list of ‘controlled drugs’, or perhaps including all people who use psychoactive drugs bar those using excluded ones? Note drugs cannot be ‘illicit’, this refers to a human action. Recreational use of ‘drugs’ must include all drinks containing alcohol or caffeine and smoking, regulation of activities ought to be around the criterion of ‘social harms’ as per Misuse of Drugs Act 1971 (it is not ‘some’ drugs but drugs. We must assert the distinction between drug MISuse (per the title of the Act) and drug ‘use’ that is essentially a peaceful activity and thus private concern over licensing property rights. Note there is no crime of ‘use’ of drugs (except opium) to allow regulation.

Prevention and early intervention:

What are the reasons for both the initial and the continued, sustained use of drugs? This refers to the wide spectrum of use, from high-risk use to the normalisation of recreational use.

This is a natural human biological and socially-constructed norm. We exist as drug permeable organisms in a sea of psychoactive molecules, not using drugs is far more bizarre than using them.

How effective and evidence-based are strategies for prevention and early intervention in managing and countering the drivers of use? This includes whether a whole-system approach is taken.

There can be no evidence-base to any strategy within a skewed socio-legal context where people using specific drugs are singled out for opprobrium, stigmatisation and criminalisation. Support services and interventions can work when confidential and actually help people with real services such as initiatives set up by ‘the Loop’, the non-judgmental tireless efforts of organisations such as ‘Release’ and importantly real grass roots support networks such as the ‘Cannabis Social Club’ initiatives.

What would a high-quality, evidence-based response to drugs look like?

If we are to transcend the absurd state-of affairs where the rights of certain drug users are so compromised that they fear to seek help when needed, then we must shift the paradigm of the debate away from the objectification of various drug users. In everyday speech we are familiar with using transferred epithets, these are shortcuts where we reverse or remove the subject, so that the human element of an expression disappears, and the resultant de-personification is unimportant. Eg everyone knows that the ‘disabled toilet’ is a toilet for disabled people, not a broken toilet.

However in drug policy and when discussing legal matters it is absolutely essential not to do this, for when this occurs not only do we stigmatise and hide the essential human element to all of
this, as it is the reader’s choices we are discussing here too, but we also create a false binary boundary between objects which assume a faux status as opposed to allow the full potential of nuances of human actions to be brought into focus. Therefore, it is essential that we never refer to drugs as illegal or illicit, for these are the qualities of human action not of a substance, and by so according that status to the object in effect we become enslaved as an object. Furthermore, we obscure the regulatory apparatus within most jurisdictions’ drug laws, because we believe that we are regulating an object which supposedly has a legal or illegal status, as opposed to a human who ought to be judged with reference to their behaviour and to outcomes with respect to the use or misuse of that object.

1. Executive Summary

Parliament charged the Secretary of State for the Home Department (“SSHD”) with administering the Misuse of Drugs Act 1971 (“the Act”). Section 1(2) of the Act charged the Advisory Council on the Misuse of Drugs (“ACMD”) with a “duty… to keep under review the situation in the United Kingdom with respect to drugs which are being or appear likely to be misused and of which the misuse is having or appears capable of having harmful effects sufficient to constitute a social problem, and to give to any one or more of the Ministers (…) advice on measures (whether or not involving alteration of the law) which… ought to be taken for preventing the misuse of such drugs or dealing with social problems connected with their misuse”. A plethora of evidence shows that the SSHD and the ACMD do not understand their respective duties under the Act and have therefore not given proper effect to them. Nowhere is this clearer than in their respective abdication of power regarding the detrimental effects of alcohol and tobacco misuse.

The SSHD and the ACMD appear to believe that the only regulatory option under the Act is the SSHD’s “policy of prohibition”. This narrow policy holds that inclusion of a drug in the schedule of controlled drugs, via section 2 of the Act, necessitates that property activities with that drug be restricted to medical or scientific uses only. This policy, applied to alcohol and tobacco, would obviously “be unacceptable to the vast majority of people who use, (alcohol and tobacco), responsibly and would conflict with deeply embedded historical tradition and tolerance of consumption of a number of substances that alter mental functioning”. Regrettably, this “policy of prohibition” ignores the beautiful, flexible and evolutive nature of the regulatory discretions found within sections 7, 22, and 31, particularly s 31(1)(a), and fails to extend this alleged “deeply embedded historical tradition and tolerance” to others who would appreciate the Cognitive Liberty to “alter mental functioning” with currently “controlled” drugs without fear of prosecution.

Section 31(1)(a) of the Act states: “31. General provisions as to regulations. (1) Regulations made by the Secretary of State under any provision of this Act—(a) may make different provision in relation to different controlled drugs, different classes of persons, different provisions of this Act or other different cases or circumstances”. (Emphasis added)

When the five “different” of section 31(1)(a) are coupled with sections 7(1)-(2)—allowing the SSHD to authorise activities otherwise unlawful—and section 22(a)(i)—allowing the SSHD to exempt entire classes of offence from operation—a very flexible regulatory regime emerges suitable “for any drug, new or old, according to its legitimate use, its dangers and its social effects”, as Parliament intended. Said another way, by Statutory Instrument, the SSHD could immediately implement the proposals in Transform Drug Policy Foundation’s After the War on Drugs: Blueprint for Regulation for a fully regulated commerce in controlled drugs for peaceful, “recreational” use, ie to “alter mental functioning”.

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Thus we ask, since the Act provides mechanisms to fully regulate commerce in any controlled drug for so-called “recreational” use, why have alcohol and tobacco yet to be declared “controlled drugs”, (s2), under the Act? There can be but one answer; the SSHD and the ACMD have misconstrued the Act by fettering themselves to a “policy of prohibition”. The SSHD and ACMD believe that to deem alcohol and tobacco “controlled drugs” under the Act would require prohibiting their use and commerce. This esteemed committee must fix this crucial misunderstanding and make clear in an authoritative manner that the Act makes available a plethora of regulatory options suitable “for any drug, new or old, according to its legitimate use, its dangers and its social effects”.

2. The comparative harm and cost of legal and illegal drugs

2.1 It is paramount that this Committee, the SSHD, the ACMD and the public understand that “illegal drugs” do not exist. Nor, for that matter, do “legal drugs”. These terms are both legal misnomers indicating the speaker does not understand the Act. These misleading terms flip the subject and object of regulation and thus create a false dichotomy in the minds of lawmakers, their advisors and the public.

2.2 The Misuse of Drugs Act 1971 regulates people not drugs. The Act makes the actions: importation, exportation, production, cultivation, supply and possession, of “controlled drugs”, unlawful and an offence, except for medical or scientific purposes, unless the SSHD authorises otherwise and the Parliament approves by positive or negative resolution.

2.3 We therefore request that the Committee cease using the terms “legal drugs” and “illegal drugs” to distinguish between “controlled drugs” and those not controlled under the Act. Until this is done, any discussion of the comparative harm of these drugs will fail to acknowledge the harms resulting to people from the chosen regulatory options and the Committee will therefore fail in its task.

3. Differentiations based on outcome must lead drugs policy

3.1 Recognising that the exercise of the enumerated activities re “dangerous or otherwise harmful drugs”, (the Act’s preamble), may result in a variable likelihood of risks and benefits to public welfare and individual autonomy and that these must be consciously balanced, Parliamentarians embodied four principles of law in the Misuse of Drugs Act 1971:

3.1.1 A determination, read from the Act’s preamble, s 1(2) and the offences stated in the Act, to employ education, health and police power measures to prevent, minimise or eliminate the “harmful effects sufficient to constitute a social problem” that may arise via any self-administration of “dangerous or otherwise harmful drugs”.

3.1.2 A determination, read from ss 1, 2(5), 7(7) & 31(3) of the Act, to employ an independent advisory body to help the Secretary of State exercise the Act’s discretionary powers in a rational and objective manner, particularly when making contingent subordinate legislation and interstitial administrative rules and when considering regulatory options.

3.1.3 A determination, read from s1(3), to employ an independent advisory body to consider any matter relating to drug dependence or the misuse of drugs that may be referred to them by any Minister and to advise them as required or requested.
3.1.4 A determination, read from ss1(2)(a)-(e), to enable persons affected by drugs misuse to obtain advice and secure health services; to promote stakeholder co-operation in dealing with the social problems connected with drugs misuse; to educate the public in the dangers of misusing drugs, and to give publicity to those dangers; and to promote research into any matter which is relevant to prevent drugs misuse or deal with any connected social problem.

3.2 Crucially, this first principle of law is neutral and generally applicable, coherent with s 31(1)(a) of the Act, and based on outcome, irrespective of the drug, the agent’s status, class, or intent, or the circumstances in which the drug-related activities occur.

3.3 The second principle of law facilitates Due Process and seeks to ensure that the Act’s police power measures are proportionate to available objective evidence of the potential risk each drug presents when used and are suitably targeted to achieve the Act’s public health objective.

3.4 The third and fourth principles facilitate a coherent social conversation for minimising harm through the intelligent use of education, health and ministerial services.

3.5 The Act does not concern itself with absolute safety. Rather the Act seeks to prevent, minimise or eliminate the “harmful effects sufficient to constitute a social problem” that may arise via any self-administration of “dangerous or otherwise harmful drugs”. The Act targets these “harmful effects” indirectly through “restrictions” ss 3–6, “prohibitions” ss 8–9 and/or “regulations” ss 7, 10 and 22, on the exercise of enumerated activities re controlled drugs whilst intending to generate a harm minimisation conversation at all levels of society via education, research and the provision of specific health services.

3.6 And whilst the difference between the activities enumerated in the Act: import, export, production, supply, possession, and drug use might seem insignificant, the legal line is drawn here. Crucially, s 37(2) of the Misuse of Drugs Act 1971 states:

“References in this Act to misusing a drug are references to misusing it by taking it; and the reference in the foregoing provision to the taking of a drug is a reference to the taking of it by a human being by way of any form of self-administration, whether or not involving assistance by another”. (Emphasis added)

3.7 Therefore, in ensuring consistency with the Act’s object of preventing, minimising or eliminating the “harmful effects sufficient to constitute a social problem” that may arise via “the taking of a drug” differentiations should distinguish drug use from drug misuse.

3.8 With respect to drug use, ie self-administration, the Act’s principles of law afford three reasonable differentiations fairly related to the object of regulation:

1. A primary differentiation between drug use that is reasonably safe to the agent and does not result in harm to others and drug use that is reasonably safe to the agent and results in harm to others.

2. A secondary differentiation between drug use that is reasonably risky to the agent and does not result in harm to others and drug use that is reasonably risky to the agent and results in harm to others.
3. A tertiary differentiation between drug use harmful only to the agent following competent informed choice and drug use harmful only to the agent not following competent informed choice.

3.9 These reasonable differentiations, based on the outcome of drug use, are neutral with respect to the drug, the agent’s intent, and the setting in which drug use occurs, and consistent with s 31(1)(a) of the Act. Only in this way are autonomous individuals separable from the public interest and education and health measures separable from the need for police power.

4. **There is no distinction between drug and alcohol misuse. Alcohol and tobacco are drugs that should be included in the Misuse of Drugs Act 1971 and regulations with respect to their use and commerce made under sections 7, 22 and 31 “according to (their) legitimate use, (their) dangers and (their) social effects”**