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Dear Pete,

Thank you for the opportunity to give evidence to the Committee on the important issue of problem drug use in Scotland and indeed across the UK. As I committed to in my evidence, I am writing to the Committee setting out the Government's view of the legal position on Drug Consumption Rooms (DCRs) and the legal challenges to their introduction by secondary legislation.

Firstly, I believe we should be open to discussing a wide range of measures when we meet at the UK Drugs Summit that I intend to hold in Glasgow in the near future. We should have a focus on considering the evidence, whether in relation to DCRs or any other measures. The problem of drug deaths is an urgent one and I am clear that there are some more immediate steps we should be taking in all nations of the UK to invest in evidence-based treatment and to improve its quality and availability.

The current position on DCRs is that they are illegal in the UK. A range of crimes would be committed in the course of running such a facility, by service users and staff, such as possession of a controlled drug, being involved in the supply of a controlled drug, knowingly permitting the supply of a controlled drug on a premises or encouraging or assisting these and other offences. As you recognised, a change in the law would therefore be required to permit the introduction of DCRs.

Any plan for a DCR would need to obtain an exemption from the Misuse of Drugs Act 1971. The UK Government does have some powers to do this, by making regulations under the Misuse of Drugs Act 1971 to make things lawful which would otherwise be unlawful under that Act (see sections 7 and 22 of that Act). An example is the Misuse of Drugs Regulations 2001.

However, offences other than those under the 1971 Act may be committed in the operation of a DCR. Regulations under the 1971 Act would not be able to provide wider exemption from potential common law offences, such as manslaughter, or offences under other legislation – for example, the Lord Advocate referenced the Smoking, Health and Social Care (Scotland) Act 2005.

Therefore, whilst there is theoretically the potential to amend the Misuse of Drugs Regulations 2001, or create bespoke regulations, to permit the operation of DCRs, it would not create a comprehensive legal framework that would allow DCRs to operate. You mentioned that lawyers in the Scrutiny Unit had outlined to you how the law could be

changed, through statutory instrument, to permit the operation of DCRs. We would, of course, be willing to consider such evidence.

Similarly, the Secretary of State does have a power to license some activities which would be undertaken in the operation of a DCR, such as the possession or supply of a controlled drug. However, there are many activities the Secretary of State cannot licence, such as providing paraphernalia for drug consumption, an offence under Section 9A of the 1971 Act, permitting premises to be used for prohibited purposes, an offence under Section 8 of the 1971 Act, or the offences under common law or other legislation, as I have outlined. Therefore, there is a real risk that those involved in operating a DCR could end up committing a range of criminal offences. Granting a licence would not provide a comprehensive legal framework for their operation.

In addition to the issues of criminal liability that I have raised there are difficulties around civil liability, were things to go wrong, with those operating DCRs potentially being sued for damages in negligence or other civil causes of action. You may find it useful to consider the legislative schemes for DCRs in other jurisdictions, such as the Ireland, which provide exemption from criminal and civil liability.

As the Lord Advocate stated in his evidence to this Committee, “for such a facility to operate effectively, you need an appropriate legislative framework that establishes an appropriate system for licensing and oversight, addresses the scope of exemptions from the criminal law, and deal[s] with issues of civil liability.” Consequently, we would need to look at the potential for Primary Legislation, which as you know would take time. Although I remain open minded in looking at the evidence over what works, we must first and foremost look at what immediate steps can be taken, especially in relation to investment in treatment.

In this legal context, it would seem reasonable only to proceed with a DCR, if that were the policy of the Government, through changes to primary legislation to create an appropriate legal and regulatory regime for its operation. Such changes would not remove all of the challenges for law enforcement nor for those running such a facility and would therefore require considerable thought. As I am sure you appreciate, the timescales for legislation are not short. It is also worth saying that at this point, whilst the Government has an open mind, it is not yet convinced of the need to legislate for DCRs when there are a range of other measures available to administrations and health systems across the UK.

I hope this letter sets out the legal position and satisfies your request to understand the legal context for introducing DCRs. As you will be aware, it is not standard practice to provide legal advice to select committees due to the very strong public interest arguments for protecting legal professional privilege. In this case, however, I considered it necessary in these exceptional circumstances to set out our view of the legal position to assist the committee in understanding the legal hurdles to introduction of DCRs by secondary legislation alone. I hope this letter does that.

Should you require any further information my officials will be available to assist the Committee with any queries.



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