



# Research briefing on the policing and legal challenges of the proposed drug checking services in Scotland

# **Research methods and aims**

This briefing will present research findings in relation to the policing and legal challenges surrounding the operation of proposed drug checking services in a Scottish context. The findings are drawn from a larger study which interviewed 43 participants based in Aberdeen, Dundee, and Glasgow. Participants of the wider research project are drawn from three groups (see Table 1): professional stakeholders (including police, NHS and third sector staff); people who use drugs or have done so in the last 12 months; and family members of people who use drugs or have done so in the last 12 months; and family present the views of the 10 police officer participants who were interviewed (see Table 1). At times, the views of the wider participant group are drawn on where there are important points not captured in the data from policing participants.

The aim of the research presented in this briefing was to explore challenges in relation to policing drug checking services, and the areas surrounding services, primarily through the perceptions of the police participants. Enforcement based policing (often through stop and search) and criminalisation of people who use drugs, or even fear of criminalisation, deter people from accessing services like drug checking which can undermine the ability of these services to be effective as harm reduction measures. It is therefore important to focus on this and related legal challenges surrounding the provision of drug checking in Scotland.

WIDER SAMPLE SUMMARY			
Group	Total number	Breakdown by city	Breakdown by gender
Professional stakeholders	27		
NHS	9	Aberdeen n=3 Dundee n= 3 Glasgow n=3	Female n=8 Male n=1
Third sector	8	Aberdeen n=3 Dundee n=2 Glasgow n=3	Female n=4 Male n=4
Police	10	Aberdeen n=5 Dundee n=2 Glasgow n=3	Female n=2 Male n=8
People with experience of drug use	11	Aberdeen n=4 Dundee n=4 Glasgow n=3	Female n=3 Male n=8
Family members	5	Aberdeen n=0 Dundee n=4 Glasgow n=1	Female n=4 Male n=1
Totals	43	Aberdeen n=15 Dundee n=15 Glasgow n=13	Female n=21 Male n=22

#### Table 1: Participant demographics

## Limitations of the research

Before commencing the main body of the report, it is worth considering some limitations in relation to the data collected from the police participant interviews. We interviewed a small, self-selecting sample of police participants and it is therefore not possible to know the extent to which these views are more generally representative of the wider policing population in Scotland. As will be discussed, participants were generally supportive of drug checking. It is possible that those who volunteered themselves for interview had positive perceptions of drug checking, creating a self-selection bias in the data. While participants were generally supportive of drug checking, they did describe significant challenges around its potential operation under current legal frameworks. The issues raised are therefore of interest when considering how drug checking services could and should be policed. It should also be noted that participants will not always present views that accurately reflect the reality of, for example, constitutional roles and responsibilities of the Chief Constable and the Lord Advocate. The aim of this briefing is to provide views and perspectives of a small sample of interviewees in order to illustrate key themes and note a range of challenges in order to generate discussion and debate about the role of policing with regards to implementation of drug checking services in Scotland.

## Section one: General perceptions of drug checking

## 1.1 General support for drug checking

- Eight out of 10 police participants described being supportive of drug checking, albeit noting significant challenges in relation to the policing of such services.
- A key justification for the support of drug checking was that people will take drugs regardless of enforcement-based practices, and that drug checking can help minimise the risks faced by people during a public health crisis that is partly driven by an increasingly volatile drug market.
- Participants described a key function of their role as preserving life and keeping people safe. They stated that this enabled policing support for interventions such as drug checking, alongside their role enforcing drug laws.
- Other perceived benefits of drug checking included its market monitoring function and capacity to link people with further supports and services.
- Two participants were less supportive of drug checking. One participant was sceptical of the effectiveness of drug checking and the other had concerns about whether the service could operate within current legal frameworks. However, it is worth noting that the participant who was sceptical of drug checking's legal standing describing knowing very little about drug checking.

1.2 Perception of support amongst police at local and national levels

- Participants generally felt that there would be reasonably widespread support for drug checking amongst police at local and national levels.
- They reported that high level actors within Police Scotland were increasingly willing to discuss harm reduction interventions such as drug checking as part of a desire to reduce drug-related harms.
- In relation to support amongst local divisions, the picture was slightly more mixed. One participant felt that their local division would be highly supportive of drug checking, whilst another noted that many of their colleagues would have significant reservations. Support for drug checking may also vary by department (e.g. community policing, response, CID) due to differing remits and cultures.
- Although participants expressed a general willingness to see drug checking implemented, they noted a need for Police Scotland to frame their stance carefully given the perceptions that it was a controversial intervention.

- There was a perception of police being politically neutral actors, deriving their legitimacy from public confidence and through the process of *'policing by consent'* (Prof22, police). Participants who were generally supportive of drug checking noted that if police expressed support for drug checking this might harm levels of public confidence.
- However, even those who expressed such concerns felt that the police could tacitly support the operation of drug checking through their practice, provided this was in line with a multi-stakeholder, nationally agreed strategy to reduce drug- related harms.

1.3 Shifting culture towards a public health-oriented approach

- Participants described their support for drug checking as part of a wider shift in culture towards a public health-oriented approach to drug possession and use.
- There was a general perception that criminalisation of personal possession was ineffective, resource intensive, and caused disproportionate harm to people who use drugs (PWUD). A number of participants expressed support for alternatives to criminalisation, ranging from diversionary schemes to legislative decriminalisation of personal possession.
- Participants described a growing organisational awareness of trauma, poverty, mental health problems, and vulnerability more generally, as driving factors behind drug dependency and drug-related harm.
- They acknowledged a growing organisational focus on partnership working with health/social care, and recognition that multi-agency 'levers' to address the issues above were not aided by enforcement.
- A number of limits to this public health approach should be noted, however, including the tension between the functions of enforcing drug laws and caring for/protecting people at significant risk from drug use harms. Participants often described a tension between these two functions.
- It was also noted that the culture within the police was not uniform, and that there would still be support for enforcement-led approaches to drugs.

# Section two: Issues and challenges surrounding the policing of drug checking services

In relation to the findings of this section, whilst participants did discuss the legality of drug checking services themselves, this briefing will only discuss the policing of clients attending drug checking services and surrounding areas. Drug checking services in Scotland will operate under Home Office (HO) Licences which provide legal exemption for the storage, testing, and transporting of drug samples. This means that services will operate within a rigorous legal framework, and procedures will be in place to manage aspects relating to staffing. However, HO licences do not protect prospective clients from being charged with possession offenses when entering and leaving the service. This section will therefore focus on issues around the policing of the area surrounding drug checking.

### 2.1 Preference for legislative change or national strategic guidance

Before considering the various specific concerns that participants discussed in relation to drug checking, it is worth briefly outlining the strong perception amongst participants that policing of a drug checking service would either require change to current legislation under the Misuse of Drugs Act (1971), or national strategic guidance from high level actors with the authority to enact changes in policing practices.

## Legislative change

- Legislative change was described as preferable by a number of participants. An example of such change, as discussed further below, was to effectively decriminalise<sup>1</sup> personal possession within a determined boundary around the drug checking service. These participants reported that, if they were expected to alter their practice in such ways, then legislative change would be necessary.
- Participants also acknowledged that the power to alter drug legislation lay with the UK Government, making such change in Scotland unlikely in the short term.

# National strategic guidance

Acknowledging the potential challenges of securing legislative change, a number of participants discussed 'national strategic guidance' to inform the policing of drug checking services that could take several forms:

- Most commonly, guidance from the Lord Advocate/Crown Office and Procurator Fiscal Service (LA/COPFS) was seen as a potential means of providing police with clear guidance and support to employ more public health-oriented practices.
- Other potential national guidance discussed was expected to come from the most senior police officials, in agreement with local and national government.
- Having clear national guidance, as opposed to relying only on informal agreements between local divisions and drug checking services, was seen as helping local divisions and frontline officers feel supported in their approach.

## 2.2 Enhanced Support Zone comments and concerns

An Enhanced Support Zone (ESZ) is, broadly, an agreement on how the area surrounding a drug checking service would operate. The detail of how such spaces would operate is not well developed and thus requires careful consideration. Participants described a potential ESZ agreement around a drug checking service as taking three primary forms, which will be considered below. It should be noted that these discussions have been presented in a way that represents a necessary simplification of the way in which drug checking services could be policed. This approach has been taken to stimulate consideration and discussion of the various legal and policing challenges surrounding such services, and the potential impact on prospective clients of the service. We are aware through discussion with national stakeholders that agreements around the policing of drug checking services will likely operate through less formalised arrangements than would be required under an ESZ as conceptualised by study participants. It is however worth considering these more formalised arrangements raised by participants as they highlight key concerns and considerations. It should be noted that interviews were conducted prior to changes to the use of RPWs to include Class A drugs in Scotland.

ESZ hypothetical option 1: Arrangements to limit both/either police presence and/or police stop and search (S&S) powers in relation to suspected possession within a defined area surrounding the service

• Participants acknowledged that heavy police presence and use of S&S in the vicinity of a drug checking service may act as a barrier to engagement. However, they were generally uncomfortable with any agreement limiting police presence or S&S on the grounds of suspected possession. It was felt that people may take advantage of lighter police presence and curtailed S&S, with the potential for increased crime and social disorder in the vicinity of the service. Dedicated police liaison officers were seen as a potential means of ensuring close dialogue, and proactively discussing any tensions and challenges.

<sup>&</sup>lt;sup>1</sup> See below (footnote 3) for discussion of the meaning of 'effectively decriminalise'.

• Not all participants agreed, however, that an ESZ would increase crime and disorder in the vicinity of the service. Participants highlighted that policing arrangements concerning drug checking can learn from established policing practices around other harm reduction services like injecting equipment provision (IEP).

ESZ hypothetical option 2: Possession below a threshold quantity to be effectively decriminalised<sup>2</sup> within a specified boundary around the service

- This was seen as potentially more workable than ESZ option 1, albeit with significant challenges and limitations. Participants described the need for clearly defined threshold limits, where someone in possession of drugs above a pre-determined quantity would still be subject to being charged. Participants placed an emphasis on this threshold being based on the small amount required for testing.
- Similar to ESZ option 1, participants felt that people may take advantage of such arrangements, causing a potential increase in social disorder in the area surrounding the service. They described concerns such as having to accept people using drugs openly in public spaces within such a zone.<sup>3</sup>
- Participants noted that there may be issues with such an arrangement based on where the boundaries of this zone were drawn. They felt that a designated zone could create the potential for police officers to wait at the boundary and perform stop and searches.

ESZ hypothetical option 3: An agreement/understanding around policing practices in relation to drug checking services with no formalised boundary, no changes to current legislation, and no formal restriction on police presence or ability to S&S

- Some participants described the potential for a less formalised approach than entailed in ESZ option 1 and 2: one based on an *'understanding'* around police practices in relation to a drug checking service, one which should be aligned with the desire for people to engage with the service to reduce their risk. Such agreement would likely be based on principles such as not targeting the service or clients.
- Integration of the service into an existing site, such as a third sector service or a community pharmacy, was seen as supporting police to operate in such a manner, as people could be accessing the service for a number of reasons other than drug checking. This would mean that there would be limited cause for S&S only on the basis of entering or leaving a service.
- Participants drew on the example of established practices regarding community pharmacies and IEP. Although police are aware that people receiving opioid substitution therapy (OST) or IEP would likely be in possession of drugs, they generally do not intend to target people accessing such services as doing so would not be in the interest of public health.
- Although such an approach would have less defined rules in relation to the policing of a drug checking service, participants still highlighted that they felt it would require national strategic guidance and support from high level actors, rather than solely localised agreements. It was noted that not having clear national guidance on the approach would leave drug checking clients vulnerable to differences in local policing cultures and practices, as well as the discretion of individual officers.

<sup>&</sup>lt;sup>2</sup> The term decriminalised here could refer to specific legislative provision (de jure decriminalisation) or extensions to police discretionary powers (de-facto).

<sup>&</sup>lt;sup>3</sup> It should be noted that this may be based on a degree of misunderstanding around how such an arrangement would likely work. Two participants conflated simple possession with people consuming drugs in public spaces within view of others in the community and noted that the police would be unable to intervene in such a situation, which would likely not be the case.

### ESZ option 1: potential benefits and challenges

Arrangements to limit both/either police presence and/or police stop and search powers in relation to suspected possession within a defined area surrounding the drug checking service **Potential benefits** 

- Limiting stop and search, where solely on grounds of suspected personal possession, is argued in the literature to be strongly in the interests of public health by facilitating the engagement of PWUD in harm reduction services (Greer et al, 2022; Bardwell et al, 2019).
- Evidence demonstrates that police presence around similar interventions such as IEP and supervised consumption sites acts as a deterrent to engagement amongst PWUD due to fear of criminalisation (Bardwell et al, 2019).
- Dedicated police liaison officers could be utilised to manage emerging conflict and tensions between community, police, the drug checking service, and service clients, and to proactively manage challenges (Watson et al, 2018).

**Potential challenges** 

- Participants expressed significant concerns in relation to perceived potential for increased crime and disorder under such arrangements and felt that they would have diminished capacity to respond to community concerns and ensure community security.
- Not a challenge, per se, but it should be noted that such arrangements would likely require legislative change or guidance from COPFS/Lord Advocate.

## ESZ option 2: Potential benefits and challenges

Possession below a threshold quantity to be effectively decriminalised within a specified boundary around the service

**Potential benefits** 

- Such an arrangement would provide prospective clients with a significant deal of protection compared to other options.
- Several participants described being supportive of decriminalisation of personal possession more generally.

**Potential challenges** 

- Similar to ESZ option 1, participants expressed concern about people 'taking advantage' of such arrangements.
- Participants expressed concerns that they wouldn't be able to intervene in instances of public drug use.
- Participants expressed support for arrangements where the threshold quantity was the minimum needed for testing. It is likely that people will be in possession of significantly higher quantities, even for personal use only.
- An arrangement would rely on a specified 'boundary' leaving clients vulnerable to stop and search at the edge of the ESZ.
- Such arrangements would likely require legislative change or guidance from COPFS/Lord Advocate which currently looks unlikely.

## ESZ option 3: Potential benefits and challenges

An agreement/understanding around policing practices in relation to drug checking services with no formalised boundary, no changes to current legislation and no formal restriction on police presence or stop and search practices

**Potential benefits** 

- Such an arrangement would not be based on a specified boundary and would not limit police capacity to stop and search or enter an area, limiting participant reservations about diminished capacity to respond to community concerns.
- As drug checking will be integrated into existing services in Scotland, police officers will be able to refrain from targeting people accessing or leaving the service, as they could be engaging in a number of interventions, limiting probable cause for stop and search.

**Potential challenges** 

- Participants expressed concern that such arrangements would be based only on agreements between local divisions and drug checking services and felt that there was a need for national guidance from relevant stakeholders including high level actors in Police Scotland.
- Limited protection for clients in the surrounding area (after immediately entering or leaving the service).
- Clients are left vulnerable to unsupportive police officers using their discretion to circumvent the spirit of the agreement.
- Such an arrangement could vary significantly in terms of formality and buy in from Police Scotland, ranging from the provision of national guidance to local divisions, to tacit acceptance. More informal arrangements provide less protection to drug checking clients.

2.3 Policing practices on the ground and officer discretion

- Several participants highlighted that, short of legislative change to decriminalise personal possession, people accessing the service would still be vulnerable to harassment, surveillance, and being charged in the area surrounding the drug checking service. The role of discretion was central to these discussions in highlighting the way in which officers can potentially utilise discretion and interpretation of the law. Such practices can unduly disrupt people seeking to engage in drug checking to keep themselves safe.
- One participant highlighted their perception that police may use drug checking services as an *'avenue'* to identify people *'wanted on warrants'* for other offences (Prof27, police).
- The potential for police to use drug checking services to identify and target suppliers was discussed, with one participant acknowledging that *'it won't be the big boys who are doing this, it will be the runners you know, probably the users or young people on their way down that route'* (Prof20, police).
- Participants highlighted a need for buy-in from both local divisions and frontline officers, and the need for awareness raising to enhance understanding of why such practices are counter-productive from a public health standpoint.
- Participants did not highlight discretion but focused instead on the fact that S&S decisions are based on 'probable cause'. Such decisions, however, were implicitly described by participants as shaped by both individual officer discretion and potential implicit biases (such as individual appearance), and institutional factors at local and national level.

2.4 PWEDU participant concerns around criminalisation

This section will draw on the discussions of participants with lived/living experience of drug use to highlight concerns around policing practices, and the potential for criminalisation on the grounds of possession when attempting to enter, leave or travel to the service.

- The majority of lived/living experience participants (10/11) indicated that they would utilise a drug checking service and felt that there would be demand amongst wider groups of PWUD. However, they described legal protection when entering, visiting, and leaving the service as a primary concern.
- Two participants highlighted that, provided there was no public disorder, anti-social behaviour, or criminal activity other than personal possession occurring, then there would be no need for the police to place the area under surveillance, or have a heavy presence in the vicinity of the service. Another participant described being known to the police for previous drug offences and being subjected to stop and searched *'five or six times a month'* (PWEDU8). The experience of this participant, of frequent S&S due to being known to the police, highlights that some PWUD may feel at higher risk of being targeted by police, which may act as a significant barrier to accessing a service such as drug checking.

# Section three: implications for policy and practice

Before outlining some specific implications which arise from the research, it is worth providing a highlevel summary of some of the key points discussed. Policing participants described being generally supportive of the planned implementation of drug checking services. They strongly identified with their remit of protecting life, supporting people's wellbeing, and keeping people and communities safe. They felt that there was an increasing willingness, at both local and national level, to support the implementation and operation of harm reduction services such as drug checking. While this organisational shift towards support for more public health-oriented policing was welcomed, the capacity of officers to enact public health-aligned policing was seen as limited in practice by current legislative frameworks. Officers noted that the culture within the police is uneven and support for, or resistance to, an enforcement-led approach differs by individual officer, local division/departmental remit and culture.

As outlined, significant challenges exist regarding the policing of drug checking services. Participants' discussion of three potential approaches to the policing of drug checking services, and surrounding areas, were provided to explore these tensions. The primary issues raised in relation to both ESZ1<sup>4</sup> and ESZ2<sup>5</sup> centered on concerns around increased social disorder and diminished officer capacity to respond to community complaints. While participants were generally skeptical of the feasibility of a formalised ESZ around a drug checking service, it should be noted that there are examples of such arrangements operating internationally<sup>6, 7</sup> with no evidence of increased social disorder or crime in the vicinity of services. The third potential policing approach (ESZ3) was a less formalised approach based on neither targeting the service nor clients entering or leaving the site. The primary challenge with such an approach is that it provides limited assurances for people accessing the service, who, given the reliance of such arrangements on police discretion, are left vulnerable to potential instances of unsupportive policing practices. Police participants described a perceived need for either legislative change or national strategic guidance around the policing of drug checking services. Consistent with the literature, participants with living experience of drug use described being targeted when accessing drug checking services as a core concern, and a potential barrier to use of/engagement with such services.

## 3.1 Implications for policy and practice

This final section will draw on the findings presented above to propose potential courses of action in relation to the policing arrangements of drug checking services. As the police will not have the power to enact some of the changes specified below, the noted implications are also relevant to stakeholders who may have the power to influence such factors, including the COPFS/LA and the Scottish Government. We offer these as starting points for the multi-agency discussions that will need to take place as part of developing drug checking services in Scotland.

1: There is very strong evidence that policing practices such as S&S and heavy patrol, and the criminalisation of personal possession more generally, act as significant barriers to the engagement of PWUD with potentially life-saving harm reduction interventions. Evidence suggests that the most

<sup>&</sup>lt;sup>4</sup> Limiting police presence and/or stop and search powers in relation to personal possession in an agreed boundary. <sup>5</sup> Effective decriminalization of personal possession without a defined boundary around the convice

<sup>&</sup>lt;sup>5</sup> Effective decriminalisation of personal possession without a defined boundary around the service.

<sup>&</sup>lt;sup>6</sup> Drug Consumption Rooms (DCRs) in Copenhagen operate on the agreement that police should not "normally" charge people for possession of illicit drugs for personal use in the "immediate vicinity" of drug consumption facilities', with the definition of 'immediate vicinity' collectively decided by local police and the municipality (Kammersgaard, 2019).

<sup>&</sup>lt;sup>7</sup> Drug checking services in the Netherlands operate under an agreement with the public prosecutor that people will not be prosecuted for possession when trying to access the services (Scottish Government, 2021).

effective and comprehensive means of aligning policing practices with public health goals is to decriminalise personal possession.

2: The capacity to enact legislative change such as decriminalisation lies with the UK Government and there is a need to consider more immediate approaches to enable the successful implementation and operation drug checking in response to an ongoing public health crisis. The extension of RPWs to Class A drugs potentially provides alternative means for local officers to address drug possession offences. The extension of RPW, in the absence of legislative decriminalisation, would increase frontline officers' discretionary capacity to align their practices with public health goals. This extension could apply only in the vicinity of a drug checking service. Alternatively, in order to offer more comprehensive protection, it could be extended to apply to all personal possession up to a threshold amount, regardless of a person having previous possession offences or RPWs for possession. There are numerous examples of international schemes to draw upon (see Stevens et al., 2022). In light of plans to implement both safer consumption facilities and drug checking services, such extensions/guidance from the COPFS/Lord Advocate would reduce the challenges faced by local police around their response to such services by expanding the capacity of local officers and divisions to develop approaches more aligned with public health goals. For example, consideration could be given to stating that it is not in the public interest to charge people in the vicinity of harm reduction services with possession offences and that there is a presumption in favour of diversion away from the CJS.

3: Participants expressed support for drug checking, and public health approaches more widely, by pointing out their remit in protecting life, supporting people to keep safe, and increasing community safety. Such interpretations indicate potential points of leverage to (re)conceptualise the role and function of policing of drug possession to be more clearly in alignment with such principles. Whilst recognising the need for Police Scotland to carefully consider how to frame their position towards drug checking, it is possible for them to provide 'support-in-principle' for drug checking services by drawing on concepts such as preservation of life and support for those at significant risk. A suggestion is to make a statement of support for harm reduction interventions such as drug checking, as part of a nationally agreed upon strategy across Scottish Government, public health, Police Scotland and COPFS, to address the drugs death crisis. Support for drug checking to protect lives and support individuals at risk is in line with both the public health and harm reduction approaches to policing in Police Scotland's Drug Strategy, and the purpose of policing (enshrined in the Police and Fire Reform Act 2012) to enhance the wellbeing and safety of individuals and communities.

4: It is likely that the policing arrangements around drug checking services will be based on informal agreements regarding expected policing practices, such as not targeting the service or clients entering and leaving the services. Participants felt that such arrangements would still require national strategic guidance from high level actors to provide local divisions and officers with support and protection. Such strategic guidance could have different levels of formality and provide varying degrees of direction but should, at a minimum, indicate support for local divisions not to target people entering or leaving services. At the very least it should be made clear that entering or leaving such a service alone is not grounds for stop and search. Further guidance could include not using the service as an avenue to find people wanted for other offences, or as a means of gaining intelligence on supply networks.

5: Informal agreements around drug checking services leave clients potentially vulnerable to unsupportive policing practices which utilise discretion to circumvent the spirit of such arrangements. The attitudes and beliefs were described as uneven and differing by individual, division, and department. There is a need for ongoing awareness raising and training on why practices such as targeting people for accessing drug checking services is counter-productive to public health goals.

6: Participants highlighted examples of existing harm reduction services (such as IEP), where policing of services is broadly aligned with public health goals in relation to police not targeting such services or not generally intending to target service clients. There is a need to build from examples of best policing practices/approaches around such services and to highlight the similarities between such services and drug checking as essential harm reduction interventions.

7: Criminalisation is a key concern for PWUD and may be a significant barrier to engagement. There is a need for PWUD to receive some form of assurance around their ability to use such services without being criminalised, provided they are not committing any other criminal or public order offence. National strategic guidance and communication from local divisions to this effect would help reduce people's fears around accessing drug checking services.

8: There is a need for close liaison and communication between local police officers and drug checking services to help build and maintain supportive relationships and proactively address any emerging tensions and challenges. International evidence suggests that dedicated liaison officers may help open and sustain lines of communication between local police and drug checking services. Such officers should be selected on the basis of their understanding of public health-aligned policing.

9: Once drug checking services are established and in operation, there is a need for continued attention and exploration of how policing practices are enabling, or providing a barrier to, engagement amongst PWUD. The establishment of a lived experience/police interface would enable dialogue on issues and challenges and help assess what, if any, changes need made to policing practices to better support access to a crucial harm reduction intervention.

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