EXPLANATORY MEMORANDUM TO

THE CRIME AND DISORDER ACT 1998 (INTERVENTION ORDERS) (AMENDMENT) ORDER 2010

2010 No. 1067

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order corrects a defect in the Crime and Disorder Act 1998 (Intervention Orders) Order 2006 ("the 2006 Order"). Section 1G of the Crime and Disorder Act 1998 ("the 1998 Act") enables authorities applying for an anti-social behaviour order ("ASBO") under section 1 of the 1998 Act to apply for an Intervention Order ("IO"), when the subject of the ASBO's behaviour is the result of drug misuse. An IO specifies particular requirements that the person must comply with to prevent a repeat of the behaviour that led to the initial anti-social behaviour. The 2006 Order, amongst other things, prescribed appropriate activities that the individual could be ordered to undertake. This Order amends the definition of appropriate activities.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument corrects an error in the Crime and Disorder 1998 (Intervention Orders) Order 2006 (S.I. 2006/2138) which was reported by the Joint Committee on Statutory Instruments in their first report of the session 2006-2007.

4. Legislative Context

4.1 Anti-social behaviour orders were introduced by the Crime and Disorder Act 1998 in England and Wales and have been available since April 1999. The powers to impose ASBOs were strengthened and extended by the Police Reform Act 2002, which, amongst other things introduced orders made as an adjunct to county court proceedings. The Anti-Social Behaviour Act 2003 together with the Serious Organised Crime and Police Act 2005 strengthened and clarified the law further. The Home Office has published guidance to help practitioners make best use of ASBOs as a tool for tackling ASB in their area, and the "Together" website supplements this with case studies, guidance updates, templates etc.

4.2 Local authorities (including county councils), the police, housing action trusts, British Transport Police and registered social landlords have the power to apply for stand-alone ASBOs. Section 20 of the Drugs Act 2005 inserted new section 1G into the 1998 Act which enabled the court to make Intervention Orders. Intervention Orders are civil orders and impose positive requirements on individuals, obliging them to comply with directions imposed by a person authorised by the order to do so.

The order specifically addresses the person's drug related anti-social behaviour. This behaviour is generally related to the behaviour which led to the ASBO being made (trigger behaviour). Ideally this should be done by tackling the root causes of this behaviour and a drug intervention order should be structured to reflect this objective, and any measures taken under the order should prioritise the prevention of further trigger behaviour.

4.3 The 2006 Order prescribed appropriate activities that could be included in such an Intervention Order. The 2006 Order was reported by the Joint Committee on Statutory Instruments First Report in the Parliamentary Session 2006-2007 for doubtful *vires*. This Order amends the definition of appropriate activities in the 2006 Order to answer the Committee's concerns.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 Section 20 of the Drugs Act 2005 amended the Crime and Disorder Act 1998 to allow a court (subject to certain conditions) to make an Intervention Order alongside an ASBO or a similar order in County Court proceedings. IOs require the perpetrator to comply with positive requirements (e.g. treatment) that tackle the perpetrator's anti-social behaviour through the treatment of their drugs misuse.

7.2 The purpose of the IO is the prevention of anti-social behaviour through the treatment of the perpetrator's drug misuse and the intention of the IO is that the latter should lead to the former. The welfare of the perpetrator is not the principal purpose of the order, but it is instead to be balanced with the needs of the community, which need to see an end to the abuse that they are suffering. IOs can only be given to individuals aged 18 or over and can last for a maximum of 6 months.

7.3 For an applicant to apply to the court for IO, the applicant must have obtained a report from an appropriately qualified individual relating to the affect of drug misuse on the individual's behaviour. The court may make an IO if it is satisfied that it is desirable in the interests or preventing the behaviour which lead to the ASBO being made. It must also be satisfied that appropriate treatment relating to the trigger behaviour are available, and must have been notified by the Secretary of State that arrangements for implementing the order are available.

7.4 An Intervention Order cannot be made if the potential recipient is (at the time the IO is applied for) subject to another IO, or any other treatment, whether voluntary or not, that relates to the subject's trigger behaviour.

7.5 Breach of an IO is an offence with a maximum penalty of a level 4 fine.

8. Consultation outcome

8.1 As this Order simply amends a defect in the 2006 Order, no consultation has been carried out.

9. Guidance

9.1 Guidance on the use of Intervention Orders under section 20 of the Drugs Act 2005 can be found at:

http://asb.homeoffice.gov.uk/uploadedFiles/Members_site/Documents_and_images/Drugs/InterventionOrdersGuidance0089.doc

10. Impact

10.1 A Regulatory Impact Assessment for the Drugs Act 2005, which included Intervention Orders, was published December 2004 and is attached to this memorandum.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This provision will be reviewed and monitored as part of general anti-social behaviour tools and powers reviews.

13. Contact

Andy Kerrigan at the Home Office, Tel: 020 7035 0061 or e-mail: andrew.kerrigan@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.

DRUGS BILL
FINAL REGULATORY IMPACT ASSESSMENT

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0.2 Aims

The aims of the Drugs Bill are to:

- increase the effectiveness of the Drug Interventions Programme;
- introduce a new civil order that will run alongside ASBOs for adults to
- tackle drug issues;
- enhance Police and Court powers; and to
- clarify existing legislation in respect of magic mushrooms.

PART 1 - DRUG INTERVENTIONS PROGRAMME

1.1 Proposal

The Government proposes to introduce testing for class A drugs at the point of arrest (TA) and a mandatory assessment (MA) for those who test positive. The Government also proposes to require certain individuals to attend a follow-up assessment, where a care plan will be drawn up. This will be implemented once the expanded workforce is in place and frontline efficiencies have been achieved.

1.2 Purpose and Intended Effect of Measures

i) **The objective**: there is a well-recognised link between the use of drugs (particularly class A drugs) and certain types of offending behaviour – in particular, acquisitive crime such as theft and burglary. We aim to reduce drug-related crime by helping offenders out of crime and into effective treatment.

ii) **The background**: it has been proven that drug treatment works and the Drug Interventions Programme (DIP) formerly known as the Criminal Justice Interventions Programme – an innovative programme – attempts to ensure that more drug misusers enter treatment. This programme is in operation across England and Wales, with certain higher intensity elements available in 66 high crime areas.

The programme involves Criminal Justice (CJ) and treatment agencies working in partnership with other services to provide a tailored solution for individuals who commit crime and who use class A drugs. Delivery at a local level is through integrated teams, using a case management approach to offer access to treatment and support from an offender's first point of contact with the CJ system through custody, court, sentence and eventual rehabilitation. Special measures for young offenders are also being implemented.

We believe we could improve the effectiveness of the programme by testing people for class A drugs at the point where they first encounter the CJ process, i.e. at the point of arrest. We also want to increase the rate of contact between drug users and drug workers.

Therefore, we are considering changing the present arrangements through the proposed Drugs Bill, where people who are charged with certain 'trigger' offences (mainly acquisitive and drug crime) are tested when they are charged, to testing them on arrest. We will build on this by requiring those who test positive for class A drugs on arrest to see a drugs worker and to undertake an assessment of their drug misuse.

The Drugs Bill will also seek a power to require, where appropriate, individuals to undergo a further follow-up appointment where a care plan will be drawn up. We will not implement this power at the same time as testing on arrest and mandatory assessment. Only once the expanded workforce is in place and they achieve the significant frontline efficiencies that we are starting to see, we will be able to absorb the additional cost of this provision within the

new workforce. It is, therefore, a cost-neutral provision when considered alongside the other proposed provisions.

1.3 Options

Option 1 – do nothing

Retain the status quo of testing defendants for specified class A drugs when charged with a trigger offence (or under an inspector's discretion). In addition, the present system of voluntary referral to a drugs worker remains in place.

*Option 2 – assessment after positive test **on charge***

Defendants would still be tested on charge. However, where they test positive for specified class A drugs they will be required to undergo an assessment of their drug dependency. Failure to do so would result in a fine, custodial sentence or both.

*Option 3 – assessment after positive test **on arrest***

Persons detained after arrest as tested for specified class A drugs and if found positive are required to undertake a mandatory assessment of their drug dependency. Failure to comply with either the provision of a sample or the undertaking of an assessment would result in a fine, custodial sentence or both.

The aim of the Drug Interventions Programme is to **reduce crime** by getting drug misusing offenders into treatment. This is the reason for introducing the provisions for testing on arrest, requiring those who test positive to attend an assessment of their drug misuse, and if thought appropriate, to attend a follow-up assessment. Refusal and breaches will be kept to a maximum of no more than % by ensuring that the police and the drug workers at all stages of the process are fully able to explain not only the requirements but more importantly the benefits of complying with the requirements, which are not onerous, and putting in place processes, which will make it easier for the drug misuser to comply with the requirements. Defence solicitors will also be engaged to ensure they are aware of the benefits of these provisions and are able to inform their clients.

1.4 Costs and Benefits

The assumptions on which these figures are based are at Annex A.

Headline costs and benefits	Additional costs above cost of current provisions
Annual cost of TA	£3.2m
Annual cost of MA1	£7.5m
TOTAL COST OF TA AND MA2	**£10.8m**
Total cost of treatment arising from TA/MA	£8.6m
Total cost to CJS	£3m

1 Includes existing cost of voluntary referrals following positive test.
2 Not including the cost of treatment resulting from testing on arrest with mandatory assessment.

Total savings to CJS	£25.3m
NET SAVING TO CJS	£22.3m
VICTIM COST OF CRIME SAVED	£62.8m

Funding Requirements and Responsibilities

The measures will be funded centrally, through Home Office expenditure.

Treatment costs arising from TA and MA are estimated to be £22 million in total, of which £8.6 million is additional as a result of the new provisions. These costs are to be provided for under the Department of Health pooled treatment budget.

Costs will arise to the CJS from dealing with people who refuse the test or the assessment, or breach their assessment requirement (i.e. agree to the assessment and then fail to turn up).

We estimate that from the testing and assessment interventions combined, the total additional work for the CJS (over and above that which could potentially already happen as a result of testing on charge and restrictions on bail) will be as follows:

Additional numbers in the courts	**2960**
Additional costs to the courts	**£2.4m**
Additional prison places required	**20**
Additional costs to NOMS	**£0.6m**

Manpower Costs

Approximately 78% of the TA costs relate to manpower costs, largely police / Civilian Detention Officers to undertake the tests and related police management & administration (all funded centrally).

Approximately 90% of the MA costs relate to drug workers to undertake the assessments (funded centrally).

1.5 Equity and Fairness

There is no evidence from the drug-testing on charge currently in place and the data routinely collected to suggest that certain groups are disproportionately impacted under this provision. There is no reason to suggest that this may be different as a result of the move to testing on arrest. This provision will apply equally to all those who are arrested for a trigger offence and all those testing positive will be required to undertake the assessment.

1.6 Enforcement and Sanctions

Failure to comply with the provision of a sample or the undertaking of an assessment would result in a fine, custodial sentence or both.

1.7 Monitoring and Review

The Home Office currently collects data monthly on those who are tested for class A drugs. This will continue to be the case with the move to testing on arrest and this will be monitored to determine its effect and impact. There are also plans to monitor the required assessment provision - the effect and impact will be looked at.

1.8 Consultation

These proposals were included as part of the consultation paper '*Policing: Modernising Police Powers to meet Community Needs*', published on 12 August 2004. However, the provision for a further appointment to draw up a care plan was not included in the consultation (although where there was initial engagement with a drug worker we would expect the majority of defendants to attend follow-up appointments on a voluntary basis).

1.9 Summary and Recommendation

The total cost of TA and MA is £10.8 million (to be covered through Home Office grants). The treatment costs arising from TA and MA are £8.6 million (to be met be the Department of Health treatment budget).

The proposal will also require certain individuals to attend a follow-up assessment, where a care plan will be drawn up. This will be implemented once the expanded workforce is in place and frontline efficiencies have been achieved. This will, therefore, be a cost neutral provision.

The costs to the CJS will be approximately £2.4 million to the Department for Constitutional Affairs and £0.6 million to the prison service.

The savings to the CJS from the reduction in crime resulting from these provisions are estimated to be £25.3 million.

We recommend option 3, introducing testing for class A drugs at the point of arrest and a mandatory assessment for those who test positive, with the follow-up assessment and care plan to be introduced at a later stage.

PART 2 - DRUG MISUSERS

2.1 Proposal

The Government proposes a new civil order for adults, an Intervention Order, that could be issued alongside an Anti-Social Behaviour Order (ASBO). The Intervention Order would focus principally on drugs and would provide a further means of ensuring that people whose anti-social behaviour is rooted in their substance misuse can be effectively dealt with outside of the Criminal Justice System (CJS).

2.2 Purpose and Intended Effect of Measures

i) **The objective**: we are aware that many people with drug misuse problems (and to a lesser extent those with alcohol problems) will be involved in the CJS, where there are already a range of interventions available and that the priority agenda within the drug strategy of moving drug using offenders into treatment is being delivered through the Drug Interventions Programme (DIP).

However, there are a number of individuals yet to come into contact with the CJS who might benefit from an order that could be attached to an ASBO. We anticipate that this would apply to a small number of people, but nevertheless would plug a gap in our current approach and provision.

The objective is to enable these adults who are committing anti-social behaviour and where there is evidence that their drug misuse might be a contributing factor, to engage with local services which they might not have engaged with voluntarily.

This will be achieved through the attachment of a new civil Intervention Order to an ASBO that will direct the individual to undertake specific actions.

ii) **The background**: ASBOs were introduced in the Crime and Disorder Act 1998 and introduced on 1 April 1999. They can be issued on individuals 10 years old or over. They are civil orders and can be issued in a magistrates' court or in a county court when attached to other proceedings.

The ASBO acts in the same way as an injunction in that it sets out prohibitions.

On 1 May 2004 Individual Support Orders (ISO) were introduced in the Criminal Justice Act 2003. These are civil orders that can be attached to an ASBO for a 10-17 year old. The court can issue an ISO if it is satisfied that the order would be desirable in the interest of preventing any repetition of the behaviour, which led to the making of the ASBO.

Such an order requires the defendant to participate in activities at a time or times so specified.

We would like the Intervention Order to work in a similar way to the ISO.

iii) **Risk assessment**: research conducted by the Anti-Social Behaviour Unit of the Home Office in September 2003 reported 66,000 incidents of anti-social

behaviour over a 24-hour period that equates to 15 million incidents a year or one every 2 seconds. Of the 66,000 reported incidents, 2920 were drug-related. This equates to over 1 million drug related incidents of anti-social behaviour a year.

2.3 Options

Option 1 – do nothing

This would mean that opportunities to engage with those involved in antisocial behaviour where substance misuse is a contributing factor would be lost.

Option 2 – implement proposal

ISOs attached to ASBOs for 10-17 year olds are addressing the underlying causes of anti-social behaviour. It is emerging that such orders can have benefits. By using them to tackle drug misuse issues in adults provides us with an opportunity to route those not currently engaged with the CJS into drug services that they would otherwise not engage with.

2.4 Benefits

Economic

Option 1

None.

Option 2

Research conducted by the Anti-Social Behaviour Unit of the Home Office in September 2003 reported 66,000 incidents of anti-social behaviour over a 24- hour period that equates to 15 million incidents a year or one every 2 seconds. Of the 66,000 reported incidents, 2920 were drug-related. This equates to over 1 million drug-related incidents of anti-social behaviour a year.

The London School of Economics put a cost on putting right all of these incidents and arrived at a figure of £3.5 billion a year. The estimated cost of the drug-related incidents is £132 million a year. We can estimate that the average cost of one drug-related incident is approximately £125. It is not known how many incidents each person subject to an ASBO is typically responsible for.

The proposed order would enable those engaged in anti-social behaviour who have a substance misuse issue and who are subject to an ASBO to be compelled to attend drug services to address the underlying causes of their anti-social behaviour. This, combined with the deterrent effect, would reduce anti-social behaviour. There is a clear economic benefit to reducing anti-social behaviour.

Social

Option 1

None.

Option 2

There are a number of social benefits to the individual subject to the order, their family and friends and to the wider community.

Compelling the defendant who is subject to the ASBO to attend services that can address the underlying causes of their anti-social behaviour will give the ASBO more of a chance of succeeding and provide a more sustainable solution to the anti-social behaviour and the drug issues that have affected the individual, their family and the wider community.

2.5 Costs

Economic

Option 1

The costs of tackling drug-related anti-social behaviour were documented in the ASBU research, which estimated the cost at £132 million a year.

To do nothing would mean that opportunities would be lost to bring into drug services the people that are engaged in drug-related anti-social behaviour.

Option 2

We estimate that there may be 100 Intervention Orders per year as a result of this proposal. The proposed order will be “bolted on” to an ASBO hearing, so there will be no cost in having a separate hearing. Currently, the breach rate for assessment as part of restriction on bail is 10%. We expect the breach rate for the Intervention Orders to be similar. However, it will usually be appropriate for the responsible officer to encourage compliance using warnings before instigating proceedings for a prosecution. Therefore, we anticipate around 10 additional cases going to Court at a cost of £6720.

The components that will make up the order will in all likelihood be made up of schemes that already exist locally and therefore there will be no new set up costs for new treatment services.

We envisage that the components of the order will be made up of an assessment and a follow up. We estimate that the assessment will cost £600. The treatment programme can cost between £400 to £1,000 a week if a medical intervention is needed. Drug treatment programmes can also vary in length from around a month (detoxification programme) to 2 years (prescribing programme). Using the treatment demand model, which is based on data from the National Treatment Agency (NTA), we can estimate the cost of treatment for 100 people to be £314,800. Therefore, we estimate the total cost of the assessment and treatment for 100 people to be £374,800.

The Department of Health and the Home Office have agreed that the treatment and assessment will be funded by the pooled treatment budget and that commencement will be delayed until April 2006.

Social

Option 1

None.

Option 2

None.

2.6 Equity and Fairness

The Intervention Order can be seen as a positive step to help drug users engage with services. The Intervention Order is a civil order and is therefore routing them away from the CJS. They are issued by the courts and consequently are not believed to impact disproportionately on any sector of society.

2.7 Enforcement and Sanctions

This measure will be enforced through primary legislation. Non-compliance with the order will be reported by the drug agencies/provider to the agency that applied for the order, who will then advise the Crown Prosecution Service (CPS) of the breach. The CPS may then decide to prosecute, if there is sufficient evidence.

Breach of the order will be a criminal offence and will be punishable upon summary conviction by a fine of up to £1000.

2.8 Monitoring and Review

Home Office will monitor the take-up and success of the orders in line with the monitoring exercise that takes place now in relation to ASBOs. Courts will be asked to indicate on the returns they send to the Home Office in relation to ASBOs if an order of this type has been issued. Breach data will be reported to the Home Office via established routes.

2.9 Consultation

Government departments have been consulted and the Drugs Strategy Directorate and the Anti-Social Behaviour Unit of the Home Office have worked closely on developing this new order.

No external consultation has been carried out.

2.10 Summary and Recommendation

Cost of assessment	£0.06m
Cost of treatment	£0.31m
Court costs	£0.006m
Total costs	£0.376m

We estimate that this proposal will produce some 100 Intervention Orders per year, resulting in an annual assessment and treatment cost of approximately £374,800 and court costs of £6720.

The Department of Health and the Home Office have agreed that the treatment and assessment will be funded by the pooled treatment budget and that commencement will be delayed until April 2006.

We recommend option 2 – introducing an Intervention Order that can be attached to an ASBO for adults with drug misuse issues.

PART 3 - POLICE AND COURT POWERS

3.1 Proposal

The Government proposes:

i) a power to enable the courts to invite a jury to draw adverse inference from the refusal to consent to an intimate search for drugs and the refusal to consent to an x-ray where there is suspicion that drugs have been swallowed;
ii) to amend the law on possession with intent to supply, so that there is a reverse evidential burden where the quantity of drugs found is beyond a particular threshold;
iii) tougher sentences for dealers in respect of aggravated circumstances;
iv) an extension of the power to detain persons suspected of swallowing drugs;
v) a power of entry to serve a closure notice in respect of crack houses.

COURT POWERS: ADVERSE INFERENCE

3.1.1 Purpose and Intended Effect of Measures

iv) **The objective**: to allow a court to draw an adverse inference from the unreasonable refusal of an arrestee to consent to an intimate body search carried out under Section 55 of the Police and Criminal Evidence Act 1984 (PACE), or, where appropriate, an x-ray or ultrasound scan.

v) **The background**: the review of PACE conducted by the Home Office and the Cabinet Office in 2002 identified that, in some cases, arrestees suspected of concealing class A drugs in a body cavity were refusing to consent to a search, in order to avoid the discovery of drugs. Forensic Medical Examiners, following British Medical Association (BMA) guidelines, will not carry out a search without such consent.

In some cases, an x-ray or ultrasound scan could determine the presence of wraps of controlled drugs which have been swallowed. This would enable the police to make an informed decision about whether to apply for an extended remand to police custody. Detaining a person in police custody for an extended period is relatively expensive; this provision will allow resources to be used cost effectively.

vi) **Risk assessment**: harm arises when a drug user or dealer avoids conviction for his activity by concealing evidence in a body cavity.

Being seen to escape justice erodes public faith in the criminal justice system and undermines the moral of the police.

Further, a dealer who is not apprehended will continue to supply new and existing users, causing social and economic harm.

There are risks to the health of the person detained in police custody, which arise if any drugs concealed in body cavities leak. A higher rate of consent will reduce this risk.

3.1.2 Options

Option 1 – do nothing

Option 2 – implement proposal

3.1.3 Benefits

Option 1

None.

Option 2

Economic

There will be certain benefits associated with a more efficient system relating to savings in police time and the criminal justice system through increased effectiveness of sentence in relation to crime. There will also be longer-term benefits in the form of a deterrent effect.

Social

This measure will lead to the conviction of dealers who would otherwise not be convicted, thereby reducing the availability of drugs. Consequently, this will reduce initiation rates and encourage existing users into treatment. Lower prevalence rates of drug use and increased numbers in treatment will directly reduce the social harm arising from drug misuse. This includes the harm arising from an individual failing to reach their potential, from the impact of drug misuse on the lives of friends and carers and in the quality of lives of those who live in areas where dealing is prevalent.

This measure will improve public confidence in the CJS and sustain police morale.

3.1.4 Costs

Option 1

None.

Option 2

Economic

We assume that the people for whom this would affect are those supplying, in possession, or possession with intent to supply. There were 112,950 known offences for these categories in 2002, of which 66,660 went to court. 10,530 of these got an immediate custodial sentence (1,300 of which were youth sentences).

Adverse inference could result in increased fines, increased number of community sentences, increased number of those with a custodial sentence and increased length of custodial sentence. The biggest cost would be from an increase in the number of offenders given a custodial sentence.

We assume that adverse inference will result in an increase of 1% getting an immediate custodial sentence, or around 105 people. This would necessitate 88 additional prison places at a cost of £2.9 million a year to the prison service.

Social

None.

COURT POWERS: REVERSE EVIDENTIAL BURDEN

3.2.1 Purpose and Intended Effect of Measures

i) **The objective**: persons found in possession of drugs above a minimum threshold will be assumed to be dealers unless they can produce evidence to the contrary.

ii) **The background**: drug dealers use the defence of personal possession or bulk buying when arrested/charged with drug supply offences. Introducing a minimum threshold will put the onus on the defendant to demonstrate he is not dealing.

iii) **Risk assessment**: harm arises when a drug user or dealer avoids conviction by claiming personal possession. Being seen to escape justice erodes public faith in the CJS and undermines the moral of the police.

Further a dealer who is not apprehended will continue to supply existing users and/or to create new users, who in turn cause social harm.

3.2.2 Options

Option 1 – do nothing

Option 2 – implement proposal

3.2.3 Benefits

Option 1

None.

Option 2

Economic

In the medium to long term, the deterrent effect will result in savings to the CJS.

Social

This measure will lead to the conviction of dealers who would otherwise not be convicted, thereby reducing the availability of drugs. Consequently, this will reduce initiation rates and encourage existing users into treatment. Lower prevalence rates of drug use and increased numbers in treatment will directly reduce the social harm arising from drug misuse. This includes the harm arising from an individual failing to reach their

potential, from the impact of drug misuse on the lives of friends and carers and in the quality of lives of those who live in areas where dealing is prevalent.

This measure will improve public confidence in the CJS and sustain police morale.

3.2.4 Costs

Option 1

None.

Option 2

Economic

Convictions for possession with intent to supply in 2002 were 5980. We assume that convictions may increase by between 2.5% (low), 5% (medium) or 10% (high) as a result of the change in the law. This would result in an increase of 150, 299 or 598 in convictions respectively.

If we assume that all those convicted for possession with intent to supply were previously convicted for possession only, there will be a 50% increase in prisoners, an additional 75, 150 and 299 prisoners respectively. Assuming the average time served is 10 months, the number of additional prison places would be 63, 125 and 250, which translates into a range of costs of £2.1million, £4.1million and £8.1 million per year.

There will be a cost to the courts in the form of an increased number of contested trials. If we assume an increase of 10%, the additional numbers of contested cases will be in a range of 15, 30 and 60. This translates into a range of costs of £218,610, £437,220 and £874,440.

Social

None.

COURT POWERS: INCREASED SENTENCES FOR AGGRAVATED OFFENCES

3.3.1 Purpose and Intended Effect of Measures

i) **The objective**: to ensure that the courts consistently take account of drug dealers whose dealing shows certain aggravating features during sentencing.

ii) **The background**: supplying or offering to supply a controlled drug, assisting another in either activity and having possession of a controlled drug with intent to supply another are offences under the Misuse of Drugs Act 1971 (MDA).

The maximum penalty for possession of a class A drug with intent is 7 years and/or a fine; for possession of a class B drug with intent is 5 years and/or a fine; and for possession of a class C drug with intent to supply is 2 years and/or a fine.

The maximum penalty for supplying or offering to supply a controlled drug or assisting another in either activity is life and/or a fine for a class A drug, and 14 years and/or a fine for a class B or C drug. Courts currently have discretion to take into account any aggravating factors present when the offence is committed.

Concern has been expressed that drug suppliers are targeting potential clients at a younger age, with anecdotal evidence of suppliers operating in the vicinity of schools in order to sell drugs to young people. There is also reportedly an increase in the use of young persons as couriers to transport drugs between suppliers and purchasers.

The proposal is that courts should have a statuary responsibility to take into account these two aggravating factors when sentencing, should either or both be present.

iii) **Risk assessment**: the harm arises from an increased exposure of young people to drugs, which may lead to an rise in the prevalence rates of drug misuse among that group and a rise in the associated social and economic harm.

The proposal could lead to a displacement of the drugs market away from the vicinity of the school.

3.3.2 Options

Option 1 – do nothing

Option 2 – implement proposal

3.3.3 Benefits

Option 1

None.

Option 2

Social

To the extent that this proposal reduces the availability of drugs to young people, it will prevent or delay the onset of drug use by young people and as a consequence lead to fewer people becoming problem drug users. In turn, this will reduce social and economic harm, including less acquisitive crime.

The proposal will also create areas around schools that are safer for young people, and it will reduce the exposure of young people to the drug culture and to potential “negative” role models.

In addition, the proposal could force suppliers to carry/deliver the drugs themselves, as "adult" couriers will be more expensive to employ than young persons, thereby exposing them to an increased likelihood of arrest.

3.3.4 Costs

Economic

Convictions for possession with intent to supply in 2002 were 5980 and convictions for unlawful supply were 4820. Of these, 2,860 and 2,670 respectively were given a custodial sentence. There were a further 770 youth sentences, which leads to an overall total of 6300 convictions.

We assume that 1% (based on anecdotal evidence) of these offences occur in aggravated circumstances; this would equal 63 cases. Further, we assume that the average increase in sentence length as a result of new law in these cases is 10% (2 months).

Therefore, the average increase length of time served in these cases is 1 month. The cost per prisoner per month is £2,708 (= £32,500 / 12). The overall likely increase in cost to the prison service, based on these assumptions is around £170,604 a year (= £2,708*63).

Social

Dealers may start using other vulnerable persons in the community as couriers in place of the young persons.

POLICE POWERS: SWALLOWERS

3.4.1 Purpose and Intended Effect of Measures

i) **The objective**: to allow a court to remand, upon charge, to the custody of a constable a person suspected of swallowing drugs, for a period of up to 192 hours, in order to allow any swallowed drugs to be recovered.

ii) **The background**: in some cases when the police approach or arrest an individual on suspicion of possession of a controlled drug or a drug trafficking offence, the individual will either swallow or be suspected of swallowing the evidence i.e. the controlled drug. It is common for such controlled drugs to be suitably wrapped. If a controlled drug is swallowed the police endeavour to wait for the controlled drugs to pass through the individual's body in order to eventually obtain the evidence.

But there are limits to the period of time which the police can detain the suspect for. The Police and Criminal Evidence Act 1984 (PACE) only allows for police detention of an individual without charge for a maximum of 96 hours. Detention beyond 36 hours is on the authority of the court (see sections 41 to 45 of PACE). In practice it will often take longer than 96 hours for the controlled drugs to pass through the individual's body and therefore on release form police detention the opportunity to collect the evidence is lost.

HM Customs and Excise Officers face similar problems in relation to drug's couriers who swallow wrapped controlled drugs in order to smuggle them undetected into the United Kingdom. Section 152 of the Criminal Justice Act 1988 (CJA 1988) enables a magistrate to remand such an individual aged 17 or over who has been charged with an offence against section 5(2) of the Misuse of Drugs Act 1971 or a drug trafficking offence (defined in section 151(5) of the CJA 1988), to customs detention for a period not exceeding 192 hours.

iii) **Risk assessment**: harm arises when a drug user or particularly a dealer avoids conviction for his activity by swallowing evidence. Being seen to escape justice erodes public faith in the criminal justice system and undermines the moral of the police.

Further, a dealer who is not apprehended will go on to supply existing users and/or to create new users, who in turn cause social and economic harm.

There are risks to the health of the person detained in police custody, which will arise if any of the drugs swallowed leak. It is for police forces to manage this risk, as customs officers do at present.

3.4.2 Options

Option 1 – do nothing

Option 2 – implement proposal

3.4.3 Benefits

Option 1

None.

Option 2

Economic

Immediate benefits will be gained from an increase in the effectiveness of the system. That is to say some of these changes will translate directly into the same level of resources (eg police time) resulting in an increase of the proportion of offences cleared up.

Over time, further benefits will be reaped from the deterrent effect that will arise once evidence of the changes causes people to revise expectations and therefore change their behaviour: we assume that people act on the basis of two sources of information - the perceived risk of getting caught and the expected penalty if caught. Increasing one or both of these will result in a reduction of the number of people engaging in this activity at the margin.

Social

To the extent that this measure brings about the conviction of dealers who would otherwise not be convicted it will bring about reduced availability of drugs, which in turn will reduce initiation rates, and encourage existing users into treatment. Lower prevalence rates of drug use and increased numbers in treatment will directly reduce the social harms arising from drug misuse, including those arising from an individual failing to reach their potential, from the impact of drug misuse on the lives of friends and carers and in the quality of lives of those who live in areas where dealing is prevalent.

This provision will improve public confidence in the CJS and sustain police morale.

3.4.4 Costs

Option 1

None.

Option 2

Economic

The number of available detention facilities will be restricted so that the total number of detainees is limited to 100 a year. If we assume that 100 additional people are detained, the court costs would be £641,250 and the associated legal aid costs would be £350,150 (see Annex B).

Social

None.

CLOSURE ORDERS

3.5.1 Purpose and Intended Effect of Measures

i) **The objective**: to grant the right of entry to a police officer serving a closure notice under Part 1 of the Antisocial Behaviour Act 2003 for the sole purpose of serving the notice on the right person(s) as identified in Anti-Social Behaviour Act 2003 Part 1 (6) points (a) to (e). This will make the service of such a notice less open to successful challenge.

ii) **The background**: the Antisocial Behaviour Act 2003 makes provision for the closure of premises being used for the supply, use, or production of class A drugs where there is associated serious nuisance or disorder. The closure procedure commences with the service of a closure notice, which a court must consider within 48 hours and if satisfied it will grant a closure order. Service of the notice must be on people identified as living in or having an interest in the property. If entry to the property is denied then service of the notice on particular individuals may be impeded. This might lead to a successful challenge to the granting of a closure order.

iii) **Risk assessment**: It is not expected that this change will result in an increase in the number of crack house closures. However, it will result in fewer successful challenges.

3.5.2 Options

Option 1 – do nothing

Option 2 – implement proposal

3.5.3 Benefits

Option 1

None.

Option 2

Economic

Reducing successful challenges to closure notices will reduce delays inclosing crack houses and reduce court and police costs.

Social

The existence of a crack house has a significantly negative impact upon the local community in terms of crime and anti-social behaviour. The proposed changes will bring about immediate relief to the community.

Closing crack houses and bringing property back into beneficial use also contributes to the regeneration of communities and neighbourhoods.

Finally speedily closing crack houses sends clear messages to dealers and builds community confidence in the CJS.

3.5.4 Costs

Option 1

None.

Option 2

None.

3.6 Equity and Fairness

Provisions for courts to draw an adverse inference from an unreasonable failure to consent to an intimate search, x-ray or ultrasound do not on first sight give rise to the potential for a differential impact on BME communities. It is envisaged that cultural or religious reasons for not consenting to such procedures would be considered by a court to be reasonable grounds to refuse consent.

The provisions relating to aggravating circumstances and the reverse evidential burden will be applied on the basis of a simple factual test. They do not appear to give rise to the potential for a differential impact.

There may be a concern that powers to detain those suspected of swallowing drugs into police custody will be used differentially to detain members of the BME community. However, the detention will be sanctioned by a court, which will have to be satisfied that reasonable grounds exist to suspect that drugs have been swallowed.

3.7 Enforcement and Sanctions

These proposals will be enforced by the police and courts.

It will be left to the discretion of the courts in accordance with the sentencing guidelines to determine the appropriate sanction in respect of adverse inference, reverse evidential burden and aggravated circumstances.

3.8 Monitoring and Review

The police will be required to report on the use of x-rays & ultrasounds.

The police are already required to report on the use of intimate searches.

3.9 Consultation

The refusal to consent to an intimate search and powers in respect of swallowers were part of the general consultation on police powers.

3.10 Summary and Recommendation

The costs to the CJS of these components of the bill are likely to fall within a range of £6.5 million to £13.2 million.

	Low	Medium	High
Additional cost to NOMS	**£5.3mn**	**£7.3mn**	**£11.3mn**
Additional court and legal aid costs	**£1.2mn**	**£1.4mn**	**£1.9mn**
Total Additional Costs	**£6.5mn**	**£8.7mn**	**£13.2mn**

The training and guidance costs will be minimal, since both will be included in current processes.

There will be an immediate benefit from increasing the efficiency of the CJS (assuming the objective is to increase the number of offences brought to justice). This will be in the form of police cost savings (the cost of police activity that should now result in a conviction). There will also be a deterrent effect. Both of these, however, are hard to quantify.

The Home Office and DCA have identified and are agreed on the levels of downstream costs that will arise from the Bill. Home Office modelling suggests that reduced re-offending rates may allow £25 million of potential savings across the CJS, including non-cashable savings. As part of ongoing work on downstream costs and savings arising from policy initiatives, Home Office, DCA and other CJS agencies are examining which of these savings are cashable.

We recommend implementing the police and court power proposals.

PART 4 - GENERAL LAW CHANGES

4.1 Proposal

The Government proposes to:

i) clarify the law on Magic Mushrooms (MMs); and
ii) to repeal Section 38 of the Criminal Justice and Police Act 2001, which would amend Section 8(d) of the Misuse of Drugs Act 1971.

MAGIC MUSHROOMS

4.1.1 Purpose and Intended Effect of Measures

i) **The objective**: is to target and shut down the commercial importation and supply of MMs.

ii) **The background**: MMs are funghi that contain the class A drug

Psilocin and/or an ester (chemical derivative) of that drug, Psilocybin. The prohibitions and offences contained in Sections 3-5 of the Misuse of Drugs Act 1971 (the 1971 Act) only bite where they relate to a controlled drug or to a preparation or product containing such a drug. Since MMs are not themselves controlled drugs, courts have required MMs to be either prepared or to be a product before they can be applied in the context of offences under Sections 3-5 of the 1971 Act. Confusion has arisen as to the point at which MMs can be said to be prepared or to be a product for this purpose.

In the UK, there is growing concern over the impact they have on public health, in particular, on mental health. There is also concern over the sale of MMs to minors.

It is our intention that MMs in any form should be treated as controlled drugs. This is the case for the purposes of the 1971 Act and of other legislation that relies on the definition of controlled drug. Thus, all offences in the 1971 Act that apply to controlled drugs will apply to MMs, including the offence of possession. Under section 28 of the MDA those caught in possession in ignorance have a defence against prosecution.

iii) **Risk assessment**: we do not intend for the Police to divert resources from enforcing the law in respect of other class A drugs; rather, we wish to clarify the law to prevent the open sale of a dangerous hallucinogenic drug.

4.1.2 Options

Option 1 – do nothing

Doing nothing would prolong the legal uncertainty, which has a number of negative consequences:

i) MMs will continue to be available for sale, which brings the law into disrepute;
ii) stall-holders and importers will continue to make considerable profits from an undesirable business;

iii) continued risk of harm to young people, particularly those with mental health problems; and
iv) continued costs to the Crown Prosecution Service (CPS) in trying to establish case law and a binding court judgement.

Option 2 – implement proposal

This will bring clarity to the law.

Option 3 – operate a licensing system

Some of the current distributors / sellers have been adopting a "safe sale" protocol. However, drug policy experts argue that it is unrealistic to expect the market to regulate itself and that the current laws should be reformed. This option would see the continued availability of MMs, which would set an undesirable precedent for other class A drugs.

4.1.3 Benefits

Economic

Option 1

This would allow the Treasury (HMT) to maintain income from charging VAT on the sale of MMs, estimated to be up to a maximum of £175,000 a year.

Option 2

There will be a saving to the CPS in respect of costs in prosecuting shop owners. There are currently between 10-15 cases being prepared.

Option 3

This would allow HMT to maintain income from charging VAT on the sale of MMs, estimated to be up to a maximum of £175,000 a year.

Social

Option 1

None.

Option 2

The proposal would prevent the open sale of MMs and would result in a decrease in the prevalence of MMs in circulation.

Option 3

None.

4.1.4 Costs

Economic

Option 1

This would result in continued costs to the CPS in trying to establish case law.

Option 2

In terms of the extent of the availability, a recent article in the Economist (*Hazy Laws on Mind-Altering Fungi*, September 19 2004) quoted a figure of 300 establishments selling MMs. The total amount imported to the country may be as great as 1,000 kg per year, with a turnover of around £1 million. Each shop would lose income from ceasing the commercial trade in MMs. In the vast majority of cases these shops were already trading in drugs memorabilia and have only recently discovered how to exploit a very lucrative sideline. It is not expected that many, if any, of the shops would be forced to cease trading completely. It is expected that these measures will act as a very significant deterrent to those currently selling MMs.

Psilocin and Psilobyn are class A drugs. The maximum sentence for supply of class A is life imprisonment. Police and the CPS do not expect this proposal to lead to a significant increase in prosecutions, due to the deterrent nature of becoming liable to prosecution. We do not, therefore, anticipate any additional CJS costs.

HMCE has deemed the sale of mushrooms eligible for VAT. They are unable to state the revenue raised per annum, but we estimate the revenue to be no greater than £175,000. In respect of enforcement, HMCE anticipate additional costs of £500,000 to £700,000. However, this is dependent on the level of enforcement activity, compared with their other priorities. The proposal does not require HMCE to take any action over and above what is already taken. HMCE are not being required to actively search for MMs; rather, this proposal will form part of HMCE's routine searches. Therefore, we believe that this proposal is cost neutral.

Option 3

None.

Social

Option 1

This would prolong the legal uncertainty in respect of MMs. Consequently, MMs would continue to be available for sale, with the resultant risks to young people, particularly those with mental health problems.

Option 2

It is claimed that the increase in use has contributed to the decline in the prevalence of ecstasy. Nevertheless, both are controlled drugs and are harmful.

An unintended consequence might be that the sale of these MMs is driven underground, perhaps encouraging the interest of organised crime groups.

Option 3

This would be seen as encouraging the use of MMs, with the resultant risks to young people, particularly those with mental health problems. Further, this would set an undesirable precedent for other class A drugs.

4.1.5 Equity and Fairness

This proposal has no race equality impact.

The proprietors of these shops are selling strong hallucinogens, which have the potential to be harmful to young people, especially those with an underlying mental illness. Ceasing the trade in these dangerous items will be of social benefit. Those selling them are doing so at a very considerable mark up – up to 1,000%.

4.1.6 Small Business Service

The Small Business Service has been consulted and has indicated that there may be repercussions for some small businesses if the legislation is strengthened. There are estimated to be between 200 - 300 shops and traders selling MMs, and other firms trading online. Some of these businesses will only have begun operating in this area within the last year. For the majority, MMs will form a small portion of the business.

4.1.7 Competition Assessment

Although there are no competition issues the following information is noted:

- the proposals for magic mushrooms will impact on the shops/ traders selling MMs;
- the proposals will effectively remove the legal market for MMs;
- the impact will be on all those who sell MMs (both existing shops/traders and any future entrants);
- as most of these shops and traders are small businesses, we have consulted the Small Business Service; and
- shops and traders selling MMs will loose the income from this trade, although it is not expected that many businesses will cease trading completely.

4.1.8 Enforcement and Sanctions

Psilocin and Psilobyn are class A drugs. The maximum sentence for supply of class A is life imprisonment. Sentencing policy is an issue for the Courts.

4.1.9 Monitoring and Review

We are in close liaison with officers in Metropolitan Police Service (MPS) Drug Directorate who monitor the prevalence of mushroom sales in the areas most noted for the sale of these items (Portobello Market and Camden Lock).

4.1.10 Consultation

We have consulted the Small Business Service, which has indicated that there may be repercussions for some small businesses if the legislation is strengthened.

We are consulting with ACPO Drugs, the CPS and with ACMD.

SECTION 38, CRIMINAL JUSTICE AND POLICE ACT 2001

4.2.1 Purpose and Intended Effect of Measures

i) **The objective**: to remove all uncertainty regarding a piece of amended legislation that was never commenced.

ii) **The background**: Section 8(d) of the Misuse of Drugs Act 1971 makes persons liable to prosecution if they knowingly allow their premises to be used for the consumption of certain controlled drugs, specifically cannabis, cannabis resin and opium. It was intended that Section 38 of the Criminal Justice and Police Act 2001 would amend section 8(d) of the 1971 Act to extend this to the unlawful use of all controlled drugs. The purpose of the amendment was to bring the law up to date and to allow police forces to deal more easily with "crack houses". A six-week formal consultation exercise was carried out, ending in November 2002. Due to concerns raised by professionals working in the treatment and harm sector, who felt that the amendment might leave them open to prosecution, Section 38 was not brought into force.

A debate subsequently ensued over whether the Section 38 amendment was the best way to deal with the problem of "crack houses". It was decided to delay implementation for a two-year period to allow for an evaluation of the effectiveness of the new powers. In the meantime, a new set of provisions were incorporated into Part 1 of the Anti-Social Behaviour Act 2003, which came into force on 20 January 2004. These give police the power to close down premises being used for the supply, use or production of class A drugs where there is an associated serious nuisance or disorder. These provisions have been widely seen as being an effective method of dealing with the issue of crack houses and other premises where drugs are being supplied. As a result, it has been decided that Section 38 has become redundant and should therefore be repealed.

iii) **Risk assessment:** there are no risks associated with repealing Section 38.

4.2.2 Options

Option 1 – do nothing

Option 2 – implement proposal

4.2.3 Benefits

Option 1

None.

Option 2

Social

This may result in an improved relationship with the voluntary sector, through the Government listening to their concerns and responding accordingly.

4.2.4 Costs

Option 1

None.

Option 2

None.

4.2.5 Equity and Fairness

This proposal has no race equality impact.

4.2.6 Enforcement and Sanctions

Not applicable.

4.2.7 Monitoring and Review

Not applicable.

4.2.8 Consultation

A consultation was carried out between September and November 2002. There were 104 respondents; 102 opposed the implementation of Section 38of the Criminal Justice and Police Act 2001.

4.3 Summary and Recommendation

The MMs proposal carries a cost of some £1 million to business. The cost of implementation will be between £0, if HMCE continue their current processes, or up to between £500,000 - £700,000 in the event that HMCE sees fit to introduce additional implementation measures. Further, the HMT would lose VAT receipts totalling some £175,000.

We recommend that:

i) the measures clarifying the law on magic mushroom sales be introduced; and
ii) section 38 Criminal Justice and Police Act 2001 be repealed.

Part 5 - CONCLUSION AND RECOMMENDATION

5.1 Conclusion

The total cost of **TA and MA** is £10.8 million (to be covered through Home Office grants). The treatment costs arising from TA and MA are £8.6 million (to be met be the Department of Health treatment budget). The proposal will also require certain individuals to attend a follow-up assessment, where a care plan will be drawn up. This will be implemented once the expanded workforce is in place and frontline efficiencies have been achieved.

The costs to the CJS are estimated to be £3 million. As a result of the reduction in crime of this provision, there will be CJS savings of £25 million and savings in terms of victim cost of crime of £62 million.

In respect of the **Drug Misusers** provisions, we estimate that this proposal will result in an annual assessment and treatment costs of approximately £374,800 and court costs of £6720. The Department of Health and the Home Office have agreed that the treatment and assessment will be funded by the pooled treatment budget and that commencement will be delayed until April 2006.

In respect of the **Police and Court Powers** proposal, the costs to the CJS will fall within a range of £6.5 million to £13.2 million in the first year after implementation. Most of these costs will be incurred by the prison service. The training and guidance costs will be minimal, since both will be included in current processes. There will be immediate benefits from increasing the efficiency of the CJS, police costs savings and a deterrent effect.

In respect of the **General Law** changes, the repeal of Section 38 carries no cost. The MMs proposal carries a cost of up to £1 million to business, whilst the cost of implementation will be between £0, if HMCE continue their current processes, or up to £700,000 in the event that HMCE introduces additional implementation measures. Further, the HMT would lose VAT receipts up to £175,000.

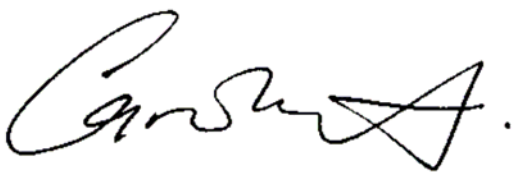
5.2 Recommendation

We recommend that **all** the proposals detailed above be implemented.

5.3 Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed



December 2004

Caroline Flint, Parliamentary Under Secretary for Reducing Organised and International Crime, Anti-Drugs Co-ordination and International and European Issues

Annex A

DRUGS INTERVENTIONS PROGRAMME

Testing on arrest and mandatory assessment: assumptions for the RIA

Summary:

The costs and benefits of the testing and mandatory assessment provisions in the Drugs Bill are set out below. These are based on assumptions about the total target population, the funding arrangements for the programmes and unit costs of treatment, court appearances and prison places. Further detail is contained below.

Summary: flows and costs of testing on arrest and mandatory assessment3 **Testing on arrest**	Additional tests being undertaken (per year)	113,900
	Additional positive tests (per year)	35,000
	Total additional cost of tests	£3.2m
	Proportion refusing a test	1.3%
	Additional test refusals each year	1600
	Additional test refusals going to court each year	1600
	Total cost to courts of test refusals	£0.6m
	Total cost of Legal Aid	£0.7m
	Additional number of prison places required for test refusals	10
	Additional costs of prison places	£0.3m
	Total additional costs	£4.8m
Mandatory assessment	Additional assessments (per year)4	44,200
	Additional treatment places (Tier 3/4) following assessment5	4,000
	Total additional cost of assessments	£7.5m
	Total additional cost of treatment	£8.6m
	% refusing/breaching assessment requirements	5%
	Refusals/breaches of assessment requirements	4900
	Refusals/breaches additionally going to court6	1400

3 Note: Flow figures have been rounded to the nearest 100. Cost figures have been rounded to the nearest 100,000.

4 Over and above what would have happened under testing on charge with voluntary assessment *and* restrictions on bail. 5 Over and above what would have happened under testing on charge with voluntary assessment *and* restrictions on bail. 6 Excludes people who are charged with trigger offences and for whom refusals will be dealt with alongside their main offence.

	Total cost to courts of refusals/ breaches	£0.5m
	Total cost of Legal Aid	£0.6m
	Additional prison places required for refusals/breaches	10
	Additional costs of prison places	£0.3m
	Total additional costs	£17.5m
Total costs		**£22.3m**

Benefits from the testing/assessment package are summarised below. Benefits are derived from the reduction in individuals' offending (and therefore of crime more generally) as a result of entering treatment. Crimes saved are valued - both to society at large (the victim costs of crime) and to the CJS - using standard costs of crime values.

Summary: estimated benefits from testing on arrest/mandatory assessment package.

Additional people in treatment (per year)	4,000
Victim costs of crime saved (per year)	£62.8m
Additional crimes saved as a result of treatment	245,200
CJS savings as a result of additional crimes saved	£25.3m

Assumptions for testing on arrest estimates: costs and flows

This policy is assumed to take place in the 96 DIP Phase 1,2 and 3 'intensive' (high crime) BCUs. Phase 1 and 2 are currently in place; phase 3 will be in place from April 2005. We assume that up to around 243,200 people could be tested annually at arrest, of which 113,900 would be additional to what could currently be achieved on-charge once all three waves of DIP intensive areas are fully operational.

Flows through testing

Estimates of total number of arrests for trigger offences	256,000	Assumption: estimated total annual trigger offence arrests accounted for by DIP intensive BCUs.
Estimated number of tests	243,200	Assumption: 5% of those arrested will not be tested (currently around 95% of those charged are tested)
Estimated total number of positive tests	97,300	Assumption of a lower positive test rate on arrest (40%).
Additional tests	113,900	Assumption: 54% of

		those arrested are charged.
Additional positive tests	35,000	Assumption: 40% positive test rate.

Additional costs of the tests are derived from the funding arrangements for testing. It is estimated that additional costs for moving testing from charge to arrest will be £3.2m.

People refusing a test can be charged (maximum penalty three months in prison or a fine of £2,500). Based on experience of three years of drug testing, the refusal rate has generally been around 1% (latest data suggests around 1.3%[7]). We do not anticipate that the refusal rate will increase significantly, especially since the process will be designed in such a way as to make the test process as straightforward as possible and fit into other procedures that occur on arrest. If this is the case, we anticipate 1560 additional refusals to be generated by the new policy. The flows from this, into court and beyond are outlined below, with associated costs.

Testing refusals

Number of additional test refusals each year	**1560**	Assumption: 1.3% of people refuse test
Number refusing who are charged	**1560**	Assumption: current data suggests 93% of those refusing are charged -we assume that this will be raised to 100%.
Number charged who proceed to court	**1560**	We must assume that all charged will proceed to court
Additional costs to the court	**£0.6m**	Assumption: DCA costings

Additional legal aid costs	**£0.7m**	Assumption: DCA costings
Number found guilty	**9408**	Assumption: data from 2003 suggests that around 60% of those who went to court for this offence were found guilty.
Number being fined	**470**	Assumption: data from 2003 suggests that around 50% of those found guilty were fined for this offence
Value of fines imposed	**£0.05m**	Assumption: data from 2003 suggests that the average value of the fine

		imposed is £100.
Number being imprisoned	**280**	Assumption: data from 2003 suggests that around 30% of those found guilty received a custodial sentence.
Number of additional prison places needed	**10**	Assumption: average prison sentence is 2 weeks x 280 offenders = 560 weeks. 560/52 = 11
Additional cost of prison places	**£0.4m**	Source: 2003 prison data shows average cost of a prison place to be £32,500 x by 11 places = £350,000

Note: Flow figures on the table have been rounded to the nearest 10.

Assumptions for mandatory assessment : costs and flows

Those testing positive for cocaine, crack or heroin will be required to undergo a mandatory assessment for drug treatment. Flows through this aspect of the policy are estimated to be:

Flows through mandatory assessment

Total receiving mandatory assessment	82,700	Assumption: 85% of those testing positive receive assessment (assume that 5% refuse/breach and for 10% it is not possible to perform assessment for other reasons)
Total additional number of assessments received9	44,200	Assumption: one third of those who are charged would have received an assessment under restrictions on bail.
Total additional individuals entering treatment	3950	Assumption: 40% take up treatment on initial assessment; 25-35% at subsequent arrests

		during the year.

As with testing, the penalty for refusing an assessment (or not attending the assessment) will be 3 months in prison/a fine of £2,500. We have assumed that 5% of those eligible will refuse or fail to attend. The policy will be designed to achieve a breach/refusal rate of this order and monitored to ensure this is being achieved.

Mandatory assessment refusals

Total refusing/breaching mandatory assessment	**4860**	Assumption: 97,000 eligible for mandatory assessment of which 5% refuse. Breach rate for similar Interventions (one-off requirements for drug using offenders) ranges from 1% (Drug testing) to 10% (restrictions on bail). Policy target will be a 5% breach rate and policy design will be formulated around monitoring and achieving this.
Of which number charged with trigger offence	**3110**	Assumption: 64% of those arrested for a trigger offence will be charged (higher than the 50% conversion rate among the general offending population). All charged with trigger offence are prosecuted for the trigger offence and the refusal is dealt with in court at the same time and any prison sentence is served concurrently with the sentence for the trigger offence.
Of which number arrested but not charged for trigger offence	**1750**	(4860 x 36%)
Total not charged with trigger offence who will be charged with refusing/ breaching the assessment requirement.	**1400**	Assumption: 80% will be charged for refusing/breaching the assessment requirement. Some of those breaching initially will be given a second chance, but for overall for the deterrent effect to work the majority must be charged.
Total proceeding to court	**1400**	We must assume that all those charged will proceed to court.
Additional court costs	**£0.5m**	Assumption: DCA costings
Additional legal aid costs	**£0.6m**	Assumption: DCA costings
Number found guilty	**840**[5]	Assumption: see assumptions for testing requirement.
Number being fined	**420**	Assumption: see assumptions for testing requirement.
Value of fines	**£0.04**	Assumption: see assumptions for testing

5 Those found guilty not fined or imprisoned are assumed to receive absolute or conditional discharge or be 'otherwise dealt with'

imposed	**m**	requirement.
Number being imprisoned	**250**	Assumption: see assumptions for testing requirement.
Number of additional prison places needed	**10**	Assumption: assuming that the average prison sentence is 2 weeks x 1100 offenders/52
Additional cost of prison places	**£0.3m**	Assumption: 2003 prison cost data average cost of a prison place is £32,500 x 10 places = £315,000

Note: Flow figures on the table have been rounded to the nearest 10.

Savings and benefits

As a crime reduction programme, it is estimated that the DIP interventions will lead to crimes saved as a result of problematic drug users entering treatment. Using the National Treatment Outcomes Research Study, it has been estimated that the average number of crimes saved as a result of a drug user entering treatment is 62 crimes per year. We estimate that the new interventions will get an additional *3950* heroin, crack and cocaine users into treatment each year, with an estimated *245,200* crimes saved each year.

Victim costs of crime. We have assumed that the average victim cost savings from a drug user entering treatment is £22,000. This is based on estimates that suggest that the average victim costs per user not in treatment are £30,000 and the average costs per user in treatment for less than one year is £8,000 (source: Godfrey et al (2002) *The economic and social costs of Class A drug use in England and Wales, 2000.* HORS 249). Savings shown are only those that occur in the same years as the treatment is started. Victim cost of crime savings for subsequent years are not included in the total. On this basis, we estimate that the savings in victim costs of crime will be **£63.2m**.

In order to calculate the CJS value of the crimes saved, we have apportioned the 245,000 crimes saved across the different types of crime committed by the drug using population and then placed CJS cost values on these as per HO Research Study 217 *'The Economic and Social Costs of Crime'* (Brand and Price 2000). These values take into account the fact that not all crimes are brought to justice: values are averaged across those crimes which are and are not brought to justice. Using this method, we estimate the total CJS savings to be **£25.3m**.

Types of crime committed are derived from drug testing monitoring data. Those that have been valued are detailed on the table below. For the quarter of offences for which CJS costs are not available I have applied the lowest CJS value (£20 per crime) and apportioned the breakdown across different parts of the CJS according to standard calculations used for other CJS cost estimates for the Bill[13]. The table below summarises the breakdown of the different types of crime (based on crime breakdowns in the drug test data) for which cost-able data is available.

Theft and other handling14	**60%**
Theft of a vehicle	**2%**
Robbery	**3%**
Burglary	**11%**

Brand and Price CJS cost of crime values used:

	Brand and Price CJS cost of crime values used: *Theft /handling (£)*	*Theft of vehicle (£)*	*Robbery (£)*	*Burglary (£)*
Total cost	**20**	**70**	**1400**	**490**
Police	7	40	680	240
Prosecution	1	2	20	8
Magistrates courts	0	1	4	5
Crown courts	0	2	40	10
Jury service	0	0	7	2
Legal aid	1	4	60	20
Non legal aid defence	0	1	20	7
Probation service	2	6	20	20
Prisons	4	20	450	160
Other CJS	0	1	70	10

Annex B

DRUGS BILL – ESTIMATES OF COSTS FOR POLICE AND COURT POWERS

- The costs to the CJS of these components of the bill are likely to fall within a range of £6.5mn to £13.2mn. Based on the assumptions outlined below, most of these costs will be incurred by NOMS (Table A).

- There will be an immediate benefit from increasing the efficiency of the CJS (assuming the objective is to increase the number of offences brought to justice). This will be in the form of police cost savings (the cost of police activity that should now result in a conviction). There will also be a deterrent effect. Both of these, however, are hard to quantify.

Table A: Estimated Costs

	Low	Medium	High
Additional cost to NOMS	£5.3mn	£7.3mn	£11.3mn
Additional court and legal aid costs	£1.2mn	£1.4mn	£1.9mn
Total Additional Costs	£6.5mn	£8.7mn	£13.2mn

Key Assumptions

1. Average cost per prison place is £32,500 (provided by NOMS).

2. Average length of sentence is 20 months (Drug Seizure and Offender Statistics 2002 – latest data for 2000) and average length of time served is approximately 10 months (Prison Statistics 2001 shows rate is approx. 50%).

3. We assume that 55% of those found guilty of possessing with intent to supply unlawfully received an immediate custodial sentence (7% of which were youth sentences) and 5% of those found guilty of unlawful possession (1% of which were youth sentences). This is based on percentages from Drug Seizure and Offender Statistics 2003/04.

Costs

Clause 1: Set out in legislation the aggravating circumstances in which a dealer will face an enhanced sentence such as dealing near a school or using young children as couriers.

- Number of convictions for possession with intent to supply was 5980 and number of convictions for unlawful supply was 4820 in 2002. A total of 6300 of these received custodial sentences.
- We assume that 1% - or 63 - of these (based on anecdotal evidence only) occur in aggravated circumstances.
- We assume that the average increase in sentence length as a result this clause in these cases is 10% (based on anecdotal evidence only), or 2 months. The average increase length of time served in these cases is therefore 1 month (assumption 2).

- The cost per prisoner per month = £2,708 (=£32,500/12) and therefore the overall likely increase in cost to the prison service, based on these assumptions is around £170,604 per annum (= £2,708*63).

Clause 2: Assume that a person was intending to supply drugs to others, unless they can prove otherwise, where the quantity of drugs in their possession exceeds specific thresholds

- Number of convictions for possession with intent to supply was 5980 in 2002. If we assume convictions increase by between 2.5% (low), 5% (medium) or 10% (high) as a result of the change in the law, this results in an increase of 150, 299 or 598 in convictions respectively.
- Assuming all those convicted for possession with intent to supply were previously convicted for possession only, there will be a 50% increase in prisoners (assumption 3) –an additional 75, 150 and 299 prisoners respectively. Assuming average time served is 10 months (assumption 2), number of prison places is 63, 125 and 250, which translates into a range of costs of £2.1mn, £4.1mn and £8.1 million per year.
- There will be a further cost to the courts in the form of an increased number of contested trials. If we assume an increase of 10%, the additional numbers of contested cases will be in a range of 15, 30 and 60. This translates into a range of costs of £218,610, £437,220 and £874,440, calculated as follows:

    - 30 contested crown court cases x £9,915 (cost of 3 day trial) = £297,450
    - legal aid costs of £139,770: magistrates' court committal 30 x £344 = £10,320 and crown court (three day trial) 30 *£4,315 = £129,450

Clause 3: Drawing adverse inference from refusal to consent to intimate search for drugs

- 112,950 offenders were found guilty, cautioned, given a fiscal fine or dealt with by compounding for drug offences by sentence for supplying, unlawful possession or intent to supply unlawfully in 2002, of which 66,660 went to court. 10,530 of these received an immediate custodial sentence (1,300 of which were youth sentences).
- Assuming adverse inference could result in increased fines, increased number of community sentences, increased number of those with a custodial sentence and increased length of custodial sentence then the greatest cost will come from increase numbers of those given a custodial sentence where would not have done before.
- Assuming that adverse inference will result in an increase of 1% getting an immediate custodial sentence, or around 105 people (no basis for assumption), this will result in additional 88 prison places at a cost of £2.9 million per annum to the prison service (assuming average time served is 10 months).
- Note that if in these circumstances sentences of more than 20 months are given, the cost in terms of prison places will increase.

Clause 6: Extension of power to detain persons suspected of swallowing drugs

Assume that there will be an increase of a maximum of 100 additional people detained – policy will be such that this will be an upper limit on the number of additional people. There will be court costs of £641,250, calculated as follows:

- 50 contested crown court cases x £9,915 (cost of 3 day trial) = £495,750
- 50 non-contested crown court cases x £2,910 (cost of 1 day trial based on assumption that sentencing takes one day to complete) = £145,500

And there will be legal aid costs of £350,150 based on the following:

- Assumed all 100 cases are additional to current workload in both magistrates' and crown court.
- Assumed each way offence.

- No impact on duty solicitor scheme (assumed already in custody)
- Lower standard fee applies at committal in magistrates' court.
- 50% are guilty pleas, 50% 3-day trials
- LSF - £344 x 100 = £34,400
- Guilty plea in crown court – £2,000 x 50 = £100,000
- 3 day trial in crown court - £4,315 x 50 = 215,750

There will also be a cost to NOMS from an additional number of offenders going through the system. If we assume that all 100 cases will be charged with possession, and that 5% of these will result in a custodial sentence (assumption 3) – this will result in an additional 5 prisoners. Assuming average time served to be 10 months (assumption 2) this translates as an additional 4 prison places. Total cost is therefore £130,000.

Benefits

Immediate benefits will be gained from an increase in the effectiveness of the system. That is to say some of these changes will translate directly into the same level of resources (eg police time) resulting in an increase of the proportion of offences cleared up. Over time, further benefits will be reaped from the deterrent effect that will arise once evidence of the changes causes people to revise expectations and therefore change their behaviour: we assume that people act on the basis of two sources of information - the perceived risk of getting caught and the expected penalty if caught. Increasing one or both of these will result in a reduction of the number of people engaging in this activity at the margin.