

MAKING SENSE OF DRUGS AND CRIME

Drugs, Crime and Penal Policy

A Report of the
Scottish Consortium on
Crime & Criminal Justice





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FOREWORD

'Making Sense of Drugs and Crime' focuses on one of the most important areas confronting contemporary penal policy. Grounded on the experiences of Consortium members and associate members and the best available research evidence, the report shows that drugs misuse is, above all, a deeply entrenched social problem with serious consequences for public health and criminal justice. The report is not, however, about all of Scotland's drug and alcohol related problems; rather it concentrates on the significance of what is known about the connections between drugs, crime and criminal justice.

The report suggests that decarceration and decriminalisation policies should guide how society responds in future to people whose problematic drug use currently brings them into contact with the youth or criminal justice systems. There are very strong arguments against the use of imprisonment for drug use offences and against punitive disposals for problematic drug users, except where the seriousness of the offence justifies imprisonment on public protection grounds. Treatment oriented disposals produce more positive results, they are more effective in preventing further harms to victims and communities, and in rebuilding the lives of problem drug users themselves and their families.

Decriminalisation of drug use must also be seriously considered, in particular, the decriminalisation of the use or possession of cannabis. Cannabis is the most frequent illegal drug in the enforcement statistics, the most widely used and is increasingly perceived as relatively harmless compared to other designated 'dangerous drugs'.

The report goes beyond analysis of the symptoms of the 'drug problem' to suggest how we could develop a more principled and effective penal policy on drugs, alcohol and crime. Evidence and experience indicate that a broad, integrated social policy approach is required to reduce the levels and seriousness of drug and alcohol related crime – for drug users, victims of crimes and communities shattered by the impact of drugs. In that context, the criminal justice system has an important contribution to make. The primary aim of this report is to move the policy debate to a wider plane and stimulate discussion by the Scottish Executive, the Scottish Parliament and the people of Scotland about what that contribution could and should be.

The Consortium would like to record its gratitude to its Hon Director, Jacqueline Tombs, who also wrote the report, to its Hon Secretary, Dinah Aitken, for her unwavering efforts and to the member organisations and the Scottish Executive, without whose generous support this report could not have been produced. Above all, we owe a deep and lasting debt of gratitude to our late Hon Treasurer, Drummond Hunter, who, at the age of 80, had the vision, drive and commitment to penal reform, to create the Consortium. This report is dedicated to his memory.

Professor Colin Bell
Convenor of the Consortium

INTRODUCTION

Penal policy can make a more moral and constructive contribution to a broad social strategy to reduce harms to individuals and communities caused by the wide range of problems associated with drugs misuse. To do so:

- the justice systems should be used less to process and punish problematic drug users and more to improve their capacity to lead productive lives;
- effective treatment programmes should be made universally available – both within the community and within prisons; and
- local communities should be assisted by the police in strengthening their abilities to resist drugs and crime whilst, at the same time, other social and economic policies should be put in place to revitalise these communities and enhance opportunities.

FOCUS OF THE REPORT

The Scottish Consortium on Crime and Criminal Justice brings together leading organisations and academics concerned with crime and criminal justice in Scotland. Consortium members include the Howard League for Penal Reform in Scotland, APEX Scotland, SACRO, the Scottish Human Rights Centre and NCH. Many other organisations and individuals contribute as associate members. Based on a broad spectrum of experience and skills and the available factual information, the Consortium seeks to promote open dialogue about the best ways to reduce the incidence and alleviate the impact of crime in our society as far as is reasonably possible and by whatever morally acceptable means can be shown to be most effective.

The Consortium's first report, *Rethinking Criminal Justice in Scotland*, www.scccj.org recommends that a 'whole problem' approach to crime and criminal justice is the most constructive way forward. Responses that address the whole of the problem – for victims, offenders and communities – have been shown to work best. That report also signals the Consortium's intention to concentrate further work on some of the main issues raised for the criminal justice system. This report focuses on one of these areas, namely, understanding the links between drugs, including alcohol, and crime, and their implications for penal policy.

The Consortium's main objective is to contribute to the development of a more principled and effective penal policy in relation to drugs, alcohol and crime. From the accumulated body of international and national research evidence, it is clear that drugs misuse, and its associations with crime, is intimately connected with conditions of severe social deprivation, economic marginality, and cultural and community breakdown. Drugs misuse is, above all, a deeply entrenched social

problem, which presents serious issues for public health and criminal justice. The focus of this report is on the criminal justice issues.

Some system of drugs control and regulation is inevitable. The issue is where the main emphasis in policy should lie – whether in public health and social policy or in penal policy. From the accumulated evidence and experience, a broad, integrated social policy approach is required in order to reduce the levels and seriousness of drug and alcohol related crime – for drug users, victims of crimes and communities shattered by the impact of drugs. In that context, the criminal justice system can make an important, albeit limited, contribution. The primary aim of this report is to stimulate public debate about what that contribution could and should be.

STRUCTURE OF THE REPORT

The contemporary social context is one in which illegal and legal drugs, notably cannabis and alcohol, are widely used and regarded by many as pleasurable. The report is not about drug use as a leisure pursuit nor is it about all of Scotland's drug and alcohol related problems; rather it concentrates on informing debate about the significance of what we know about the complex connections between drugs and crime. The Consortium's specific focus is on the drug use of people who are 'problem drug misusers', 'problem drinkers' or both and whose problematic use brings them into contact with the youth or criminal justice systems. The report does not focus on developing penal policy in relation to drug trafficking or the illegal trade.

Part One is about principles and policies. It outlines shifts in thinking about drugs, defines what we mean by drugs and drugs misuse and considers the implications of the complexities of the connections found between drugs and crime. Issues of principle about the proper role of the criminal law in relation to drugs misuse are mentioned before discussing the main options for control. Part One concludes with a short review of drugs policy internationally, particularly in the European Union.

Part Two reflects on the evidence. It begins by outlining recent trends in illegal drugs and alcohol use; trends that show increasingly widespread availability and use of a great variety of drugs. Research on the links between drugs, alcohol and crime is reviewed, particularly in relation to whether criminal activity leads to drug use, whether drug use causes crime, the significance of polydrug use, including the legal drug alcohol, and the associations between alcohol and crime. The implications of illegal drug use for victims are considered before discussing enforcement practices and sentencing for drugs offences. Part Two also reflects on the impact of treatment and rehabilitation for drug users through the criminal justice system. Treatments in the community, in prisons and the importance of throughcare are noted.

Part Three is about penal policy. It looks at some of the key features of current drugs policy and concludes with a discussion of how we might rethink penal policy in ways that would contribute to reducing drug related crime. In this context the report draws attention to the strong arguments in favour of decriminalising drug users and, in particular, recommends that the decriminalisation of cannabis use should be seriously considered.

EXECUTIVE SUMMARY

PART ONE: PRINCIPLES AND POLICIES

SHIFTS IN THINKING

The way we think about and respond to drug use reflects and shapes the contours of the 'drug problem'. Current tensions between the public health model of drug use and the requirements of the criminal law are potentially very serious. This report, in reviewing the evidence on penal policy options in relation to controlled drugs, highlights the need for some radical rethinking about criminal justice responses to the drug problem if current public health approaches are to succeed.

The report challenges many assumptions that currently underlie drugs policy. The reasons why some drugs are illegal and others are legal are largely historical rather than due to any unique aspect of their pharmacology or intrinsic dangerousness to society or the individual. But this does not mean that they are not harmful nor does it mean that they are not linked to other forms of criminal behaviour. Penal choices have to be made. These are difficult choices but the stakes are high – the choices we make now are not about whether or not we approve or disapprove of drug use but about the kind of society in which we, in Scotland, want to live.

DEFINITIONS: WHAT WE MEAN BY DRUGS AND DRUG MISUSE

The report focuses on the drug use of people who are 'problem drug misusers', 'problem drinkers' or both and whose problematic use brings them into contact with the youth or criminal justice systems. The relationships between drugs and crime are not, however, straightforward. Research shows that the complexities of the connections that exist and their embeddedness in social structure have far-reaching implications for penal policy and for criminal justice interventions.

SOME PRINCIPLES

The evidence imposes limitations on criminalisation as an effective primary mode of control. It also raises questions of principle about the appropriateness of regulating drug use through the criminal law. Three principles – the reduction of harm, the promotion of community safety, and the integration of problem drug users into productive life – are identified as appropriate principles to guide the role of criminal justice in relation to drugs.

OPTIONS FOR CONTROL AND PENAL CHOICES

Underlying the issues of principle is a fundamental question about the role of the state in restricting the liberty of its citizens. How we answer that question has very important implications for how we, as a society, choose to regulate drug use, hence, for the penal policy choices we make and the criminal justice practices we promote. What is certain, both from international experience and from research evidence, is that the criminal justice system can only have a limited impact on drugs misuse. However, regardless of future drugs policy directions, criminal justice will continue to have some part to play.

The report aims to open up the debate about the most appropriate and constructive role for criminal justice; a debate that necessarily involves thinking about the kind of society we want to live in. There are two extremes to this debate. At one extreme are those who advocate increased penal severity, that is, intensifying current law enforcement efforts and criminal justice practices, whether to detect and convict 'traffickers' or to subject 'users' to compulsory treatment, particularly in prison. At the other extreme are those who want to remove the regulation of drugs from the criminal justice system altogether, that is, to legalise drugs. Between these two extremes lie a range of options including decriminalisation of drug use, controlled dispensation of drugs and licensing.

All the evidence shows that increased penal severity and massive incarceration, a policy followed with catastrophic consequences in the United States, does not reduce the drug problem. On the other hand, there is strong evidence, from The Netherlands and elsewhere, that a policy of decriminalisation of drug use, notably cannabis use, contributes to 'harm reduction'.

DRUG CONTROL IN INTERNATIONAL CONTEXT

Across the EU, the principle of treatment instead of punishment is being adopted; some member states have consolidated social and medical support for drug-addicted offenders and, increasingly, the first contact with law enforcement agencies is being used as a door to treatment. There appears to be a clear shift from repressive responses to those that reduce the risks of drug misuse. In addition, there is a move towards decriminalising the possession of drugs for personal use.

PART TWO: CRIME AND CRIMINAL JUSTICE

TRENDS IN DRUG AND ALCOHOL USE

Alcohol remains the main drug used in all age groups, including young people. Illegal drugs are, however, widely used and significant numbers of young people from all social backgrounds have, therefore, engaged in criminal activity, simply through their use of illegal substances, mainly cannabis. Most people who use illegal or legal drugs neither become problematic users nor do they become involved in wider criminal activities associated with their drug use. In the career of most illegal drug users, 'escalation' to 'harder' drugs and long-term continuation is confined to a minority.

DRUGS, ALCOHOL AND CRIME

There are various quite different sorts of correlation between illegal drug use and other kinds of crime. Some of these relationships suggest that the drug use itself causes or explains the crime; others suggest that involvement in other kinds of crime helps to explain the drug use. The most frequently recurring relationships suggest that drug use and crime are both linked to other underlying socio-economic and subcultural factors.

Much of the crime due solely to offenders' drug habits – drugs offences – can therefore be explained because the drugs are criminalised. Apart from driving under the influence of alcohol or drugs, there is not much evidence of the kind of direct causal link between drugs and crime that would exist if the drugs were not criminal. In particular, cannabis use, on its own, is extremely rarely associated with criminal activity.

That is not to say that problem drug misuse, any more than problem drinking, has no relationship to a whole range of crimes. It does. Evidence suggests a very strong link between alcohol and crime. Excessive intake of alcohol appears to be more directly linked to violent crime than most illegal drug use. This does not mean that alcohol or other drug use alone cause crime. The point with both legal and illegal drugs use is that the explanation for the main link with criminality lies elsewhere – in socio-economic and subcultural factors.

VICTIMS

The costs of drug related crime – to victims, communities and drug misusers themselves – extend well beyond the immediate consequences. There are serious impacts on a whole range of victims of alcohol and drug related crime. These consequences are experienced directly by crime victims, drug users themselves, their families, their children and their communities. There are also more subtle and long term forms of victimisation – long term health consequences and reduction in educational and employment opportunities for adolescent drug users.

Responses that seek to identify the social capital available within communities themselves offer a constructive way to promote integrated prevention programmes. Local communities require to be assisted by the police and others to revitalise neighbourhoods and enhance opportunities in order to strengthen their abilities to resist drugs and crime.

ENFORCEMENT

Enforcement practices are shifting towards channelling problematic drug users into treatment rather than the criminal justice system. Promising approaches include low level enforcement practices aimed at disrupting markets and reducing demand, and arrest referral schemes aimed at diverting users into treatment.

SENTENCING

The trend towards increased use and length of prison sentences for drug crimes has not had a deterrent effect. The establishment of the pilot drug court in Glasgow indicates a positive shift in thinking towards channelling drug misusing offenders to treatment and social support. By extension, this principle should also be applied to offenders whose alcohol abuse is related to offending.

COMMUNITY DISPOSALS

Drug using offenders whose offences are drug related can receive treatment via community based criminal justice disposals. By extension of this principle, such orders could be extended to offenders whose alcohol use is related to their offences. Although treatment within the criminal justice system is coerced, this does not seem to reduce effectiveness.

PRISON

Very high proportions of prisoners have problems with drug and/or alcohol misuse. Although various kinds of treatment are available within prisons, their effectiveness is limited by the prison environment, where drugs are widely available, and by prison culture.

THROUGH-CARE

Programmes that take the whole range of prisoners' needs into account and provide support in the prison and in the community, not only in the early weeks of readjustment on release, but also in the long term, have had the most favourable results.

PART THREE: RETHINKING PENAL POLICY

DRUGS POLICY

Current drugs policy emphasises three main themes: partnership between different agencies, effective targeting of resources, and the connection between drug-related problems and social inclusion. The extent to which each of these themes can be successfully addressed depends on the priority attached to what have traditionally been the three main areas of policy concern – prevention, treatment, and, law enforcement. Estimates show that around 61% of drug related expenditure is on enforcement measures, 13% on international supply reduction, 13% on treatment and 12% on education.

RETHINKING PENAL POLICY

The conclusions reached in the report about future directions for penal policy are founded on the principles and policy options discussed in Part One and on the evidence summarised in Part Two on the connections between drugs, alcohol and crime and criminal justice responses. In short, three main presumptions are made about how society should respond in future to the drug use of people who are ‘problem drug misusers’, ‘problem drinkers’ or both and whose problematic use currently brings them into contact with the youth or criminal justice systems. The presumptions are **not** about how to develop penal policy in relation to drug trafficking or the illegal trade.

The first two presumptions are about how the criminal justice system should respond to drug offences and drug using offenders. In effect, these presumptions spell out a policy of decarceration in relation to problematic drug use. From the evidence and based on principle,

- the first presumption is against the use of imprisonment for drug use offences. This presumption is based on considerations of penal justice, cost effectiveness, harm prevention and social inclusion,

and

- the second presumption is against punitive disposals for problematic drug users unless their offences – whether or not these are drug or non drug related offences – are sufficiently serious as to justify imprisonment on public protection grounds. All the evidence points to treatment oriented disposals as producing more positive results, both in terms of reductions in usage and reductions in drug related crimes. Community disposals are, therefore, more effective in preventing further harms to victims, communities and drug users themselves, and in rebuilding the lives of problem drug users and their families.

The third presumption concerns the need for serious debate about the decriminalisation of the use or possession of cannabis. Cannabis is the most frequent illegal drug in the enforcement statistics, the most widely used and is increasingly perceived as relatively harmless compared to other 'dangerous drugs'. The decriminalisation of cannabis would certainly have a major crime reduction effect insofar as it would produce a sudden and dramatic drop in the number of drug crimes that currently consist in the possession, use – or sale – of cannabis.

Whatever is done about cannabis, a large area of illegal drug related crime will remain as will alcohol related crime. And, while the long term answers to the 'drug problem' lie in wider social and economic change, the criminal justice system does have a key role to play in developing a more effective strategy. To do this requires a far-reaching change in priorities and the development of a penal policy that gives precedence to three principles – the reduction of harm, the promotion of community safety, and the integration of problem drug users into productive life.

The infrastructure exists to provide serious help for problematic drug users within the justice systems, through initiatives to provide treatment in the community wherever possible, in prison where essential for public protection, and a 'continuum of care' between prison and community. But these are not all universally available across the country. Many are dependent on a process of piloting with indefinite periods of time before national expansion. This process should be accelerated as a matter of urgency.

At the same time, law enforcement priorities must be shifted towards community safety. At present, the police are used primarily to channel mainly drug users and small time dealers into the criminal justice system. But there is another role for the police – as providers of community safety. A shift in policing priorities is required; a shift towards strategies that are more preventive and more enduring – such as some of the more innovative and better-supported forms of community-oriented policing. Such shifts in priorities would contribute effectively to the development of 'integrated programmes' of health promotion and drugs prevention. Current policy thinking, particularly in the US, seeks to identify the 'social capital' available in communities in order to develop community health work. This kind of response can address the consequences of illegal and legal drug problems for the victims of drug related crimes and for drug misusers themselves.

In conclusion, penal policy can make a more moral and constructive contribution to a broad social strategy to reduce harms to individuals and communities caused by the wide range of problems associated with drugs misuse. The primary themes identified are that:

- the justice systems should be used less to process and punish problematic drug users and more to improve their capacity to lead productive lives,
- effective treatment programmes should be made universally available – both within the community and within prisons,

and

- local communities should be assisted by the police in strengthening their abilities to resist drugs and crime whilst, at the same time, other social and economic policies should be put in place to revitalise these communities and enhance opportunities.

PART ONE: PRINCIPLES AND POLICIES

SHIFTS IN THINKING

- 1.1 The way we think about and respond to drug use has changed over time. These shifts in thinking reflect and shape the contours of the 'drug problem' and make different assumptions about the nature of human behaviour and the social world. Is it a criminal problem, a matter for legislation, enforcement and penal responses? Is it a medical problem – a disease with clear aetiology, prognosis and treatment? Is it a public health problem? Is it a moral problem – that we do not like what drug users do? Or is it a social problem – a reflection of structural disadvantage?
- 1.2 Following the first international drug control agreements (at Shanghai in 1909 and The Hague in 1912), both the USA (under the 1914 Harrison Act) and the UK (under the 1920 Dangerous Drugs Act) placed controls on the availability of narcotic drugs and limited their possession to legitimate medical use. Both countries had to decide on the question of whether it was legitimate for doctors to prescribe to addicts. In the USA this question was decided in the courts and the answer was no. From that time, the criminal law dominated US drugs policy and the criminalisation of drug users was rapid and progressive.
- 1.3 The UK made a different decision; it was legitimate for doctors to prescribe to addicts. Thus in 1926 the Rolleston Committee defined the drugs problem as a problem of addiction, a "manifestation of disease and not a mere form of vicious indulgence" (Departmental Committee on Morphine and Heroin Addiction, 1926, 11). The Brain Committee modified the prevailing medical view in 1965. Addiction was now conceptualised as a "socially infectious condition" (Interdepartmental Committee on Drug Addiction, Second Report, 1965, 5) and drugs policy became concerned with the spread of drug use (Stimson, 1990). Cannabis was brought under control for the first time in Britain by the Dangerous Drugs Act of 1925 to give effect to the machinery for the control of the international drug trade established by the Geneva International Convention of 1925 (Logan, 1979).
- 1.4 From the mid 1960s, UK drugs policy increasingly shifted from a concentration on addiction to the range of problems that can be associated with drug use. This rethinking paralleled changing professional conceptions of alcohol use where the focus had shifted from the addicted alcoholic to the problem drinker, that is, to concern with the range of problems that can occur with alcohol in the absence of addiction. Thus official committees and government reports began to talk about 'drug misuse' rather than 'addiction'. By 1982 the Advisory Council on the Misuse of Drugs (ACMD) defined the 'problem drug taker' as anyone who, "experiences social, psychological, physical or legal problems related to intoxication and/or regular excessive consumption and/or dependence as a consequence of his own use of drugs or other chemical substances (excluding alcohol and tobacco)" (ACMD, 1982).

- 1.5 Concern with the wider problems associated with drug use led to the coexistence of competing conceptions of and solutions to the drug problem. To some extent the advent of HIV and AIDS, and the very serious health problems associated with injecting drug use, clarified drugs policy and penal responses to drug users; the dominant concern progressively moved in the direction of harm minimisation and public health. Thus, in 1988 the ACMD concluded that: "the spread of HIV is a greater danger to individual and public health than drug misuse" (ACMD, 1988, 17). Since then, as far as drug users are concerned, policy thinking has concentrated on harm minimisation, health promotion and risk reduction. The solutions to the drug problem – for drug users – range from becoming drug free, switching from injecting to oral use, a decrease in drug use, and avoiding sharing needles. Even penal responses, to some extent at least, adopt these solutions. There are, for example, drug courts for those whose crimes are associated with their problematic drug use and drug-free wings and detoxification programmes in prisons. Yet the drugs themselves remain illegal, as does their sale and unprescribed use. What this means is that law enforcement goals continue to sit, at best, uneasily alongside public health strategies and, at worst, come into direct conflict with them.
- 1.6 Tensions between the public health model of drug use and the requirements of the criminal law are potentially very serious indeed. This report, in reviewing the evidence on penal policy options in relation to controlled drugs, highlights the need for some radical rethinking about criminal justice responses to the drug problem if current public health approaches are to succeed. It challenges assumptions currently underlying policy about drugs. Why are some drugs treated differently than others? The reasons why some are illegal and others are legal are largely historical rather than due to any unique aspect of their pharmacology or intrinsic dangerousness to society or the individual. But this does not mean that they are not harmful nor does it mean that they are not linked to other forms of criminal behaviour. Penal choices have to be made. These are difficult choices but the stakes are high – the choices we make now are not about whether or not we approve or disapprove of drug use but about the kind of society in which we, in Scotland, want to live.

DEFINITIONS: WHAT WE MEAN BY DRUGS AND DRUGS MISUSE

- 1.7 The term 'drugs' refers to many different substances, used in different contexts, for different reasons and with different international, national and regional trends. When we refer to 'illegal drugs' we are concerned with those designated illegal for purposes of possession or use or trade according to various domestic laws and international agreements and treaties (Bruun et al, 1975). Despite their illegality, these drugs are widely available and used. Today selections are made from an assortment of substances and, perhaps most importantly, the mix of drugs or intoxicants used contains legal as well as illegal substances. (See South, 1999; Parker et al, 1998; Ramsay, 1998.) Alcohol, of course, always has been and remains "our favourite drug" (South and Teeman, 1999; Royal College of Psychiatrists, 1986).

- 1.8 The Consortium's focus is on the drug use of people who are 'problem drug misusers', 'problem drinkers' or both and whose problematic use brings them into contact with the youth or criminal justice systems. There are, of course, many problem drug misusers and problem drinkers who do not have any contact with the justice systems. What the Consortium means by problematic use follows the thinking of the ACMD, that is, anyone who experiences social, psychological, physical or legal problems related to intoxication and/or regular consumption and/or dependence as a consequence of his/her own use of drugs or other chemical substances. The Consortium's specific concern is with the relationships between problematic use and the justice systems.
- 1.9 It is important to note that the ACMD definition embraces a wider group than dependent users; dependent and problem misuse are not necessarily the same thing (see Strang et al, 1993). Non-dependent use can create various problems and some dependent misusers cope with their dependence without causing other serious problems. It is also important to stress that adopting the ACMD's terminology of 'problem drug misuse' does not imply that some categories of illegal drug use are problem-free or that 'recreational' drug misuse is unproblematic. The simple fact of the illegality of the drugs covered by the 1971 Misuse of Drugs Act causes problems. There is no doubt that casual drug misusers expose themselves to a variety of health risks: smoking cannabis, like nicotine, can lead to cancer, LSD can trigger psychotic episodes, and many illegal drugs carry serious risks due to adulteration. But these are health not criminal risks – other than the fact of the illegality of the drugs themselves.
- 1.10 It is also important to emphasise here the interconnections between alcohol and illegal drug use and the cultures that mix or divide the two. There is, for example, a very important debate in the literature about whether people 'opt into' or 'opt out' of 'polydrug' or 'any drug' using cultures. Available evidence indicates two positions, both of which are supported by various rigorous research studies. Some studies show an increasing 'normalisation' of illegal drug use where people mix legal and illegal substances in routine ways and in routine contexts. Briefly this argument is that 'use' and/or 'acquaintance' with the availability of drugs and/or drug users, have made the use of illegal drugs a normal part of life for ever increasing numbers of young people. In effect, use or acquaintance with users is the 'new norm' (Parker et al, 1995). Other studies emphasise the enduring strength of barriers – peer-pressure, parental attachment, personal value systems – that keep most young people from associating with a culture in which familiarity with drugs is 'normal' (Shiner and Newburn, 1997, 1999).
- 1.11 South (1999) argues that future policy development must pay attention to both of these positions, since both are at least partly correct. His argument is that the 'normalisation' view reflects society's undeniable awareness of drugs issues; for example, drugs education and prevention efforts indicate that these substances are no longer perceived as exceptional and remote but as familiar and accessible consumables in everyday life. The 'drug-resistant' argument, about the persistence of peer-group opposition to anything more than passing acquaintance or minor experimentation with drugs, is also important.

DRUGS AND CRIME: COMPLEX CONNECTIONS

- 1.12 In Part Two, the section on drugs, alcohol and crime demonstrates that the relationships between drugs and crime are not straightforward. In particular, the commonly held view that the crime committed by problematic drug users can largely be explained by their need to finance the purchase of illegal drugs is not clearly borne out by the evidence (but see paragraphs 2.17 - 2.19). Many studies show that, of the people who misuse drugs and commit crimes, most began committing crime before they began using drugs. Other studies show that, for many problematic drug users, drug use and crime have begun more or less independently, without one clearly causing the other. The research consistently points to the complexities of the links between drugs and crime; there are several different kinds of drugs and crime connections among different types of drug users. Significantly, there is no evidence suggesting that cannabis use alone explains criminality – other than by virtue of its current criminalisation.
- 1.13 Research in Scotland (Hammersley et al, 1989), for example, found that heavy opiate users had a greater involvement in crime than cannabis users. Involvement in crime appeared to reflect a larger lifestyle including polydrug use and criminality. Eliminating opiate use from this lifestyle would have only a "modest" impact on theft. In effect, "the association between opioids and crime is a matter of history not of pharmacology", thus refuting "the legend that heroin or other drug addiction regularly compels otherwise honest people to become criminals"(Hammersley et al, 1989, 1034). Other Scottish research on patterns of drug use and crime amongst new young users found that those who used harder drugs and more different kinds of drugs were also more likely to commit crimes – but not simply to pay for drugs. These young people were involved in a variety of crimes, and in drug use, more or less independently (Hammersley et al, 1990).
- 1.14 The international evidence also supports the conclusion that people who use heroin and other opiates do not do so simply because they are attracted to the chemical properties or because of the need to satisfy uncontrollable physical cravings. Instead, they generally use opiates as part of their broader participation in a subculture and lifestyle that typically includes involvement in several kinds of crime and polydrug use (Currie, 1993).
- 1.15 In short, the evidence on the connections between drugs and crime demonstrates three points very clearly.
- There are various quite different sorts of correlation between drug use and other kinds of crime. Some of these relationships suggest that the drug use itself causes or explains the crime; others suggest that involvement in other kinds of crime helps to explain the drug use. The most frequently recurring relationships suggest that both drug use and crime are most adequately explained in terms of other underlying socio-economic and subcultural factors.
 - Much of the crime that can be attributed solely to offenders' drug habits – drugs offences – can therefore be explained because the drugs are criminalised. Apart

from driving under the influence of alcohol or drugs, there is not much evidence of the kind of direct causal link between drugs and crime that would obtain even if the drugs were not criminal.

- But that is not to say that problem drug misuse, any more than problem drinking, has no relationship to a whole range of crimes. It does. Excessive intake of alcohol, however, appears to be more directly linked to violent crime than most illegal drug use. The point with both legal and illegal drugs use is that the explanation for the main link with criminality lies elsewhere – in socio-economic and subcultural factors.

1.16 The complexities of the connections between drugs and crime and their embeddedness in social structure have far-reaching implications for penal policy and for criminal justice interventions. The evidence not only imposes limitations on criminalisation as an effective primary mode of control but also raises questions of principle about the appropriateness of regulating drug use through the criminal law.

SOME PRINCIPLES

1.17 Current debates about the control and regulation of drugs tend to evade the question of principles, most notably, the question of whether the state has the right to seek to prevent the sale or use of drugs. This basic question of principle is raised most frequently in debates about cannabis. Increasingly people believe that, whilst the state should regulate the sale of cannabis, as it does of other kinds of consumable, it has no right to seek to prevent its use – either because it is not harmful in any significant way, or because any harm it does cause is not of a kind that is properly the business of the criminal law. This argument of principle has not taken place in relation to ‘hard’ drugs in any European country, though it has in the United States.

1.18 Three principles – the reduction of harm, the promotion of community safety, and the integration of problem drug users into productive life – have been identified as appropriate principles to guide the role of criminal justice in relation to drugs (see Currie, 1993; Pearson, 1999). All three principles are undoubtedly appropriate objectives for drugs policy and it is proper for criminal justice responses to contribute to that policy. What is at issue here is the question of what kinds of ‘harm’ should concern the criminal law and whether drug use constitutes or threatens such harm, or would do so were it not criminal; what kinds of threat to community safety flow from the drugs misuse itself, rather than from the misuse of drugs that have been criminalised; and whether the integration of problem drug users into productive life should be a matter for the criminal law.

REDUCTION OF HARM

1.19 There are three main kinds of harm that might flow from the misuse of various kinds of drug even if they are not criminalised. All three kinds of harms currently flow from misuse of the legal drug, alcohol. These are:

- harm to the health, wealth or well-being of the drug user. Some drugs present a significant risk of such harm in any use of them, others are dangerous only if used to excess; some are addictive, some are not. While this report does not focus on health issues, there is abundant evidence on the harmful physical and psychopharmacological effects of drugs misuse – particularly from the harder drugs;
- harm to victims of a kind that traditionally concerns the criminal law: to their property and security, if the cost even of legal drugs would be such that addicts would be likely to rob or steal to fund their habits; and to their physical safety, if use of the drug is directly linked to a tendency to violent crime, or, for example, to dangerous driving under the influence;
- harm to others of kinds that do not traditionally concern the criminal law: effects of foetal drug exposure; effects on families and friendships; effects on work (or on employability); costs to the health or social services, if the drug use causes illness or leads to the user being reliant on social services.

1.20 The issue here is whether any of these three main ‘harms’ warrant the criminalisation of drugs as such, as distinct from regulating their sale in the way that the sale of nicotine or alcohol is regulated, and trying to encourage people not to misuse drugs, or to help them recover from addiction, in the way that the state now deals with alcohol. In relation to the main harms identified:

- for the drug user, the issue of principle concerns the extent to which the state should be paternalistic towards its adult, responsible citizens, and, in particular, whether it should use the criminal law as an instrument of paternalism. The practical issue is whether the criminalisation is efficient as a paternalist mechanism. On both issues, the evidence does not appear to provide sufficient justification for criminalisation;
- for victims of crime, the question is whether the law should simply criminalise the conduct that directly causes or threatens such harm – robbery, housebreaking, assault of various kinds, theft, driving under the influence and so on – or also criminalise conduct, in this case the possession or use of drugs, which creates the conditions that make the harmful or dangerous conduct more likely. Given concerns about individual liberty and privacy, criminalising the latter kind of conduct could only be justified on the basis of demonstrating a very close connection between it – drug use – and the directly harmful or dangerous conduct. In the absence of evidence of a closer connection between illegal drugs and crime than alcohol and crime, there is arguably no more justification for criminalising drug use than there is alcohol use. In the case of alcohol, the state’s position is that it is up to the individual citizen to take steps to ensure that use does not lead to conduct that breaks or threatens to break the criminal law;

- for harm to others of kinds that do not traditionally concern the criminal law, these are relevant only insofar as rehabilitative criminal justice disposals for non drug crimes committed by drug users can contribute to reducing other harms in the longer term. They are not 'harms' that, as such, are the proper concern of the criminal law.

PROMOTION OF COMMUNITY SAFETY

- 1.21 The promotion of community safety is, quite properly, a main aim of the criminal law. The issue of principle concerns the kinds of threat to community safety that flow from drugs misuse itself. Some of the major problems for communities and crime victims stem from the illegal drugs trade. In Part Two the section on enforcement reviews some of the main evidence on policing practices and their impact on community safety. While some policing strategies can disrupt street markets and reduce crime in the short term, the evidence is less clear on the extent to which these markets are simply displaced elsewhere (Sherman, 1990). Community policing has, however, been found to make residents feel less fearful and bolster a sense of cohesion in neighbourhoods torn apart by drugs and crime (Bennett, 1991). Local institution building, helping to create a 'civil society' in the worst hit communities, also reduces fear (Moore and Kleiman, 1989). These kinds of strategies can contribute to reducing 'civic malaise' and promote the building of 'social capital', the "social networks and the norms of reciprocity and trustworthiness that arise from them" (Putnam, 2000, 19).
- 1.22 In general, while the evidence indicates that drugs misuse of itself does not present a major threat to community safety, some of the crime committed is psychopharmacological – deriving from the effects of the drugs themselves. The largest threat, however, comes from the interaction of the illegality of drugs misuse with the circumstances in which it is presently concentrated – multiply disadvantaged communities together with the volatility and violence surrounding the illegal trade. Many people, living in drug saturated neighbourhoods with the reality of dealers on their doorstep, fear for their lives, or their children's lives, and feel that their communities have slid into a more or less permanent state of disintegration. These people are victims of the drug problem and many directly experience the crime and violence associated with the illegal trade and street drug cultures in communities throughout Scotland.

INTEGRATION OF PROBLEM DRUG USERS INTO PRODUCTIVE LIFE

- 1.23 While it is clearly not a matter for the criminal law to aim to integrate problem drug users into productive life, crime reduction is surely a key aim of criminal justice interventions. The issue that confronts the criminal justice system is what to do with drug misusers, including those who misuse alcohol. Even if drugs as such were not criminalised, the criminal justice system would have to process drug users who commit non-drug crimes and offences and whose use is connected with their offending behaviour.

1.24 The choice of criminal justice intervention can contribute to crime reduction amongst offenders who misuse drugs. The sections on community disposals, prisons and throughcare in Part Two indicate that community based interventions are more effective in the integration of substance misusing offenders into productive life and a reduction in re-offending. Supervision and monitoring in the community provides a consistent structure within which to abstain from drugs (Valliant, 1988) and to receive help with housing, jobs, family issues and other problems underlying drugs misuse and offending. Prison, by definition, is the most extreme form of social exclusion; as such it is applicable only to very serious drug misusing offenders who present a danger to the public. For these latter offenders, if there is to be a realistic chance of their future integration into productive life and reduction in re-offending, prison provides the opportunity for treatment and the basis for 'continuity of care' on release.

OPTIONS FOR CONTROL AND PENAL CHOICES

1.25 Underlying all the issues of principle is a fundamental question about the role of the state in restricting the liberty of its citizens. How we answer that question has very important implications for how we, as a society, choose to regulate drug use, hence, for the penal policy choices we make and the criminal justice practices we promote. What is certain, both from international experience and from research evidence, is that the criminal justice system can only have a limited impact on drugs misuse. However, regardless of future drug policy directions, criminal justice will always have some part to play.

1.26 The aim of this report is to open up the debate about the most appropriate and constructive role for criminal justice; a debate that necessarily involves thinking about the kind of society we want to live in. There are two extremes to this debate. At one extreme are those who advocate increased penal severity, that is, intensifying current law enforcement efforts and criminal justice practices, whether to detect and convict 'traffickers' or to subject 'users' to compulsory treatment, particularly in prison. At the other extreme are those who want to remove the regulation of drugs from the criminal justice system altogether, that is, to legalise drugs. Between these two extremes lie a range of options.

INCREASED PENAL SEVERITY

1.27 The present system of control in Britain is prohibition, regulated under the Misuse of Drugs Act 1971, where the classification of controlled drugs is a tiered system reflecting official perceptions of their relative harmfulness. The production, manufacture, export, import and distribution of the controlled drugs is limited exclusively to medical and scientific needs. All other acts, including importation, cultivation, sale and possession are illegal and punishable by imprisonment.

- 1.28 The trend in recent years in Scotland has been towards harsher sentences for drugs offences. In particular, the combination of longer sentences of imprisonment for drug and drug related offences and high numbers of problematic drug users in prisons has contributed to the significant increase in the prison population and the consequent increase in public expenditure on incarcerating more and more of our citizens.
- 1.29 What then would increased incarceration achieve? We know already, as the sections on sentencing and prisons in Part Two show, that neither the threat nor the experience of imprisonment deters drug misusers (Fagan, 1992; Chaiken and Johnson, 1988). We also know that massive incarceration, a policy followed with catastrophic consequences in the United States, does not reduce the drug problem. And we know that even if we could detect and imprison virtually all of our most serious drug offenders – at massive public expense – this would only increase the problem of drug misuse in prisons. Even in ‘drug-free halls’ some prisoners are dealing a wide range of illegal drugs and other prisoners are using them.
- 1.30 In sum, increased penal severity would, at best, have little impact on the current drug problem and, at worst, seriously intensify the problems we already have. Research shows that imprisonment may not only fail to deter but may also make matters worse by strengthening the links between street and prison and cementing users’ and dealers’ identities as members of a drug subculture. Moreover, a key limitation on the deterrence of illegal drug use and dealing through the criminal justice system is that those most frequently arrested and imprisoned for drug offences, “do not respond to these sanctions the way middle-class people probably would; and as the conditions of life in their communities continue to deteriorate, the gulf between those responses widens” (Currie, 1993, 163).
- 1.31 The significance of this latter point cannot be overstated. Increased penal severity in practice would mean increased social exclusion for the have-nots in our society. As is clear from the evidence presented in the section on trends in drug and alcohol use in Part Two, increased consumption of illegal drugs is an all class phenomenon but incarceration is almost wholly experienced by the most disadvantaged groups.

DECRIMINALISATION OF DRUG USE

- 1.32 Another option for regulation is ‘decriminalisation’; a term that is used in a variety of ways, all of which are really about partial decriminalisation. Decriminalisation could be partial by categorising drugs according to their high or low risk value (to users and society) and then removing the prohibition from the lowest risk drugs. Alternatively, partial decriminalisation could refer to the decriminalisation of the possession and consumption of very small amounts of any drug. Typically the term ‘decriminalisation’ refers to the decriminalisation of drug use, specifically cannabis use. In this case, decriminalisation involves the creation of a system of control in which the possession of small amounts of cannabis for personal use ceases to be a criminal offence. Several countries have decriminalised cannabis use and, by extension of the principle, some countries also permit the cultivation of small

amounts for personal use and the gift of small amounts to another person. Other transactions, including the possession of larger amounts, cultivation and supply for profit remain illegal.

- 1.33 The aim of decriminalisation is to remove the stigma of criminality from cannabis users but, at the same time, to prevent commercial exploitation. Some restrictions on the circumstances of use, such as in relation to children and young persons and driving a vehicle, are typically considered necessary. Different countries have adopted different ways of defining what constitutes possession, for example, by statutory enumerated quantities as in some of the United States. Cannabis use was first decriminalised in 1973 in the State of Oregon where the legislation made the possession of one ounce of cannabis a civil 'violation' (comparable to a parking ticket). Imprisonment was abolished for the possession of small amounts and no criminal record results from the imposition of a fine. Public opinion surveys conducted subsequent to the passage of the Oregon legislation showed that the use of cannabis did not increase significantly (Blachly, 1976). Cannabis is now decriminalised in many of the States and in Canada.
- 1.34 The best known example of decriminalising drug use is in The Netherlands. As is discussed in the section on drug control in international context, though drug use remains technically illegal, Dutch policy has been to selectively decriminalise some drugs in some amounts. In practice, though not in law, the sale and use of small amounts of marijuana and hashish have been tolerated – but not heroin or cocaine (Van Dijk, 1998). The aim is to separate the markets for 'hard' and 'soft' drugs in order to contribute to 'harm reduction'. Law enforcement efforts and resources are concentrated on larger drug traffickers, whereas for drug users the emphasis is on avoidance of the criminal justice system. Instead efforts are made to channel users to treatment programmes and social services.
- 1.35 In some countries there have also been localised experiments in which specific parts of a city are defined as 'free' zones where drugs may be used and sold with minimal interference, though they remain illegal under national law. The best-known experiment was in Zurich, Switzerland, though the 'free' zone policy was largely abandoned in 1992 (Gould, 1996). Many European countries have either enacted laws decriminalising the possession of cannabis for personal use and others routinely do not prosecute for such offences even though criminal penalties remain on their statute books.

CONTROLLED DISPENSATION OF DRUGS

- 1.36 The controlled dispensation of drugs to addicts who have been certified by a medical doctor, frequently referred to as the 'medical model', is another form of regulation. The aim here is not to deregulate the drug trade but to dispense drugs to drug misusers under strict guidelines about amounts and conditions of use. Under the so called 'British system', addicts could receive heroin from doctors or clinics but the private production and distribution of heroin was subject to severe penal sanctions as was heroin use except in its medical form. Since the 1970s, prescribing heroin

has been abandoned in favour of methadone – a synthetic opiate that blocks the body's craving for heroin but, amongst other things, produces less of a pleasurable 'high' and lasts considerably longer. The possession or sale of methadone is itself illegal outside of the strictly controlled medical relationship.

- 1.37 There is little doubt that the option of the controlled dispensation of drugs to addicts is a valuable part of any drug treatment policy and the majority of studies suggest that this does have some impact on reducing drug related crime (see, for example, Marsh, 1998; Coid et al, 2000; Keen et al, 2000). Nevertheless, there is also evidence indicating that addicts supplement their prescriptions from illegal sources.

LICENSING

- 1.38 Illegal drugs are not, of course, the only substances related to crime. Alcohol is a major problem for many offenders and is frequently linked to offending behaviour. Historically the state has been concerned with the social and behavioural manifestations of excessive alcohol consumption – public disorder, crime and violence. But alcohol, as such, is not an illegal drug – it can be bought and sold, imported and used, under a licensing system. This means that there are restrictions on the sale of alcohol – to people under the age of 18 years, it can only be purchased in licensed stores, and in both licensed premises and registered clubs, it can only be sold during certain hours of each day. Attempts to prevent and regulate alcohol use are through health education and licensing, not the criminal law, the only exceptions to this being drunk driving and drunkenness offences. Yet, as the section on drugs, alcohol and crime in Part Two indicates, alcohol related crime is a serious problem.
- 1.39 Most advocates of a licensing system for currently illegal drugs are referring to the licensing of cannabis. Special outlets, 'authorised sellers', would be licensed for the sale of cannabis and restricted to a limited number in specified areas. Purchasers would have to give reasonable proof of identity, there would be a limit on the amount purchasable at any one time and so on. As with alcohol, cannabis would not be sold to young people and advertising would be regulated or prohibited. Again as with alcohol, the circumstances in which cannabis use would be a matter for the criminal law would be specified, for example, driving under the influence, owners of licensed premises knowingly allowing consumption by under age young people on their premises and so on (Logan, 1979).

LEGALISATION

- 1.40 There are those who would go further than licensing to total legalisation, that is, deregulation of the production, sale and use of all drugs – hard and soft. This view, based on the principle that the state should not interfere in individual citizens' choices about the substances they consume, has received support in the USA. It has also been considered by the European Parliament where arguments have linked large scale organised drug trafficking to repressive policies, suggesting that

legalisation could be an effective tool in controlling trafficking (Chatwin, 2001). Advocates of legalisation generally accept the need for qualifications similar to those with licensing and that the circumstances in which drug use would be a matter for the criminal law should be specified. But these sorts of restrictions are exceptions to the general rule that the government should not intervene in private drug transactions. This position has been referred to as the 'free-market' approach to drug control; an approach whose central objective is the 'deregulation of the drug market' (Currie, 1993).

- 1.41 Advocates of total legalisation argue that most of the damage caused by drugs is because of their illegality. The argument runs as follows. Legalisation would reduce or eliminate crime currently associated with the drug trade and with drug addiction. The illegality of the drug trade makes it not only highly profitable but also inevitably violent; for example, disputes over 'turf' or between users and dealers cannot be resolved by legal means.
- 1.42 The legalisation argument accepts that there will be increased health and social problems associated with an inevitable rise in the consumption of drugs. However, the damage increased consumption would bring could be offset by, for example, funding more treatment centres with the revenue gained by taxing formerly illegal substances, and saved in reductions in drug related crime. In addition, adverse health effects would ultimately be lessened with legalisation since more people with serious drug problems would feel able to come forward for treatment, prenatal care, or other forms of help.
- 1.43 Most of those in favour of complete deregulation do not dispute that consumption would increase if drugs were legalised. What they do not consider is that it is almost certain that increased consumption of illegal drugs would mirror consumption patterns of legal drugs – alcohol and nicotine – where there is an ever-increasing disparity between the socially advantaged and most disadvantaged groups in society. High taxes on drug sales would not act as a break on consumption any more than it has with alcohol or tobacco and the result could be a new black market, selling cheaper drugs.

DRUG CONTROL IN INTERNATIONAL CONTEXT

- 1.44 The present British system of drug control derives from obligations assumed by the United Kingdom as a Party to a long series of international conventions, going back to the Geneva Convention of 1925; these obligations are currently embodied in the 1961 Single Convention on Narcotic Drugs (Logan, 1979). Through signing the Maastricht Treaty in 1991, Britain, along with all countries in the European Union, is committed to international co-operation and to various UN drug conventions, particularly those that concern curbing large-scale drug trafficking crime organisations. Individual member states are free to continue with their own differing domestic policies. The pragmatic Dutch approach is increasingly influential, for example, in the development of the emphasis on social needs in Austria, Denmark, Italy and Portugal (Blom and Van Mastrigt, 1994), the decriminalisation of cannabis

possession in parts of Germany, Belgium and Portugal, and the provision of methadone programmes in Switzerland (Lemmens and Garretsen, 1998).

- 1.45 Dutch drug policy is generally regarded as liberal, tolerant and dynamic (De Kort and Cramer, 1999). It is based on 'normalisation'; drugs are seen as a 'normal' problem affecting society in general, rather than a problem of 'pathology' facing individual users (Van Vliet, 1990). Drug addicts are regarded as patients who need help, rather than as criminals who require punishment. These conceptions underlie the 1976 Opium Act, which makes provisions for the health of individual users, people around them and society as a whole. It is, however, important to stress that the social problem approach relates to drug use. The Dutch strongly enforce criminal justice measures against drug trafficking.
- 1.46 In relation to drug users, two main principles underpin Dutch policy. First, the principle of 'harm reduction' which aims to reduce both 'primary harms' caused by the drugs themselves and 'secondary harms' suffered by addicts and others as a consequence of addiction. The aim of Dutch policy is, therefore, to reduce the risks posed by the use of drugs to the users themselves, people in the immediate vicinity and society at large. Eradicating drugs from society is explicitly rejected as unrealistic; the aim is to contain the damage caused by drugs. Harm reducing initiatives – needle exchanges, free testing of ecstasy pills for purity, reception rooms where users can take drugs without making a nuisance of themselves on the streets and methadone programmes – mean that drug addicts are visible, have open access to treatment and can, therefore, be monitored. These practices have not led to an increase in the overall number of users (Korf et al, 1999) but they have led to a higher proportion of addicts accessing treatment and a lower drug related death rate in The Netherlands than in countries with more prohibitionist policies.
- 1.47 The second principle underpinning Dutch policy is the separation of the markets for 'hard' and 'soft' drugs and thus for closing the dealers' 'gateway' from cannabis to heroin and cocaine. Hard drugs – heroin, cocaine, crack cocaine and amphetamines – are judged to present an unacceptable risk to society. On the other hand, soft drugs – cannabis and marijuana products – are assigned a far lower risk status. In order to achieve a separation of the markets, the sale of cannabis in coffeeshops is tolerated in parts of The Netherlands. Coffeeshops must adhere to a set of carefully laid down rules; hard drugs must not be sold, there can be no advertising, no sales to minors and no nuisance caused to neighbours. Trade stock cannot exceed 500 grams and each customer can only buy up to 5 grams per day (Van Dijk, 1998). Cannabis itself remains illegal and, although coffeeshops are licensed to sell small amounts, they cannot grow or import it but are dependent on an illegal supply market (De Kort and Cramer, 1999).
- 1.48 Despite this highly paradoxical 'legal fudge', the Dutch generally regard their 'separation of markets' and 'harm reduction' policy as being effective. Some comparisons between The Netherlands and the UK are instructive. In the UK, 2% of teenagers have tried heroin, compared with 0.01% in The Netherlands. There are around four times as many 'problem' hard drug addicts per head of the population in the UK (250,000 in a population of 60m) and, while the number of hard drug addicts in the UK continues to rise, the number in The Netherlands (25,000 in a

population of 16m) has remained fairly stable over the past 20 years. In the UK 40% of teenagers, including 24% of 15 year olds, have tried cannabis compared with 20% in of teenagers, including 15% of 15 year olds, in The Netherlands (European Monitoring Centre for Drugs and Drug Addiction, EMCDDA, 1999). And, the crimes typically committed by drug addicts – burglary, robbery, shoplifting and theft from cars – are significantly more prevalent in the UK than in The Netherlands (International Crime Victims Survey, ICVS, 2000).

- 1.49 At the opposite end of the spectrum to The Netherlands, Sweden’s drugs control policy aims for a society free of illegal drugs. Sweden’s current prohibitionist policy targets every user and dealer and makes no distinction between soft and hard drugs. While there are differing views on the effectiveness of Swedish policy, available statistics show a significant increase in serious drug addicts from 12,000 in 1980, when Swedish drugs policy was more akin to the Dutch approach, to 22,000 in 1998 under the prohibitionist regime. Statistics also show that an increase in drug related deaths and availability of illegal drugs is at an all time high (Yates, 1998).
- 1.50 Despite differing domestic policies across the EU, there are some prevailing tendencies. Problematic drug use is consistently linked to social exclusion, prevention and treatment options are becoming more comprehensive, and community work is increasingly important in prevention. The principle of treatment instead of punishment is being adopted, some member states have consolidated social and medical support for drug-addicted offenders and, increasingly, the first contact with law enforcement agencies is being used as a door to treatment. The EU appears to be shifting from repressive responses to those that reduce the risks of drug misuse. There is, for example, an ongoing expansion of new projects that aim to give legal, professional and political recognition to activities such as needle exchange, injecting rooms or substitution treatments. In terms of treatment and development, the borders between legal and illegal drugs are blurring in all EU countries (Chatwin, 2001).
- 1.51 As far as control is concerned, total legalisation is not currently considered an option in any member state, though there is agreement that the prosecution and imprisonment of drug misusers can increase their problems. Debate continues on how to deal with those in possession of small quantities of drugs for personal use, or who commit petty crimes because of their drug dependence. To sum up, there is a shift towards decriminalising some behaviour linked to consuming and possessing drugs for personal use. Most member states reject extreme solutions, either total legislation or increased penal severity, but continue to prohibit drug use while modifying the penalties applied to it (Chatwin, 2001).
- 1.52 The European Parliament views drug misuse as a public health issue and has seriously considered recommending that possession of drugs for personal use should not be a criminal offence (Stewart-Clark report, 1986; Cooney report, 1991). The Parliament has also taken the view that legalisation must be rejected as the EU supports the United Nations, heavily influenced by the USA, in aiming to minimise the use of drugs. Education, information and rehabilitation have been endorsed as the most effective ways to reduce the demand for illegal drugs.

PART TWO: CRIME AND CRIMINAL JUSTICE

TRENDS IN DRUG AND ALCOHOL USE

Alcohol remains the main drug used by all ages, including young people. Illegal drugs are, however, widely used and significant numbers of young people from all social backgrounds have, therefore, engaged in criminal activity, simply through their use of illegal substances, mainly cannabis. Most people who use illegal or legal drugs neither become problematic users nor do they become involved in wider criminal activities associated with their drug use. In the career of most illegal drug users, 'escalation' to 'harder' drugs and long-term continuation of use is confined to a minority.

- 2.1 The incidence and prevalence of drug and alcohol use amongst young people for experimental, recreational and social reasons is widespread and continuing to rise (see, for example, Miller and Plant, 1996; Ramsay and Percy, 1996; Balding, 1998). In relation to 15 and 16 year olds, Miller and Plant (1996) found that 94% had drunk alcohol, a third had smoked cigarettes and 42% had at some time used illegal drugs, mainly cannabis. Alcohol, therefore, remains the most common drug used by young people. Regular consumption starts early, with 89% of children admitting to having had their first alcoholic drink by age 13 and underage drinking to excess is an increasingly common social phenomenon (NACRO, 2001). In the older age groups, 42% of young men aged between 18-24 years, the group most likely to commit crime, drink more than the recommended safe limit of 21 units per week (Office of National Statistics, 1997).
- 2.2 As far as illegal drugs are concerned, cannabis remains the most widely used. Balding (1998) shows that at least one in every three young people will have tried some form of illegal drug by the age of 15 and that higher numbers of younger children (11-13 year olds) are trying illegal substances than ever before. In Graham and Bowling's (1995) self-report study of 14 - 25 year olds, 45% of young men and 26% of young women admitted to illegal drug use at some time and the rate of use was significantly higher for white than ethnic minority populations. Similarly, based on data obtained from the British Crime Survey (BCS) and Scottish Crime Survey (SCS), around one in two young people (under 25) has tried a prohibited drug at some point in their lives (Ramsay and Spiller 1997; Anderson and Frischer, 1997). A significant proportion of young people from all social backgrounds have, therefore, engaged in criminal activity, simply through their use of illegal substances and the average age of initiation is becoming lower (NACRO, 2000).
- 2.3 While cannabis is still by far the most commonly used illegal drug and accounts for over 90% of all drugs seizures (Muncie, 1999, 36), amphetamine, LSD, ecstasy, crack and polydrug use have been increasing amongst young people since the late 1980s (Parker et al, 1995; Mott and Mirrlees-Black, 1995; and Shapiro, 1999). In terms of specific substances, the 1996 SCS found evidence of substantial increases in the use of opiates and ecstasy. The proportion of 16-24 year olds who had used

cocaine, crack cocaine, heroin or methadone in the last 12 months rose from 1.6% in 1993 to 5.3% in 1996. For ecstasy use the increase was from 5.1 % to 8.8% and was particularly marked among young women, rising from 1.7% in 1993 to 5.9% in 1996. In general, however, the magnitude of the increase in drug use was similar among young men and women (Anderson and Frischer, 1997, 5), supporting recent studies which demonstrate that the use of illegal drugs – particularly cannabis – is an increasingly ‘normal’ aspect of young people’s leisure, transcending class and gender boundaries rather than associated with particular youth cultures (Parker, 1996).

2.4 For most young people, experimentation with illegal drugs involves cannabis and amphetamines, and from the early 1990s onward, some use (occasional, irregular or regular) of Ecstasy (MDMA) and LSD, both class ‘A’ drugs. Note, however, that in the career of most drug users, ‘escalation’ to ‘harder’ drugs and long-term continuation of use is confined to a minority. In other words, “most young drug users are not at a significant risk of becoming casualties – their experimentation is too fleeting, their involvement too occasional” (South, 1999, 73). However, there is no doubt that some young people are at “high risk of addiction and social exclusion” (Gilman, 1998, 17), such risk being particularly associated with certain background factors in their lives. The ten most crucial factors listed, though not in rank order, by Gilman are:

- mental health issues,
- initiation into crime,
- school non-attendance,
- unemployment as the norm,
- experience of being ‘looked after’ (e.g. in care of a local authority),
- homelessness (not simply sleeping rough but not having a settled place to call ‘home’),
- heavy use of legal drugs in early life,
- criminally active parent with a history of substance misuse,
- disruption of family unit, and
- use of illegal recreational drugs.

2.5 While illegal drug use is an ‘all-class’ phenomenon, drug use trends during the 1980s and 90s were significantly related to the emergence of large numbers of young, socially and economically deprived users (Ruggiero and South, 1995). Moreover, illegal drug use is no longer predominantly amongst males: the 1996 SCS found that, for ‘ever-users’ between 16-19 years of age, 40% were male and 38.1% were female. Nevertheless, drug dealing and the drugs economy are largely a male preserve (South, 1999; Maher, 1997; Ruggiero and South, 1995), and higher proportions of males continue using drugs on a regular basis, producing proportionately more problematic illegal drug users. On the other hand, the burden of care falls upon female partners or relatives (principally mothers) of male heavy drug users – and some of this ‘care’ involves these carers in illegal activities to obtain drugs for the male users. The whole area of familial implications and, indeed, familial and voluntary sector care has, however, only been very patchily researched. As far as ethnicity is concerned, existing evidence suggests that white and Afro-Caribbean illegal drug use is of similar proportions (Mott and Mirrlees-Black, 1995)

and that Asian use is generally low (South 1999). In the most recent SCS, ethnic minority respondents were more likely than whites to consider both occasional and regular drug use to be risky (MVA, 2002).

- 2.6 Increases in the numbers of children in the early teenage years with drug problems is of particular concern (Ashton, 1999). Many young people in need, both because of their drug problems and because of what led to these problems, frequently fall through gaps in services. By and large drug services have developed to deal with problems which often only become visible when the constraints of the home and school are outgrown. This problem is exacerbated by the fact that many of the youngest drug users tend to use the much more accessible and cheaper alcohol and solvents instead of or as well as illegal drugs.
- 2.7 To sum up, while use of illegal drugs is largely confined to young people, this has not always been the case; for example, during the 19th century presently illegal drugs were used by or administered to a wide age-range, from infancy to senility (Berridge and Edwards, 1981). Furthermore, one characteristic of the contemporary illegal drug scene is that it also embraces a wide age-range of different kinds of drug users; from those who were in their twenties in the 1960s and are now in their fifties and sixties, to those who are in the teens today. Nevertheless, the majority of drug users can be described as young, relatively few being over thirty-five, regardless of class or gender. Cannabis is, by a long way, the most typically used illegal drug in Scotland and across the EU; used by around forty million people across the EU (EMCDDA, 1999). But alcohol, a legal drug, undoubtedly remains much more commonly used by young people than any illegal drug and is, of course, used extensively by those over thirty years. Finally, most people who use illegal or legal drugs neither become problematic users nor do they become involved in wider criminal activities associated with their drug use. But some do.

DRUGS, ALCOHOL AND CRIME

There are various quite different sorts of correlation between illegal drug use and other kinds of crime. Some of these relationships suggest that the drug use itself causes or explains the crime; others suggest that involvement in other kinds of crime helps to explain the drug use. The most frequently recurring relationships suggest that drug use and crime are both linked to other underlying socio-economic and subcultural factors.

Much of the crime due solely to offenders' drug habits – drugs offences – can therefore be explained because the drugs are criminalised. Apart from driving under the influence of alcohol or drugs, there is not much evidence of the kind of direct causal link between drugs and crime that would exist if the drugs were not criminal. In particular, cannabis use, on its own, is extremely rarely associated with criminal activity.

That is not to say that problem drug misuse, any more than problem drinking, has no relationship to a whole range of crimes. It does. Evidence suggests a

very strong link between alcohol and crime. Excessive intake of alcohol appears to be more directly linked to violent crime than most illegal drug use. This does not mean that alcohol or other drug use alone cause crime. The point with both legal and illegal drugs use is that the explanation for the main link with criminality lies elsewhere – in socio-economic and subcultural factors.

COMPLEX CONNECTIONS

- 2.8 A variety of connections between drugs and youthful offending have been established but there is no clearly demonstrable causality. Briefly, 'hanging around' with youths who do risky things, including offending, may bring contact with drugs; alternatively 'getting into drugs' and hanging around with drug users may ease, encourage or require the passage into various forms of crime, usually acquisitive, to generate funds for purchasing drugs. The Audit Commission's report, 'Misspent Youth' (1996) noted that of the 600 young people studied, 15% were classed as having a drug or alcohol problem, and of the persistent offenders the figure rose to 37%. Arnall (1998) argues that, given that there are some differences between adult and youth offending, one difference in young people's offending: "might be less about feeding a habit, but more about 'lifestyle', about a young person's general way of life and behaviour at that time. Drugs and crime might be two of those factors" (Arnall, 1998, 21). Hough (1996) has therefore concluded that such offending may be more 'drug related' than 'drug driven'.
- 2.9 Similar explanations can often account for drug misuse and other forms of crime. Both are widespread amongst young people, especially young men. There is also a growing body of research that establishes links between offending behaviour and drug taking by young people. For example, Jamieson, McIvor and Murray's (1999) study of offending by young people in two Scottish towns found a strong link between young people's use of drugs and offending – mainly thefts, housebreakings and some physical assaults. Young people's drug use and its contribution to their offending increased dramatically with age and drug addiction was the most common explanation provided by older age groups (22-25 years) for continued offending. Research by NAPO (1994) shows that when asked to assess what proportion of their caseload had problems associated with alcohol and drugs, probation officers thought that a quarter of offenders misuse drugs regularly and 30% were judged to have serious problems with alcohol. Probation officers judged that almost three-quarters of all substance-abusing offenders had committed their most recent offence to buy drink or drugs.
- 2.10 It has been accepted for some time that a number of people engage in criminal activity to sustain their involvement in illegal drug use (Inciardi et al, 1994). The association with alcohol is particularly strong and it is estimated that over 50% of crimes involve alcohol in some way (Institute of Alcohol Studies, 2000). Further evidence on the relationship between alcohol and crime comes from crime victims. When asked about violent incidents in the BCS, 40% victims judged that their offenders were under the influence of alcohol. In cases of stranger violence, 53% of

victims said that their offender had been drinking alcohol (Home Office, 2000). Research findings on the perceptions of police officers are similar. In a 1999 survey, 60% of police officers said that alcohol had a greater impact on their work than illegal drugs, none said that illegal drugs were a greater problem and 96% believed that the scale of the alcohol problem was not reflected accurately in the crime statistics (NACRO, 2001).

2.11 In relation to illegal drugs, research on the Arrestee Drug Abuse Monitoring Methodology (ADAM) in Scotland shows very high levels of illegal drug use and criminal activity where:

- 71% of urine samples tested positive: 52% tested positive for cannabis, 33% for Benzodiazepines, 31% for opiates, 12% for methadone, and 3% for cocaine,
- 26% of male and 51% of female arrestees tested positive for opiates,
- the level of opiate use was found to be higher in Scotland than in any of the 35 areas covered by the US ADAM programme (see ADAM, 1999),
- 25% of arrestees said they had received illegal income within the last 30 days,
- 43% of injectors said they had passed on injecting equipment within the previous 3 days,
- 25% of arrestees said they had either owned or had access to a gun; amongst current injectors 37% reported having access to a gun, and
- 65% of arrestees thought there was a connection between illegal drugs and violence and 93% between alcohol and violence (McKeganey et al, 2000).

2.12 A study of the criminal histories of suspected drug offenders in Strathclyde provides further insights into the links between drug misuse and crime. Recorded criminal histories of suspects apprehended for drug offences during a Strathclyde Police anti-drugs and crime initiative show that:

- 70% had previous convictions, and 41% of those with previous convictions had at least 10,
- of those with previous convictions, 61% had previous convictions for theft, 41% for housebreaking, 26% for theft of a motor vehicle, 38% for the possession of drugs, and 15% for supplying or attempting to supply drugs, and
- amongst suspects with previous convictions, 31% were aged 16 or 17 at the time of their first offence (McGallagly and Dunn, 2001).

2.13 Young offenders have also been found to have higher rates of drug use and misuse in comparison with non-offending young people. BCS and SCS figures indicate that 50% of those under 20 have used some kind of illegal drug. However, research shows that, of young people on supervision orders 70% reported having taken some form of illegal substance (NACRO, 2000) and 95% of young people held in young offenders' institutions in Scotland said they had taken illegal drugs (SPS, 2000). The evidence is mounting that young offenders are at high risk of both involvement with drugs and of developing problematic drug use – they are more likely to use more dangerous 'class A' substances and to take drugs intravenously, thus placing a higher risk on their health. Delinquent behaviour typically predates drug use but drugs and delinquent behaviour may be mutually reinforcing – as drug use increases so does the likelihood of other problem behaviour (NACRO, 2000). Indeed Audit Scotland's baseline report on 'Youth Justice in Scotland' recognises that "drug and alcohol abuse affect youth crime in a variety of ways" (Audit Scotland, 2001, 13).

- 2.14 Most of the research on relationships with crime concentrates on opiate users and on 'men, drugs and crime'. There are significant gaps in the literature. For example, there is a tendency to ignore the extent to which heroin users are polydrug users and, even when polydrug use is correctly identified as such, alcohol is typically one of the misused drugs (see Plant and Plant, 1992; Strang and Gossop, 1994). In addition, despite the fact that cannabis is, undoubtedly, the most commonly used illegal drug, there is little research on links between cannabis use and crime. From available evidence, cannabis use, on its own, is extremely rarely associated with criminal activity. It is also rarely associated with dependency; most users do not encounter or create serious problems. There are, however, complex links between cannabis use and the use of other drugs.
- 2.15 In Scotland, studies by Hammersley et al (1989, 1990) seriously challenge the view that heroin use alone is a direct causal determinant of criminal activity. While heroin use and crime are related, use of other drugs is also related. A prior history of criminality, rather than prior drug use, is the more important determinant of crime frequency. For teenage drug users' offending, "explanations of delinquency are likely to be more relevant ... than explanations invoking 'drug addiction'" (Hammersley et al, 1990, 1592). This conclusion is supported by studies showing that other forms of criminal activity tend to predate drug misuse (Hunt, 1990; Plant, 1990).
- 2.16 The recurrent finding is that most people who both abuse drugs and commit crimes began committing the crimes before they began using drugs – their need for drugs cannot, therefore, have caused their initial criminal activity (though it may have accelerated it later). For example, Vaillant found that, unlike alcoholics, heroin addicts had typically been involved in crime well before they began their career of substance abuse. Whereas alcoholics seemed to become involved in crime as a result of their abuse of alcohol, over 50% of the heroin addicts (versus 5% of the alcoholics) were "delinquent before drug abuse" (cited in Innes, 1988). Similarly, a US federal survey of drug use amongst prison inmates found that three fifths of those who had ever used a 'major drug' regularly – that is, heroin, cocaine, methadone, PCP or LSD – had not done so until after their first arrest (cited in Innes, 1988).

ACQUISITIVE CRIMES

- 2.17 Nevertheless, problem drug misuse is a crucial factor in a large number of acquisitive crimes and both dependent and other very heavy users report financing at least part of their habit through theft – other sources include income, state benefits, loans, selling property, gifts, prostitution and drug dealing. Drug addiction has been found to be related to 30-50% of acquisitive crimes and effective treatment has been shown to reduce the level of shoplifting and other drug-related crimes (NTORS, 1999). Typically then, drug-related crime is non-violent and acquisitive, involving theft, shoplifting, forgery, or burglary (Chaiken and Chaiken, 1990) or prostitution (Plant, 1990, McKeganey et al, 2000).

- 2.18 Studies of the drug-crime careers of crack-cocaine and heroin users in England suggest individual crack-cocaine misusers may be spending £20,000, and dependent heroin misusers £10,000 per year, deriving their income largely from acquisitive crime, although benefits and legal work income also contribute (Parker and Bottomley, 1996). Other research draws attention to a greater hedonistic attachment to a consumption-oriented lifestyle among young users who routinely engage in petty crime (Collison, 1996; Parker, 1996).
- 2.19 For many dependent drug misusers, spending on drugs is significant and many of them do finance their drug use through crime, though the causal process can take several forms. Chaiken and Chaiken's (1990) summary of US research indicates that a progression from casual misuse to dependence and then to property crime occurs for some drug users, but that for others, possibly most, a history of acquisitive crime may predate and facilitate drug misuse. Persistent use of drugs other than heroin and cocaine seems unrelated to persistent predatory offending; however, offenders who are heroin-dependent polydrug users tend to be highly persistent offenders, and their rate of offending falls dramatically when they stop using heroin (Chaiken and Chaiken, 1990).

VIOLENT CRIMES

- 2.20 Less is known about the instrumental use of violence in crimes committed to finance drug use. What we do know suggests that there is a hierarchy of methods of financing drug use – if the preferred method is not available then the next method is selected. In most cases 'dealing' is the preferred method, followed by property crime, and only then by violent crime. Instrumental violence as part of the process of acquiring drugs certainly occurs but is much rarer than non-violent acquisitive crime. Extreme levels of violence have become associated with crack dealing but it is unclear whether the dealers are users and whether use of crack has itself contributed to the violence (Bean and Pearson, 1992; Dorn et al., 1992).
- 2.21 Serious drug-related crimes – violence, murder, large-scale trafficking and money laundering – though less frequent, appear to be increasing (South, 1997). The effects, or after-effects, of intoxication can provoke violence, or violence can be used instrumentally to acquire money for drugs. The links appear to vary substantially by type of drug. There is no evidence that cannabis predisposes users to violence; quite the reverse. This is also broadly the case with opiates – no association has been established between dependence on heroin as such and violence. The use of 'dance drugs' at 'raves' is typically associated with 'benign collectivist hedonism' (Saunders, 1993). However, regular use of stimulants such as cocaine and amphetamine can lead to anxiety, psychotic symptoms and paranoid behaviour (Ghodse, 1995). Links have been found between violence and use of barbiturates and amphetamine, and there is suggestive evidence that cocaine – especially in the form of crack – can lead to violence (see Fagan, 1990, for a US review of links between drug use and aggression).

- 2.22 The use of alcohol alone and in combination with other drugs has been clearly connected with violence. The extent to which alcohol use is responsible for certain forms of criminal behaviour has been a recurrent theme in the research literature (Russell, 1993). A number of studies examining criminal careers and drinking careers suggest that "criminality and alcohol abuse tend to run in parallel, as both have their peak incidence in young adults and tend to diminish with age. Those who continue with heavy drinking and petty crime into mid-life tend to become habitual drunkenness offenders" (d'Orban, 1991, 298). D'Orban also observes that "studies of offences of violence show that the majority of the offenders, the victims or both, had consumed alcohol prior to their offence" (1991, 296). On the basis of the available evidence, excessive intake of alcohol is much more closely linked with violence than most illegal drugs (Russell, 1993). And, while our knowledge of the prevalence of violent crime amongst illegal drug users is limited, it appears that taking various drugs to excess in combination – such as amphetamine and alcohol – substantially increases the chances of violent behaviour (Hough, 1996).
- 2.23 Specifically in relation to alcohol, the BCS and SCS have found that young men who have been drinking heavily are more likely than moderate drinkers to (a) become involved in minor violent offences, and (b) become victims of some crime of violence. Other research supports the finding that young 'heavy' drinkers are more likely to become victims of violence as well as committing minor violent crime themselves (Gottfredson, 1990). Cookson (1992) found that, among 17-21 year old males sentenced to detention in a young offender institution, 41% reported being drunk or having drunk alcohol at the time of their current offence. Disorderly conduct and violent offences have repeatedly been found to be strongly related to recent alcohol consumption. For example, 20-30% of violent or disorderly conduct offences were found to occur in or near licensed premises and involve young men (Mott, 1990) and in 67% of cases where an arrestee had consumed alcohol, the arrest was for a violent or public order offence (Saunders, 1998). Most recently, a 1999 survey of the results of random testing of arrestees revealed that, of those testing positive for alcohol, 32% were arrested for assault, 29% for criminal damage and 61% for breach of the peace (Bennett, 2000).

DRIVING OFFENCES

- 2.24 Increasing numbers of road accidents and deaths are caused by people under the influence of illegal drugs. Campaigns, tougher penalties and enforcement in relation to drinking and driving have undoubtedly had an impact, though the level of road accidents and deaths caused by drunk drivers remains unacceptably high. Whether or not a similar strategy would be effective in relation to driving under the influence of drugs is not clear. What we do know, from a recent survey of recreational drug use and driving in Scotland, is that of 17-39 year olds, in the past twelve months, 5% had driven a motor vehicle on a public road when they suspected they may have been over the drink-drive limit and 5% had done so under the influence of a 'recreational' drug (Ingram, Lancaster and Hope, 2001). We also know that drug driving appears to be associated with a particular life-style (clubbing) rather than being distributed throughout society (Neale, McKeganey, Hay and Oliver, 2001).

SOCIAL CONTEXT

2.25 As with illegal drug use, beliefs about how alcohol is 'supposed' to affect behaviour, coupled with the influences of immediate social context and wider culture, are as important for the behavioural outcome as the amount of alcohol consumed. Recent studies of young offenders (Parker, 1996; Collison, 1996) suggest that alcohol and drugs have become central to a 'consumption-oriented' lifestyle, and that this lifestyle is funded by persistent petty crime. Other studies draw attention to the emergence of a leisure 'night-time economy' in British and other European cities and its impact on alcohol and drugs consumption, public order and crime (Hobbs et al, 2000).

VICTIMS

The costs of drug related crime – to victims, communities and drug misusers themselves – extend well beyond the immediate consequences. There are serious impacts on a whole range of victims of alcohol and drug related crime. These consequences are experienced directly by crime victims, drug users themselves, their families, their children and their communities. There are also more subtle and long term forms of victimisation – long term health consequences and reduction in educational and employment opportunities for adolescent drug users.

Responses that seek to identify the social capital available within communities themselves offer a constructive way to promote integrated prevention programmes. Local communities require to be assisted by the police and others to revitalise neighbourhoods and enhance opportunities in order to strengthen their abilities to resist drugs and crime.

2.26 People who live in communities with high drug problems frequently experience multiple crime victimisation in addition to high levels of fear and anxiety about themselves, their children and their property. These problems are concentrated in our most socially disadvantaged and economically insecure communities. Such communities suffer disproportionate amounts of crime in general and drugs related crime in particular, and are victims of the violence inextricably entwined with the illegal trade. In this context, the role of the police as providers and protectors of community safety is crucial. The main conclusion from the evidence on different kinds of police strategies against drug dealing and violence is that crack-downs have very short lived impacts (Sherman, 1990), but that community policing together with urban regeneration help victims and potential victims to more effectively resist further deterioration in their communities. Integrated prevention programmes, which reduce victimisation, are widely supported by members of the public (see, for example, Glasgow People's Jury on Drugs, 2001).

2.27 Drug misusers themselves can, of course, amongst other health risks, be victims of drug related deaths, especially from adulterated or contaminated illegal supplies.

But victimisation spreads much further to claim victims of foetal drug exposure, drug related family disintegration and child abuse. There are also more subtle kinds of victimisation from illegal drug use including adverse long term health consequences, the foreclosure of opportunities in education and work for adolescent users and the demoralisation and disintegration of communities where efforts to improve social conditions are undermined (Currie, 1993).

2.28 In terms of overall financial costs in the UK, Hough (1996) estimates that for victims, "crimes committed by dependent heroin users alone may involve losses of between £58 million and £864 million annually" and, for the criminal justice system, "if drug-related crime absorbed 5 per cent of criminal justice resources, this would cost about £500 million" (Hough, 1996, 1). Hough stresses that his estimates in relation to acquisitive crime are based only on information about dependent heroin users and notes that we have no 'raw materials' with which to even begin to estimate the volume of acquisitive crime committed by other illegal drug users. As far as alcohol related crime is concerned, while there have been no systematic attempts to assess the costs – either to victims or to the criminal justice system – these are undoubtedly very large indeed.

ENFORCEMENT

Enforcement practices are shifting towards channelling problematic drug users into treatment rather than the criminal justice system. Promising approaches include low level enforcement practices aimed at disrupting markets and reducing demand, and arrest referral schemes aimed at diverting users into treatment.

2.29 Drugs offences are rarely reported in the same way as assaults or robberies – enforcement statistics primarily reflect detections, seizures and convictions rather than reports from members of the public. In part, because of the increasing availability and use of illegal drugs and, in part, because of the recognition that the marketing of illegal drugs in Britain is 'disorganised', enforcement goals have been changing. The British illegal drugs market is characterised as fragmented, with a diversity of participants from highly successful entrepreneurs (Hobbs, 1995) to petty-criminal users and dealers, often caught within the criminal justice system (Ruggiero and South, 1995).

2.30 In these circumstances, where the 'market' is 'disorganised', several police forces have shifted enforcement goals to reducing demand rather than eliminating supply. 'Low level enforcement' involves strategies that attempt to disrupt the retail markets for illegal drugs and the 'inconvenience policing' of purchasers and users (Hough, 1996; Lee, 1996). The main rationale for low level enforcement is that by making drug markets less predictable for both users and dealers, demand will be reduced. The aim is, therefore, preventive and it is frequently coupled with diverting users from criminalisation to counselling and treatment (Pearson, 1991).

- 2.31 Research demonstrates that low-level enforcement can disrupt street markets and reduce crime in the short term (Sherman, 1990), but there are two main limitations. First, it is unclear whether the markets are simply displaced elsewhere, and second, there is evidence that users and user-dealers prefer to buy from a trusted source by prior arrangement – street markets are a last resort (Power et al, 1993, cited in Hough, 1996). Nevertheless, the ACMD (1994) outlines ways in which low level enforcement can be integrated into strategies of harm reduction. These include the use of ‘referral cards’ or leaflets giving details of helping agencies which police can hand out in less formal encounters with illegal users. Some police forces pursue such a de facto ‘decriminalisation’ of soft drug use and possession which, at the very least, channels some problematic users into treatment and away from crime.
- 2.32 Police forces also operate arrest referral schemes to encourage problematic drug users to attend medical or drug services. Referral schemes are intended to exploit the opportunity provided by arrest to channel users into treatment. Turnbull et al (1995) note that problem users have flashes of wanting to stop using, often at vulnerable periods in their lives, such as at arrest and detention. Initial evaluation of pilot arrest referral schemes concluded that they were likely to be an effective way to reduce crime and drug use involvement (Hough, 1996) and evaluations of later schemes have shown substantial reductions in the number of acquisitive crimes committed (Edmunds et al, 1998). Given the high costs to the criminal justice system together with the social costs of crimes committed by drug misusers, such schemes only have to prove successful with a few users to cover their costs. It is worth noting here that the most common disposal for those arrested for drugs offences in England and Wales – typically possession of cannabis – is a formal caution and that research demonstrates low reconviction rates for those who receive formal cautions – only 25% within 3-5 years (Hughes and Hughes, 1993 cited in Hough, 1996).
- 2.33 Other enforcement strategies include procedures such as asset seizure. Drug trafficking sentences may also include asset confiscation. So far, seizure of assets has not proved as effective as hoped, not least because of the huge profits in drug trafficking. Thus, while the number of confiscation orders and the amounts forfeited have been rising, so too have the scale and profits of to be made in the drugs economy (Collison, 1994). It is important to stress here that drug trafficking is, of course, a major part of the global economy. Research in this area shows that, on a global level, drug trafficking involves not only criminal cartels but also ‘legitimate actors’ such as state security agencies and multi-national corporations (Levi, 1991).
- 2.34 It is within this context that the illegal drugs market is reportedly growing stronger. The use of firearms and violence by traffickers has been rising (O’Connor, 1995) and money laundering has developed in various ways. All of this has profound implications for enforcement. Overall, enforcement and other drug-control policies must confront the likelihood that the ‘war on drugs’ is un-winnable. If drug markets cannot be eradicated, then perhaps we should be asking ‘what kind of drug markets are least undesirable?’ and trying to shape them in that direction (Dorn and South, 1990). Other jurisdictions, most notably The Netherlands, have adopted drugs policies that focus most law-enforcement resources on sales, especially on the larger traffickers, while dealing with drug users mainly through treatment programmes and other social services, rather than the police and the courts.

SENTENCING

The trend towards increased use and length of prison sentences for drug crimes has not had a deterrent effect. The establishment of the pilot drug court in Glasgow indicates a positive shift in thinking towards channelling drug misusing offenders to treatment and social support. By extension, this principle should also be applied to offenders whose alcohol abuse is related to offending.

TRENDS

- 2.35 While data on sentencing trends has not received much attention in the research literature, it is clear that the trend has been towards increased severity in penalties for drugs offences; an escalation which runs counter to policy goals aimed at reducing the use of imprisonment. Dorn et al (1992), in discussing the escalation in sentence severity in England and Wales, which has been paralleled in Scotland, note that in 1972, that is, before the 1971 Misuse of Drugs Act (MDA) had come into effect, prison sentences were frequently of between six months and two years. By 1976, when the MDA had been in operation for three years, the numbers of persons receiving a prison sentence had approximately doubled and, of these, the majority received sentences of between six months and three years. From 1983 onwards, the courts could refer to the Lord Chief Justice's guidelines suggesting a raised tariff. In practice, sentences of ten years or more became common; the 1985 Controlled Drugs (Penalties) Act raised the maximum penalty for trafficking in Class A drugs from fourteen years to life imprisonment; and the 1986 Drug Trafficking Offences Act (DTOA) allowed such sentences to include asset confiscation (Levi, 1991).
- 2.36 The trend towards increasingly severe penalties continued throughout the 1990s. Increases in fines for possession or supply of certain drugs may well have led to an inability to pay and further imprisonment for fine defaulting. Criminal statistics show a threefold increase in the number of convictions for drug offences in the last ten years. The pattern is not the same for all drugs offences but overall, for 'all drugs', the trend is upwards. 'Unlawful possession' of cannabis remains overwhelmingly the most frequent offence dealt with.
- 2.37 In recent years we have seen harsher sentences in Scotland for drugs offences and have reached the position that around 80-90% of prisoners received into custody have been misusing illegal drugs and /or alcohol or both. The combination of longer sentences for drug and drug related offences and high numbers of problematic drug users in prisons, has contributed to the significant increase in the prison population and the consequent increase in public expenditure on incarcerating more and more of our citizens.

EFFECTIVENESS

- 2.38 This relates centrally to the issue of what can usefully be achieved by imprisoning problematic drug users. Some argue that their imprisonment should impact on reducing crime in the community. The three main ways in which prison can arguably reduce crime are: by general deterrence, that is, by deterring potential offenders from committing crime; by individual deterrence, that is, by deterring people in prison from further offending; and by incapacitation, that is, by keeping offenders out of circulation. The research literature on general deterrence is inconclusive about the marginal preventive effects on potential offenders of varying the level or type of sentences (see Beyleveld, 1979; Ashworth, 1994). (Marginal general deterrence refers to the hypothesised link between heavier penalties and the crime rate). Conclusions about the impact of sentencing in this country are difficult to draw; there is no research on general deterrent effects where custodial sentences are targeted specifically on problem drug users, nor does the research which does exist indicate that drug users are any more susceptible to the individual deterrent effects of a prison sentence than other types of offenders (Hough, 1996).
- 2.39 There is a fair amount of research (mainly from the US) indicating that far from being deterred by the threat of imprisonment, some drug users gain 'status' from a prison sentence (see Currie, 1993). Research evaluations show that neither the threat nor the experience of imprisonment deters drug misusers. In a study of the deterrent effect of criminal sanctions imposed on people arrested for drug offences, Fagan (1992) found that imprisonment had no significant effect on the likelihood of subsequent re-arrest for drug offences. Overall, "the severity of criminal sanction" had little influence on the likelihood of re-offending; the severity of criminal sanction imposed did not deter drug offenders. In fact, among those arrested for dealing, the chance of being re-arrested for the same crime increased as the severity of their sentence rose. Moreover, those who got probation were less likely to commit violent felony offences or to be re-arrested for drug possession. The chance of being rearrested for the same crime increased as the severity of their sentence increased.
- 2.40 Such findings have been replicated by a number of other US studies (see Chaiken and Johnson's 1988 review of research on 'adult predatory drug-involved offenders'). In addition, some studies have demonstrated that imprisonment may not only fail to deter but may also make matters worse by strengthening the links between the street and the prison, thereby cementing users' and dealers' identities as members of a drug subculture (Currie, 1993, 161). In addition, imprisonment is, by definition, the most extreme form of social exclusion. To further exclude those who are already on the 'margins' of our society, unless it is necessary for public protection, is not only ineffective in terms of reducing re-offending but also morally unacceptable.
- 2.41 There are also grounds of challenge in terms of cost effectiveness. While the incapacitative effects of imprisonment can, undoubtedly, prevent some property crimes by keeping some heavily dependent drug users out of circulation, the extent to which incapacitation can reduce drug related crime depends on whether imprisonment simply defers further offending until release. The evidence on this issue is extremely limited but what we do know is that there are drug-related crimes

within prisons. Furthermore, the little evidence we have indicates that, unless problem drug users receive effective treatment whilst in prison linked to ongoing support in the community, they will resume both their drug use and associated offending on release. Even if imprisoning highly criminally active problem drug users reduces crime, Hough (1996) questions the cost effectiveness of such sentences. He compares imprisonment with probation and argues that if, "methadone maintenance programmes can reduce drug-related crime by two-thirds at an annual cost of £2,400, and prison can eliminate it at an annual cost of £24,000, the former may be a much better buy than the latter" (1996, 41).

DRUG COURTS

- 2.42 In response to increasing levels of drug-related crime, despite a policy of massive incarceration, specialist drug courts were pioneered in the United States (in Dade County) in 1989. Both a growing recognition that incarceration was ineffective in reducing drug related crime and research results showing that treatment could reduce not only drug addiction but also, in some cases, associated drug related offending, led to the development of drug courts. Drug courts are based on the principle of sending individuals into mandatory drug treatment instead of sentencing them to a prison term. From the outset, they have been based on a multi-agency philosophy – criminal justice agents and treatment providers work together to devise an effective response (Walsh, 2001). The first pilot drug court in Scotland was established in Glasgow Sheriff Court in November 2001.
- 2.43 Looking at a Decade of Drug Courts (US Department of Justice, 1998) provides a comprehensive evaluation of specialist drug courts. That report compares the effectiveness of drug courts with other disposals and finds that they are more effective in relation to reductions in recidivism, capacity to deal promptly with relapse and its consequences, and capability to integrate drug treatment with other rehabilitation services to promote long-term recovery. Indicators of the success include: high participant retention rates of 70%, more than double the norm; cost effectiveness; benefits for the families and children of drug-using offenders; freeing up of criminal justice resources for violent and other serious cases; and benefits to prosecutors and police. Building on the success of the adult drug courts, recent developments in the US include the establishment of family drug courts and juvenile drug courts.
- 2.44 The thinking behind the establishment of the pilot Scottish drug court was heavily influenced by the international experience. The drug court in Glasgow, which has specially trained Sheriffs, aims to:
- reduce the level of drug related offending behaviour,
 - reduce or eliminate offenders' dependence on or propensity to misuse drugs, and
 - examine the viability and usefulness of a Drug Court in Scotland using existing legislation and to demonstrate where legislative and practical improvements might be appropriate.

2.45 The drug court is targeted on offenders aged 21 years or older (but with exceptional consideration for those aged 16 to 20 years) where:

- there is an established relationship between the pattern of serious drug misuse and the pattern of offending, and
- the nature of that drug misuse is susceptible to treatment.

To meet the criteria for appearance at the drug court offenders must have committed an offence liable to prosecution in the Sheriff summary court and offenders should normally first appear before the summary court from custody. The drug court aims to provide rapid access to required treatment programmes and regular and random drug testing of all offenders on community based orders. In the event of relapse, offenders can be imprisoned for part of their sentence and then returned to their treatment in the community. Offenders are regularly reviewed in court and encouraged to make changes to their lifestyle aimed at breaking the cycle of drug addiction and related crime. A research evaluation of the pilot drug court is underway to assist in the process of making drug courts available throughout Scotland. By extension of the principle, offenders whose alcohol abuse is related to offending should also be dealt with by a drug court.

COMMUNITY DISPOSALS

Drug using offenders whose offences are drug related can receive treatment via community based criminal justice disposals. By extension of this principle, such orders could be extended to offenders whose alcohol use is related to their offences. Although treatment within the criminal justice system is coerced, this does not seem to reduce effectiveness.

HARM REDUCTION

2.46 Outside the criminal justice system, health-care services delivering treatment to problem drug users typically operate on the assumption that, however desirable as a treatment goal, total abstinence is rarely achieved quickly or simply. Since the advent of HIV/AIDS, the health-care intermediate goal of harm reduction has prevailed. Thus 'treatment' for problem drug misusers has meant prescribing pharmaceutically pure drugs as a substitute for 'street drugs' – most importantly methadone maintenance programmes. Basically a health-oriented harm reduction strategy, claims are also made for methadone maintenance as a method of crime reduction (Parker and Kirby, 1986; Marsh, 1998; Coid et al, 2000; Keen et al, 2000). Many drug misusers, with expensive and compulsive drug habits, such as daily heroin users, finance their use through property crime, drug dealing and prostitution (Bennett, 1998). Methadone maintenance reduces the need for addicts to generate income by illegal means and 'treatment' becomes a means to 'crime prevention' (Pearson, 1999, 16).

COERCED TREATMENT

- 2.47 In most cases, treatment, delivered within the criminal justice system as part of a community sanction, is linked to probation supervision. Unlike other sanctions, the primary purpose of probation is rehabilitative. The courts have a general power to attach additional requirements to a probation order if they are deemed to be reasonable, legally enforceable and capable of being supervised. Such requirements include treatment for drug and/or alcohol dependency.
- 2.48 Treatment within the criminal justice system is, in important ways, 'coerced'. At the sentencing stage, an offender's failure to agree to treatment as part of a community sentence may well result in a prison sentence. When treatment is accepted as a condition of probation, defaulting on the condition may cause breach proceedings (and imprisonment). Even in cases where treatment is not an explicit formal condition of probation, continued drug misuse or offending could result in breach, as could any results from drug testing. Hough (1996), in reviewing the research evidence, notes that research evaluations in the US show that people receiving legally coerced treatment respond no worse than others. Legal coercion, "seems to be an effective way of first getting drug misusers into treatment early and, secondly, of keeping them there" (Hough, 1996, 37).
- 2.49 Effective treatment crucially depends on getting problem drug users to talk honestly about their drug use; this is particularly difficult within a criminal justice context (ACMD, 1991). Before trial and sentence offenders may believe that disclosure will reduce their chances of bail and increase their chances of a severe sentence; under supervision on a community penalty and on release from custody, disclosure may lead to breach proceedings. In prison, fear of disciplinary procedures contributes to a reluctance to be honest about drug use. The ACMD (1991) recommended approach is to provide incentives to disclose drug problems, such as better access to community based treatment, and to remove disincentives, by getting different parts of the criminal justice system to adopt mutually consistent harm reduction policies.

DRUG TREATMENT AND TESTING ORDERS

- 2.50 Drug testing is one of the solutions to the problem of disclosure. Drug treatment and testing orders (DTTOs) are community sentences that require treatment with regular drug testing and review by the courts. DTTOs are aimed at offenders whose offences are related to their drugs use. Such offenders may be required to undergo treatment in the community when they might otherwise have received a custodial sentence. DTTO's were introduced by the Crime and Disorder Act 1998 and early research in England (Turnbull, 1999) shows that DTTOs produce a marked decline from pre-sentence expenditure on drugs and the number of acquisitive crimes. It is also predicted that extensive implementation of these orders should pay for themselves by reducing health and crime related costs of drug dependence.

- 2.51 DTTO's were piloted in Scotland in Glasgow and Fife in 2000 and the evaluation of the schemes shows very promising results. For example, drugs spend pre-order was on average £490 per offender per week, whereas 6 months into the order, spend had reduced to £57 – an 88% reduction in 6 months. The proportion of positive tests progressively reduced by over 30% between the first test and the 25th and it has been estimated that a net saving of £3 million was made to the community during the pilot period, taking into account both drug and crime reductions (Morrison, 2002). The average cost of a DTTO per annum was £7,992 compared to £28,374 for prison. All DTTO's were made on offenders who were unemployed and whose crimes were mainly acquisitive. All offenders had a history of heroin abuse, albeit sometimes used with other drugs. Over 50% of the offenders had at least 20 previous convictions, and over 30% had at least 40. In Glasgow, 36% had over 10 previous custodial sentences (24% in Fife) and a quarter had more than 20 previous periods in prison (1/8th in Fife). These offenders would not previously have attracted non-custodial sentences in Scotland. DTTO's are currently being rolled out across Scotland (Morrison, 2002).
- 2.52 It is worth noting that there is a sharp distinction on drug testing policy north and south of the Border. In England, testing is regarded as sanctioned enforcement, whereas in Scotland it is regarded as verified and objective information to inform assessment and treatment and to enhance public and court confidence. In this respect, Scotland is fully in accord with the approach found to be more positive in much of Europe (Morrison, 2002). On the other hand, in England and Wales DTTOs can be used for 16 and 17 year olds. Given the Executive's Youth Crime Review's proposed 'bridging system' for 16-18 year olds, and the increasingly early age of initiation into experimentation with illegal drugs, DTTO's could be used for 16-18 year olds in Scotland, whose offences are drug related.
- 2.53 In Rethinking Criminal Justice, the Consortium recommended that similar types of orders should be made available for offenders with alcohol problems. Sentences would require appropriate treatment for offenders whose offences were alcohol related – including alcohol education courses with a focus on skills, training and attitude change, together with regular alcohol testing and review by the courts. Treatment and testing orders for offenders, whose offences are related to their alcohol and/or drug use, could be reviewed by specialist drug courts if and when these become fully established throughout Scotland.

PRISON

Very high proportions of prisoners have problems with drug and/or alcohol misuse. Although various kinds of treatment are available within prisons, their effectiveness is limited by the prison environment, where drugs are widely available, and by prison culture.

DRUG AND ALCOHOL PROBLEMS

2.54 Across the EU, drug users constitute a high proportion of the prison population (EMCDDA, 1999). In Scotland, the largest group of sentenced prisoners is those convicted specifically of drugs offences (importation, possession, supply etc). This is the case for both males and females. Those convicted of trafficking may not be users but a significant number of offenders imprisoned for other types of crime appear to be dependent users. Maden et al (1991) found that in 1989, 11 per cent of men and 23 per cent of women in the adult convicted population were dependent users prior to imprisonment – dependency being defined as the daily usage of drugs of dependency in the six months before the offence (cannabis was excluded). This is before any assessment is made of non-dependent problem users. Recent figures for Scottish prisons suggest that between 80-90% of prisoners have drug and/or alcohol related problems (SPS, 2002).

DRUG USE

2.55 Illegal drugs are, of course, widely available within prisons. Intravenous drug use (IDU) represents a particular concern, given that the scarcity of injecting equipment makes needle sharing likely (ACMD, 1993) with attendant risks of HIV and AIDS. Turnbull et al's (1991) study of ex-prisoners found that 7.5% of their sample had injected drugs before their sentence; and of those who were injectors before their sentence, 8% of men and 16% of women were HIV positive at the time of interview. Most drug injectors cease to inject when in prison but a substantial proportion continue, despite the risks (ACMD, 1993) and this has been a particular problem in Scottish prisons. Dye and Isaacs (1991, cited in Power et al, 1994) interviewed 123 inmates at HMP Edinburgh for whom 43 (35%) had a history of IDU and 29 (23.6%) had injected whilst in prison. From these 123 inmates, 38 (30.9%) had shared needles prior to imprisonment and 22 (17.9%) had done so during custody.

2.56 For a number of extremely important reasons, "prison is not an effective environment for reducing commitment to a drug using lifestyle" (South, 1997, 944). When drug users are punished by a prison sentence, they are committed to an environment where drugs are invariably widely available, but the means of using them (clean injecting equipment) are not. Sharing injecting equipment makes the risk of HIV/AIDS, or forms of hepatitis, a serious problem (ACMD, 1993). The health problems of prisoners with drug and alcohol problems are becoming increasingly serious and account for virtually all major illnesses in prison – around 20% of prisoners have hepatitis C, many have TB, others are suffering from malnutrition.

DRUG TESTING

2.57 The problem of sharing needles and injecting equipment was exacerbated when, following the introduction of mandatory drug testing in prisons, evidence began to appear that some prisoners were switching from the use of cannabis to the much more dangerous use of opiates in order to avoid detection (South, 1997); cannabis lingers much longer in the body-system and is therefore more easily traced. Random mandatory drug testing (MDTs) in prisons does, however, have positive uses. It can be used to determine the prevalence of drug use, to assess the effectiveness of efforts to reduce its prevalence and to monitor an individual prisoner's attempt to remain abstinent. Voluntary drug testing also enables an individual prisoner to demonstrate to prison authorities that they are drug-free.

2.58 On the other hand, there are negative consequences from random MDTs:

- they cannot discriminate the pattern of drug use, simply the presence of a drug in an individual's urine. For example, a positive opiate test may have come from a one-off ingestion of two dihydrocodeine tablets for a headache or from daily intravenous heroin use, and
- cannabis is known to remain in the urine for up to three weeks after ingestion. This increases the odds of testing positive for those who may only use cannabis and, as already noted, some prisoners have been encouraged to switch to the use of more harmful drugs to avoid detection in prison.

2.59 Whatever the pitfalls, MDTs have confirmed the prevalence of problematic drug use in prisoners on their reception into prison. This problem is particularly acute in HMPI Cornton Vale where the vast majority of women have had experience with illicit drug use (Louks, 1997). We are faced with the situation that many people with drug problems commit crimes that the courts consider deserve punishment by imprisonment. If there is no dramatic shift in penal or drug policies, large numbers of problematic users will continue to be imprisoned and prisons will have to provide drug services if they are to alleviate the suffering and prevent future problematic use and crime by these prisoners.

TREATMENTS

2.60 Treatments for drug and alcohol misusers within Scottish prisons are still limited, though programmes are expanding, and there are some evaluations of effectiveness. Medical doctors working within prisons can and do prescribe methadone and other notifiable drugs to dependent drug users backed by a policy of reduction prescribing. Reduction prescribing played an important role in the Drug Reduction Programme (DRP) in HMP, Edinburgh. The DRP developed in response to the exceptional level of HIV infection amongst prison inmates in the early 1990s (estimated as 1 in 5 at the time) and coupled the prescribing of substitute drugs (mainly methadone and benzodiazepines) with group work and counselling sessions. Shewan et al (1994), on the basis of a comparison of those prisoners who had completed at least 21 days on the programme with those who had either dropped out or had no contact

with the programme, found that the DRP group had lower levels of drug use while in prison. No long-term follow up was conducted.

- 2.61 Evaluations of maintenance prescribing of methadone in prison systems are rare – not least because maintenance prescribing in prisons, at least until very recently, has been rare. There are some exceptions. For example, the New South Wales Prison Methadone Programme was set up in the late 1980s with the objectives of reducing drug use in prison, reducing the risk of HIV and AIDS infection and reducing recidivism. Hall et al (1993) found that while the programme was promising in relation to reducing drug use in prison, there appeared to be little impact on recidivism; retention rates in treatment after release were poor. This may be explained, in part, by the hostility demonstrated by some prison staff who thought that maintenance prescribing was pandering to addicts and, in part, and probably more importantly, by the failure to link more broadly with community supports prior to release.
- 2.62 Treatment programmes within prisons can also be undermined by ‘inmate culture’ (see Plant, 1994). In order to overcome this difficulty, some prisons have established therapeutic communities (TCs) where prisoners who want treatment can be protected from the dominant pro-drugs ethos. Evaluations of the ‘Stay’n Out’ programme in New York and the Cornerstone programme in Salem, Oregon, both of which include throughcare and aftercare in the community as critical to success, indicate that those who complete the programmes do better than drop-outs and control groups and, as with community based TC’s, the longer people remain in the programme the greater the impact (see Plant, 1994).
- 2.63 ‘Drug-free wings’, known as ‘milieu therapy’ in the US, have also shown positive results; not as positive as TC’s but significantly better than conventional counselling. Such wings, which involve a degree of physical separation from the rest of the prison, insulate participants from the pro-drugs ethos and typically involve a programme of group therapy, education and intensive counselling. Counsellors include ex-dependent users and links are established with Narcotics Anonymous for post-release follow-up. Drug testing is also an integral part of these regimes. A separate Drug Addiction Centre has recently opened in HM Prison Barlinnie, along similar lines to ‘drug-free wings’. Apart from that, in Scotland most prisons have ‘drug-free halls’, though they are rarely drug free.

THROUGH-CARE

Programmes that take the whole range of prisoners’ needs into account and provide support in the prison and in the community, not only in the early weeks of readjustment on release, but also in the long term, have had the most favourable results.

- 2.64 The development of drugs services in prisons and their links with community based services is crucial. Though there is little research in this area, what we do know emphasises the need for ‘continuity of care’, using high quality services following

treatments in prison in order to maximise effectiveness (Kothari et al, 2002). The chance of treatment in prison being successful is improved by the nature, quality and length of support after release and it is essential that there is co-ordination between whatever programmes are offered in prison and those offered by criminal justice social work services to offenders under post-release supervision.

- 2.65 As already noted, aftercare programmes have been shown to be central to the success of prison TC's. Hiller et al (1999) found that the effectiveness of treatment in a prison TC, in terms of subsequent recidivism rates, was enhanced if it was followed by residential aftercare on release. In the aftercare programme, participants were given more opportunities to find stable employment and accommodation. In addition, they were given continued support to prevent relapse in the community. Existing studies emphasise that linking prisoners to drug agencies and community projects is a key part of throughcare and that information exchange between prison and community is vital to inform agencies of the individual's previous treatment history and treatment needs (Kothari et al, 2002, Burrows et al, 2000).
- 2.66 While the evidence on the effectiveness of throughcare in Britain is limited, evaluations in the US show that 'habilitation', that is, teaching prisoners basic skills, helping them to develop the capacity to cope with their 'survival' needs in the outside world and establishing links with a range of community services that can offer continuing support are all essential features of the most successful programmes. HMP Edinburgh Throughcare Centre is an innovative approach in Scotland. There, community based agencies – housing, employment, benefits, literacy, counselling, family relationships and reducing re-offending – work with offenders within the throughcare centre and continue to offer support on release. This kind of approach contains many of the features central to 'continuity of care'. In addition, a substantial programme of transitional care was launched in Scotland in 2002 taking prisoners through to their first 12 weeks in the community.
- 2.67 From the international experience it is clear that throughcare programmes that take the whole range of prisoners' needs into account and are integrated with support in the community, not only in the early weeks of readjustment on release, but also in the long term, have the most favourable results. In particular, evaluations in the US of supported work programmes for ex prisoner addicts have consistently demonstrated a close link between treatment success and a stable job. These programmes have also been found to be highly cost effective (Currie, 1993).

PART THREE: RETHINKING PENAL POLICY

DRUGS POLICY

- 3.1 Drug and alcohol related health issues have serious implications for the criminal justice system. However, one of the major paradoxes of drugs policy is that, through legislation such as the Misuse of Drugs Act 1971, an attempt is made to achieve what are essentially public health goals, reducing the availability and consumption of dangerous drugs, by means of the criminal law. To a significant extent, criminal justice responses to problematic drug use today are part of the legacy of the heroin epidemic of the 1980s which, "was to assume a characteristic form of difficulty, particularly on working class housing estates already hit by high levels of unemployment and poverty" (Pearson, 1999). The same neighbourhoods also experienced the highest levels of crime and 'fear of crime'; the heroin problem compounded the difficulties of already shattered communities. Thus, while cannabis is by far the most commonly used illegal drug and the youth drug culture is predominantly a cannabis culture (Parker et al., 1998; Ramsay and Spiller, 1997), the heroin epidemic created serious dilemmas for policy and practice in relation to all illegal drugs.
- 3.2 Current policy is set out in the UK Government ten-year strategy, *Tackling Drugs Together to Build a Better Britain* (Home Office, 1998) and the Scottish strategy *Tackling Drugs in Scotland: Action in Partnership* (The Scottish Office, 1998). Both of these documents emphasise three main themes: partnership between different agencies, effective targeting of resources, and the connection between drug-related problems and social inclusion. These themes are echoed in the Scottish Executive's *Plan for Action on alcohol problems* (Scottish Executive, 2001).

PARTNERSHIP

- 3.3 Within the drugs field there have traditionally been three broad areas of policy concern – prevention, treatment, and law enforcement. Drugs policy is highly complex not only because of the interaction between these policy goals but also because each area of concern is itself internally complex. Current government policy documents continue to mention prevention, treatment and law enforcement but "the emphasis has undoubtedly shifted towards crime-reduction and the reduction of other forms of anti-social nuisance associated with serious drug misuse" (Pearson, 1999, 17). Reducing harm to the wider community is a main objective; one of the key means of achieving this is by "channelling offenders with drug-related problems through the criminal justice system towards systems of treatment and support which will assist them in tackling their drug misuse" (Pearson, 1999, 17). Emphasis is, therefore, placed on joint working between agencies – perhaps most importantly between health, social work, housing and criminal justice.
- 3.4 Research on the multi-agency approach to crime prevention indicates that there are inevitable conflicts of interest between agencies such as the police, social work and

housing because of their structural positions rather than different attitudes. Conflicts arise because of different missions and objectives, different systems of representation and accountability, power differentials between agencies, and varying procedures for information sharing and protecting confidentiality together with more mundane issues such as the routine workloads of different agencies (Blagg et al., 1988). At a practical level, if multi-agency collaboration is to work positively, it is important to openly acknowledge that different agencies may have distinctive organisational objectives, professional ideologies and personal belief systems. Realistic plans and effective working practices depend on overcoming the factionalism, short term funding and fragmentation engendered by current policies. It is also essential to engage with local communities to enable them to help tackle their own drug problems (The Scottish Office, 1996).

RESOURCES

- 3.5 Resource allocation is critical in the short and longer term. In the short term, it is important to consider the likely impact of the Government's strategy; for example, the use of the courts to 'fast track' offenders with drug-related problems towards helping agencies will affect waiting lists for other problem drug users seeking help. An evaluation of one 'fast-track' programme shows that, while this can be an effective way of tackling the drugs-crime connection, waiting lists for other users had increased significantly and mistrust between drugs services and criminal justice agencies meant that there was sometimes a reluctance to share information such as the outcomes of urine tests (Barton, 1999).
- 3.6 In terms of long term planning, the emphasis must be on reducing the social, economic and health costs resulting from drug misuse. This has fundamental implications for the way public resources are currently allocated in the drugs field. Estimates show that around 61% of drug-related expenditure is on enforcement measures, 13% on international supply reduction, 13% on treatment and 12% on education and prevention (Pearson, 1999). Government policy is committed to shifting drug-related expenditure 'over time' from 'reacting to the consequences' of drugs misuse through enforcement towards 'positive investment' in prevention through health and social services.
- 3.7 The results to date from the National Treatment and Outcome Study (NTORS), the largest study of treatment outcomes for drug misusers ever conducted in the UK, strongly support this strategy. Estimates suggest that "for every £1 spent on drug misuse treatment, there is a return of more than £3 in cost savings associated with lower levels of victim costs of crime, and reduced demands upon the criminal justice system. The total costs to society will be even greater than this" (NTORS, 1999).
- 3.8 Further support comes from a major research programme conducted by the RAND Corporation in the US (Rydell and Everingham, 1994). This programme involved economic modelling of the impact of different types of public investment and anti-drug programmes. Although the study focused on cocaine misuse, its findings are of more general interest. Basically, the question asked was this: if an extra dollar is to

be spent on drug programmes, will it yield improved benefits if it is spent on various enforcement measures or on health care? The answer was unequivocal – investment in health care. Indeed, the RAND study, which did not make over-ambitious assumptions about what could be expected from treatment programmes in terms of long-term abstinence, showed the dramatic potential of investing in health care rather than enforcement measures. The study estimates that every dollar spent on treatment will save \$7.46 dollars on the costs of crime and lost productivity (Rydell and Everingham, 1994, 16).

SOCIAL INCLUSION

- 3.9 Government policy documents recognise that the most serious drug-related problems are inter-related with issues of social inclusion, hence broader socio-economic forces and policy considerations. While problematic drug use is not the sole province of the poor and recreational drug use is widespread throughout all sections of society, there is little doubt that the largest and most intransigent problems associated with illegal drug use are located in our most deprived areas. For example, research indicates that the most serious pockets of heroin or crack-cocaine misuse, together with the associated crime and fear of crime, are found in the poorest neighbourhoods and housing estates (Pearson and Gilman, 1994, Pearson, 1995).
- 3.10 Indeed, connections between drugs misuse, deprivation, crime and disorder have been repeatedly established by research. Prolonged use of illegal substances is generally confined to the most disadvantaged sectors of the population and, while illegal drug use is now an 'all class' phenomenon, class is related to acquaintance with and patterns of drug use (Marlow and Pearson, 1999; NACRO, 2000). Some young people are particularly susceptible to addiction and social exclusion due to a range of background factors in their lives (NACRO, 2000). There is also evidence that dependency upon alcohol is significantly related to class, suggesting that the problem is one that goes beyond the chemical impact of the substance itself. Indeed, it "seems likely that the factors which predispose children and young people to long term, problematic alcohol consumption will correspond, at least in part, with those underpinning persistent drug taking. These same factors are in turn associated with a risk of anti-social behaviour"(NACRO, 1999).
- 3.11 The practical implications of this are two-fold. First, communities must be protected from drug-related anti-social and criminal behaviour. Because it is the poorest neighbourhoods which experience the most serious levels of drug-related crime and disorder, this means targeting resources on these already vulnerable communities – including enforcement efforts directed against dealers, other forms of community safety initiative, effective housing management schemes and a variety of social schemes to improve the fabric of the community. Clearly, effective multi-agency partnership is essential to these efforts, together with the activation and participation of local people.

3.12 The other aspect of the inter-connection between the problems associated with drug misuse and social inclusion concerns those individuals with drug problems who must be assisted to address their problems and become integrated into society. Integration into society is not just about people 'coming off drugs'— it is about how people re-create identities and lifestyles and about 'habilitation' and rehabilitation. In many cases it is about creating what was never there before. This means jobs, housing and other meaningful life opportunities. From the evidence it is unlikely that unemployment, "independent of other factors, leads to 'addiction' and hence related problems for the individual and community"(South, 1999, 75). What is likely, however, is that unemployment substantially influences patterns of recidivism amongst ex-addicts, post-treatment. Simmons and Gold (1973) view the role of employment in the rehabilitation process as being of "peculiar significance" (see also Inciardi, 1996). Drugs agencies and the criminal justice system will therefore have to connect up with job creation and job training schemes and other aspects of the wider socio-economic environment to promote social inclusion.

RETHINKING PENAL POLICY: SOME CONCLUDING COMMENTS

3.13 The following conclusions about future directions for penal policy are founded on the principles and policy options discussed in Part One and on the evidence summarised in Part Two on the connections between drugs, alcohol and crime and criminal justice responses. These conclusions are expressed as three main presumptions about how society should respond in future to the drug use of people who are 'problem drug misusers', 'problem drinkers' or both and whose problematic use currently brings them into contact with the youth or criminal justice systems. They are not presumptions about how to develop penal policy in relation to drug trafficking or the illegal trade.

DECARCERATION

3.14 The first two presumptions are about how the criminal justice system should respond to drug offences and drug using offenders. In effect, these presumptions spell out a policy of decarceration in relation to drug use. Such a policy relates centrally to the issue of what can usefully be achieved by imprisoning drug misusers. There is no research evidence to show that imprisoning problematic drug users impacts on reducing crime in the community nor does any existing research indicate that drug users are any more susceptible to the individual deterrent effects of a prison sentence than other types of offenders (Hough, 1996).

3.15 From the evidence on drugs and crime connections and based on principle, the first presumption is against the use of imprisonment for drug use offences. This presumption is based on considerations of penal justice, cost effectiveness, harm prevention and social inclusion. In terms of:

- penal justice – incarceration of illegal and legal drug users should only occur when the criminal behaviour associated with use is sufficiently serious as to justify imprisonment in order to protect the public,
- cost effectiveness – community based sentences, such as DTTO's, are significantly cheaper than imprisonment,
- harm prevention – DTTO's are also more effective in reducing drug related crime than prison, thereby reducing harm to victims and communities, and
- inclusion – clearly imprisonment, the most extreme form of social exclusion, only serves to strengthen what is often pre-existing exclusion for many of those most in need of a way into contributing to society. Where imprisonment is necessary on public protection grounds, throughcare, beginning in 'reintegrative centres' within prisons and extending into such centres in the community, is vital for drug users.

3.16 The second presumption is against punitive disposals for problematic drug users unless their offences – whether these are drug or non drug related offences – are sufficiently serious as to justify imprisonment on public protection grounds. The burden of having to take part in treatment programmes is sufficient punishment. All the evidence points to treatment oriented disposals as producing more positive results, both in terms of reductions in usage and reductions in drug related crimes. They are, therefore, more effective in preventing further harms to victims, communities and drug users themselves, and in rebuilding the lives of problem drug users and their families. It is important to note here that public attitudes in Scotland support this view. A recent survey for the Scottish Parliament of public attitudes to sentencing and alternatives to imprisonment found widespread support for sentencing drug offenders to treatment services (System Three, 2002) and the Glasgow People's Jury on Drugs (2001) recommended the use of non custodial sentences to encourage rehabilitation of drug users.

DECRIMINALISATION

- 3.17 The third presumption concerns the need for serious debate about options for decriminalisation of the use or possession of cannabis. Cannabis is the most frequent illegal drug in the enforcement statistics, the most widely used and is increasingly perceived as relatively harmless compared to other designated 'dangerous drugs'. The question of whether it justifies the enforcement resources expended upon it suggests that debates about decriminalisation or legalisation will continue, fuelled by pressures for recognition of the drug's therapeutic value in alleviating some medical conditions.
- 3.18 There are basically three positions on this issue. First, that the costly, counterproductive and unsuccessful efforts of law enforcement as a response to cannabis use, indicate that decriminalisation or legalisation is a wiser alternative. Availability would not mean unacceptable rises in use and taxation of legal supply would provide funds for educational and health responses. Regulation would ensure

purity levels and reduce health hazards caused by adulterants, and legal availability would prevent criminalising large sections of the population simply due to their use of an illegal substance whilst, at the same time, removing the profit motive that drives the criminal market. The second position is that legalisation would certainly increase use, thereby increasing the costs to society. And the third view is that legalisation and commercialisation would have profoundly negative effects on third world producing countries and that the frequently cited case of the de facto decriminalisation of cannabis – The Netherlands – is actually a policy aimed at preserving ‘market separation’, by keeping cannabis supply distinct from supply of drugs with an unacceptable risk.

- 3.19 Whatever position is held to, there is a strong argument of principle that supports changing the law in relation to cannabis use – and sale. Given that in a tolerant society we should seek to restrain the scope of the criminal law as far as possible, and that a change in the law would decriminalise the conduct of a large number of our citizens, in the absence of any strong arguments to the contrary, such a change would be desirable. The decriminalisation of cannabis would certainly have a major crime reduction effect insofar as it would produce a sudden and dramatic drop in the number of drug crimes that currently consist in the possession, use – or sale – of cannabis. Options for the decriminalisation of cannabis use and/or sale should, therefore, be given serious consideration.
- 3.20 However, even if cannabis were to be decriminalised, many drugs would remain illegal. In addition, given that, as far as users are concerned, there is little evidence linking the sole use of cannabis with other non drug crimes, whatever is done about cannabis, a large area of illegal drug related crime will remain as will alcohol related crime. The evidence suggests that the most serious links between problem drug and alcohol misuse and crime are manifestations of social exclusion and that a single focus on ‘drugs’ may be at best partially successful and at worst a doomed strategy (SCC&CJ, 2000). As already noted, the problems associated with drug misuse and crime are concentrated in some of our most disadvantaged and economically insecure communities; communities that suffer disproportionate amounts of crime in general and drug related crime in particular. Thus even “the best, most comprehensive programs to help addicts transform their lives will inevitably be compromised if we do not simultaneously address the powerful social forces that are destroying the communities to which they must return” (Currie, 1993, 199).
- 3.21 Nevertheless, while the long term answers to the ‘drug problem’ lie in wider social and economic change, the criminal justice system does have a key role to play in developing a more effective strategy. In small but significant ways, criminal justice practices can improve the prospects of problematic drug and alcohol users who are now caught in the revolving door of court, prison and the street. Law enforcement efforts can be used help strengthen the ability of drug ridden communities to defend themselves against violence, fear and demoralisation. To do this requires a far-reaching change in priorities and the development of a penal policy which gives precedence to the three principles already mentioned: the reduction of harm, the promotion of community safety, and the integration of problem drug users into productive life.

CRIMINAL JUSTICE ROUTES INTO TREATMENT

3.22 Scotland has an infrastructure of criminal justice responses compatible with these principles. In theory, offenders already can, or very shortly should be able to, access drug assessment and treatment at every point of contact with the criminal justice system. Thus:

- at the point of arrest, the 100% funding mechanism can cover the costs of local arrest referral schemes and official guidance on model schemes and effective practice is available;
- at the point of referral to prosecutors, diversion from prosecution schemes operate in most parts of the country and official guidance prioritises drugs misusers as a target group;
- at the point of first court appearance, bail information and supervision schemes currently operating in Glasgow and Edinburgh are being extended to other court areas. Adequate resources are urgently required to extend these schemes so that they give increased emphasis to drugs related issues and operate as a secondary catchment opportunity for arrest referral schemes;
- at the point of sentence, drug related assessment and treatment can be accessed through Probation Orders with a condition of treatment or in a widening number of courts where DTTO's are available as a sentencing option. The emergence of Drug Courts in Glasgow and Fife will ensure further development of DTTO's. Again, it is important to emphasise here that public attitudes have been found to be highly supportive of the use of DTTO's for drug users (System Three, 2002; Glasgow People's Jury on Drugs, 2001). In addition, for those offenders who are in the early stages of drugs and crime careers, the extension of the 100% funding mechanism to deferred sentences, will provide opportunities for early intervention in a drug misuse context;
- at the point of custody, drug treatment programmes are being made available throughout the Scottish Prison Service. The Throughcare Centre at HMP Edinburgh, and similar initiatives developing within other prisons, can provide support during a prison sentence and after release, through community based drugs agencies coming into the prison to work with offenders whilst in custody and on their release into the community. The SPS has also contracted with Cranstoun Drug Services to provide bridging services from during the prison sentence into the first 'transitional' 12 weeks after release. Contact can be made with local community groups for this period to be extended where necessary, though there is an urgent need to ensure that there are adequate community facilities for transitional care workers to refer people to; and
- at the point of release from prison, for those on longer sentences (over 4 years), continued access to drug treatment or assessment is available through statutory after care and parole arrangements. For those released on shorter sentences and not subject to statutory after care, support can be provided within 12 months of release from prison under statutory duties placed on local authorities to provide

help, guidance and assistance. The released drug user must, however, seek such assistance.

- 3.23 The above initiatives are all constructive insofar as they aim to provide serious help for problematic drug users within the justice systems through treatment in the community wherever possible, in prison where essential for public protection, and a 'continuum of care' between prison and community. But they are not all universally available across the country. Many are dependent on a process of piloting with indefinite periods of time before national expansion. This process should be accelerated as a matter of urgency. In short, the infrastructure allows for comprehensive provision but the value and effectiveness of the initiatives noted depend both on the speed with which treatment opportunities become available and used throughout the country and on the quality of delivery.
- 3.24 At the same time, law enforcement priorities must be shifted towards community safety. At present, the police are used primarily to channel mainly drug users and small time dealers into the criminal justice system. But there is another role for the police – as providers of community safety. A shift in policing priorities is required; a shift towards strategies that are more preventive and more enduring – such as some of the more innovative and better-supported forms of community-oriented policing. Such a shift would contribute effectively to the development of 'integrated programmes' of health promotion and drugs prevention. Current policy thinking, particularly in the US, seeks to identify and foster the 'social capital' – trust, participation and political involvement – available in communities in order to develop community health work (Gillies, 1997). This kind of response can address the consequences of illegal and legal drug problems for the victims of drug related crimes and for drug misusers themselves.

PRIMARY THEMES

- 3.25 In conclusion, penal policy can make a more moral and constructive contribution to a broad social strategy to reduce harms to individuals and communities caused by the wide range of problems associated with drugs misuse. The common themes identified are that:
- the justice systems should be used less to process and punish problematic drug users and more to improve their capacity to lead productive lives;
 - effective treatment programmes should be made universally available – both within the community and within prisons; and
 - local communities should be assisted by the police in strengthening their abilities to resist drugs and crime whilst, at the same time, other social and economic policies should be put in place to revitalise these communities and enhance opportunities.

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