



**Misuse of Drugs Act 1971 Section 9A:
An ineffective law that is threatening public health**

Briefing No 3

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An ineffective law that is threatening public health***

Summary

Section 9A of the Misuse of Drugs Act 1971 was intended to prevent the commercial sale of kits and equipment for the preparation and consumption of illicit drugs. Not only is it failing to achieve this aim, but it is also having unintended consequences by preventing health services providing interventions that have the potential to reduce blood borne virus transmission.

This paper outlines the problem, and recommends that Section 9A be repealed or revised to allow the supply by health services of items with the potential to reduce drug-related harms.

The Law

The Misuse of Drugs Act 1971 (c.38) was given Royal Assent in July 1973 and remains the primary UK legislation covering drugs. The Act categorises and controls the possession and supply of numerous drugs in line with the United Nation's 1961

Single Convention on Narcotic Drugs. However, there have been many changes in drug use and drug treatment since 1971.

Arguably the most significant of these changes was the emergence in the 1980s of an association between injecting drug use and HIV transmission. This was when the Drug Trafficking Offences Act 1986 (c.32) inserted a new section – Section 9A – into the Misuse of Drugs Act to prohibit the sale or supply of “any article which may be used or adapted to be used (whether by itself or in combination with another article or other articles) in the administration by any person of a controlled drug” if the supplier “believes it may be used by the recipient to administer an unlawful drug or prepare an unlawful drug for administration”.

Although Section 9A was created in order to prevent the commercial sale of ‘cocaine kits’ and other paraphernalia by drug dealers and public traders, an amendment was made to allow for the “supply or offer to supply a hypodermic syringe, or any part of one” – in recognition of the role that needle and syringe exchange schemes has been proven to play in the prevention of blood borne viruses amongst people who inject drugs.

The Problem

Since 1986, Section 9A has, in practice, been an ineffective law on two grounds:

1) Failure to prevent the sale of drug kits and equipment

The commercial sale of products for the use of drugs is widespread – with items such as bongs, pipes and gummed ('Rizla') papers available across the UK. Since 1986, there have only been a handful of prosecutions and convictions for Section 9A offences, with many vendors claiming that their goods are ornaments or for 'novelty use only'. A number of high-profile cases have failed to result in prosecution due to the difficulties in proving that the items were knowingly sold for 'illegal' purposes, and most forces have since abandoned enforcement.

2) Hindering health care

Section 9A has presented serious legal barriers to needle and syringe programmes that provide sterile equipment for people who use drugs. Although provisions were made for the supply of syringes, no such allowances were made for other items that are essential to the preparation of a drug for injection – including widely available items such as matches, filters and foil. Subsequently, several amendments have been made to Section 9A to incorporate newly developed interventions, each

involving a lengthy process of campaigning and legislative change. However, there are still a number of commonly available items that could provide significant public health benefits, but whose supply is technically prohibited.

Paraphernalia Supplied in Needle and Syringe Programmes

The preparation of a 'base' drug (such as brown heroin powder or crack cocaine) for injection is a multi-step process involving chemical reactions and a range of equipment. A range of harm reduction products have been developed as knowledge of the injecting process, risk behaviours and blood borne virus transmission have improved. It is now widely accepted, for example, that:

- There are significant transmission risks for hepatitis associated with the sharing of communal water, 'spoons' or 'cookers', and filters. Accordingly, sterile, single-use versions of these items have been developed for the purposes of needle and syringe programmes;
- Acidifiers such as lemon juice (which are used to make the drug dissolve into an injectable solution) can result in fungal infections that can cause significant damage to

heart valves and the eye, leading to blindness.

Accordingly, sterile, single use sachets of acidic powders have been developed for the purposes of needle and syringe programmes;

- The risks associated with drug injection (such as overdose, blood borne virus transmission, abscesses and bacterial infections) can be reduced or avoided by encouraging a client to smoke their drugs instead. Accordingly, ‘route transition interventions’ – such as the provision of specially produced packs of foil – have been developed to discourage injecting (both to reduce harms amongst current injectors and to prevent the onset of injection itself) in order to save significant public health costs associated with injection-related harms (including the estimated £25million a year in health care costs for blood borne viruses and the additional £15-20million spent on injection site infections each year). Independent research has found that people use foil from needle and syringe programmes to manage their use and avoid overdose risks when moving towards abstinence whilst in treatment.
- The provision of a full range of injecting equipment in a needle exchange encourages better and more frequent engagement with people who inject drugs – which

facilitates potentially life-saving healthcare interactions and advice for this highly marginalised group.

Previous Amendments to the Misuse of Drugs

In 2003, following a recommendation from the Advisory Council on the Misuse of Drugs (ACMD), Section 9A was amended to allow for the supply of swabs, “utensils for the preparation of a controlled drug” (‘cookers’), citric acid, filters and water for injections. Supply was permitted for those “employed or engaged in the lawful provision of drug treatment services” (Statutory Instrument 2003 No. 1653).

The Home Office press release that announced the change said, “We know that treatment workers and doctors have been making sensible decisions to provide equipment anyway, but faced the risk of prosecution. We have decided to change the law to help reduce the health risks to drug users”.

Ascorbic acid sachets were omitted from this revision and, in 2005 – after further lobbying – another amendment was made to add it to the list as well (Statutory Instrument 2005 No. 2864).

The Current Situation

A number of products have been developed for needle exchanges – such as foil packs to discourage intravenous use – which have been shown to reduce harms, reduce injecting, improve client engagement (including the engagement of ‘naïve treatment users’). Because these items are not explicitly mentioned in Section 9A, many needle exchanges are unable to purchase or supply them, or technically face prosecution if they do. Although there has never been a conviction of a needle exchange or pharmacy worker under Section 9A, this threat of prosecution is a barrier to the supply of these products. Even in areas where the police have provided letters to indicate that the provision of such items is not a policing priority, local fund-holders have refused permission for budgets to be spent on “illegal” products.

Jamie Bridge

International Harm Reduction Association

19th September 2008

References available on request – jamie.bridge@ihra.net

Options for Action

Repeal Section 9A

Given that it is not being successfully used by the police for its intended purpose (prohibiting the commercial sale of paraphernalia by drug dealers and public traders) – and is instead hindering the provision of health care to a marginalised population – the most logical option would be a full repeal of Section 9A. This was included as the 50th recommendation of an Independent Inquiry in 2000 by the Police Foundation.

Revise Section 9A

An alternative would be to revise Section 9A and remove the existing, restrictive list of permitted items – replacing it instead with a general exemption for legitimate drug services to supply any items that have the potential to reduce drug-related harms. This would allow for the ‘legal’ supply of health care interventions such as foil packs, while still prohibiting the commercial sale for profit of equipment direct to people who use drugs.