A TALE OF ~~TWO~~ THREE PITIES

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THREE LEGISLATIVE DRUG CONTROL REGIMES

1. **Misuse of Drugs Act 1971 (controlled drugs)**
2. **Human Medicines Regulations 2012 (medicinal products)**
3. **Psychoactive Substances Act 2016**
   - **Royal Assent: 28th January 2016**
   - **In force: 26th May 2016**

DEFINITION OF A "PSYCHOACTIVE SUBSTANCE": s.2

In this Act "psychoactive substance" means any substance which—

(a) is *capable* of producing a *psychoactive effect* in a person who *consumes* it, *and*

(b) is not an exempted substance.

Section 2(3): "….a person consumes a substance if the person CAUSES or ALLOWS the substance, or fumes given off by the substance, to enter the person's body in any way".

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"EXEMPTED SUBSTANCES": S.3, PSA 2016 SCHD.1

a. **Controlled drugs**
b. **Medicinal products**
c. **Alcohol and alcohol products**
d. **Nicotine and nicotine products**
e. **Caffeine and caffeine products.**
f. **Food (which includes "drink")**

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HOME OFFICE REVIEW OF THE PSA 2016 (Nov 2018)

1. **To put an end to the open sale of NPS:**
   - **Apparently achieved.**
   - **Main supply for NPS "is now likely to be street dealers, particularly for synthetic cannabinoids."**
2. **To put an end to the game of 'cat and mouse'.**
   - **Not achieved.**
3. **To reduce the various health and social harms associated with NPS.**
   - **"….achieved in the main"**
   - **"....a reduction in NPS-related deaths across E&W"**
   - **"….considerable increase in Scotland [since PSA]".**

4. **To reduce the number of people using NPS.**
   - **Seemingly achieved re adult population;**
   - **"significant reduction in NPS use….particularly among young adults".**
   - **No significant change in use of nitrous oxide by adults**
   - **No significant change re NPS use among children.**
   - **Mixed indications re NPS use among vulnerable users, including the homeless – with "some displacement from synthetic cannabinoids to 'traditional' controlled drugs".**
   - **In prisons, "the PSA does not appear to have restricted the prevalence of NPS".**

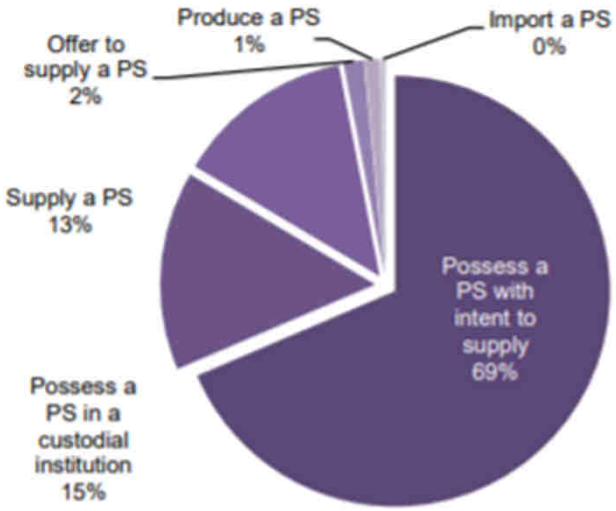
Summary of enforcement evidence

Table 1 – Summary of enforcement evidence in England and Wales, Northern Ireland and Scotland

	England & Wales	Northern Ireland	Scotland
Prohibition/ premises notices	9 issued *(to February 2018)*	0 issued *(to March 2018)*	0 issued *(to March 2018)*
Prohibition/ premises orders	0 issued *(to March 2018)*	0 issued *(to March 2018)*	0 issued *(to March 2018)*
Head shops closed down	31 head shops shut down & 332 head shops no longer selling NPS *(to December 2016)*		
Arrests	492 arrests (to December 2016)		-
Stop and searches	52 stop & searches *(to December 2017)*	13 stop & searches *(to December 2017)*	4 stop & searches *(to December 2017)*
Seizures	989 seizures *(to March 2017)*	-	-
Offences	318 offences *(to December 2017)*	10 offences *(to December 2017)*	38 offences *(to December 2017)*
Sentencing	261 prosecutions, 171 sentences *(to December 2017)*	Fewer than 4 prosecutions per year *(to December 2017)*	11 prosecutions, 2 sentences *(to March 2018)*

'-' indicates data is not available

PROSECUTIONS – ENGLAND AND WALES (H.O. Review of the PSA)



"MEDICINAL PRODUCT"

Reg.2: *Human Medicines Regs 2012* = Art.1(2) EC 2001/83

(a) any substance….presented as having properties of preventing or treating disease in human beings;

R v Hickman (fake Viagra;* MHRA prosecution*)

(b) any substance…that may be used by or administered to human beings with a view to—

(i) restoring, correcting, or modifying, a physiological function by exerting a pharmacological, immunological, or metabolic action, or

(ii) making a medical diagnosis.

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Must a "medicinal product" have therapeutic effect?

ISLAND OF GUERNSEY:

***Law officers of the Crown v Le Billon* (2011) -- charged with three charges of importing a "medicinal product" (mephedrone) into Guernsey.**

EU POSITION:

***Re Markus D and G* [C-358/13, C-181/14] - ECJ; July 14**

Selling herb mixtures containing, inter alia, synthetic cannabinoids.

"…the term 'medicinal product' in Article 1(2)(b) of Directive 2001/83 must be interpreted as not covering substances whose effects merely modify physiological functions and which are not such as to entail immediate or long-term beneficial effects for human health."

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R v. CHAPMAN **[2017] EWCA Crim 1743 (CACD)**

CACD rejected the contention that nitrous oxide in canisters produced for the catering industry, used recreationally, was a "medicinal product" and thus an "exempted substance":

> **"… the purpose for which it was intended to supply the canisters was purely recreational with nothing whatsoever to do with health. This last feature coupled with the fact that the gas was intended to be used in circumstances which were not beneficial to health…. was sufficient to take it outside the definition of medicinal product whatever label may have been on the boxes in which the canisters were originally packed."(Lord Burnett CJ.)**

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"**PSYCHOACTIVE EFFECT**" [s.2(2)]

"….**stimulates** or **depresses** a person's **central nervous system** and which affects a person's **mental functioning** or **emotional state**."

> [Explanatory Notes] "cause *an alteration in the individual's state of consciousness by producing a range of effects including, but not limited to:* ***hallucinations; changes in alertness, perception of time and space, mood*** *or* ***empathy with others;*** *and* ***drowsiness.***"

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Lyn Brown MP: 20th Jan 16 – amendment to exempt poppers defeated in Parliament.

ACMD: 16th March 16 (post Royal Assent of PSA 2016)

"The ACMD's consensus view is that a psychoactive substance has a direct action on the brain and that substances having peripheral effects, such as those caused by alkyl nitrites, do not directly stimulate or depress the central nervous system."

Govt. Response: 22nd March 2016

"…the Government agrees with your advice and interpretation of the definition….in the understanding that "poppers" have these unique indirect effects. Our understanding is that this approach does not have any further implications for the operation of the Act…"

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***R v ROCHESTER* [2018] EWCA Crim 1936**

The Court of Appeal (Criminal Division) concluded that the Psychoactive Substances Act 2016 does not require a "psychoactive substance" to be capable of producing its "psychoactive effect" by directly stimulating or depressing the central nervous system.

Indirect effect is sufficient.

The substance in *Rochester* was nitrous oxide, ("laughing gas").

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"SPICE"

SYNTHETIC CANNABINOIDS

CANNABIS

PHYTO-CANNABINOIDS

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SYNTHETIC CANNABINOIDS - SO-CALLED "SPICE"

- **Drug identification crucial.**
- **There is - in law - no such drug as "spice".**

1st Generation synthetic cannabinoids:
MDA 1971 (Amendment) Order 2009 **(SI 2009/3209, in force: 23rd Dec 2009.**

2nd Generation synthetic cannabinoids:
MDA 1971 (Amendment) Order 2013 **(SI 2013/239; in force February 2013)**

3rd Generation synthetic cannabinoids:
MDA 1971 (Amendment) Order 2016 **(SI 2016/1109; in force 14th December 2016.**

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R. v JOHNSON (WAYNE) **[2017] EWCA Crim 189**

- **J pleaded guilty (Magistrates' Court) to conveying a List C article into prison, namely, "spice", contrary to s.40C(2)(a) Prison Act 1952, a summary only offence.**
- **A "List C" article is "*any article or substance prescribed for the purposes of [s.40A(6)] by prison rules*".**
- **The offence was not the subject of the appeal. The CACD proceeded on the basis that the articles fell within List C and were prohibited.**
- **The judgment does not identify the actual synthetic cannabinoid (or cannabinoids) involved.**

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- **Rule 50, *Prison Rules 1999* makes provision for drug testing for "controlled drugs" and "specified drugs".**
- **Rule 51(9) – offence against prison discipline (including administration of a "specified drug".**
- **Rule 51(24) – offence of receiving a controlled drug or "specified drug" during a prison visit.**

From 19th October 2018; SI 2018 No.960 - amending *The Prison Rules* – adding schedule 2 that lists "specified drugs".

Section 40B(1) *Prison Act 1952* – offence if a person "without authorisation– (a) brings, throws or otherwise conveys a List A article into or out of a prison". [controlled drug]

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SI 2018 No.960 AMENDING SCH.2 TO THE PRISON RULES 1999/728

(a) AB-PINACA ….;
(b) 5F-AB-PINACA….;
(c) AB-FUBINACA …..;
(d) APICA ….;
(e) 5F-APICA ….;
(f) APINACA …..;
(g) 5F-APINACA ….;
(h) 5F-PB22….;
(i) MDMB-CHMICA ….;
(j) PB-22….;
(k) 5F-MDMB-PINACA….;
(l) AB-CHMINACA….;
(m) 5F-AMB ….;
(n) AMB-FUBINACA….;
(o) Etizolam….. [benzodiazepam]
(x) Norfludiazepam ….;
(y) Nifoxipam ….;
(z) Gabapentin …. [treat epilepsy];
(z1) Pregabalin …. [anti-convulsant];
(z2) Mirtazapine – [anti-depressant]
(z19) Sildenafil – [viagra]

Synthetic cannabinoids

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CBD AND "MEDICINAL CANNABIS"

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DEFINITION OF "CANNABIS"

"cannabis" (except in the expression "cannabis resin") means any plant of the genus Cannabis or any part of any such plant (by whatever name designated) except that it does not include cannabis resin or any of the following products after separation from the rest of the plant, namely—

(a) mature stalk of any such plant.

(b) fibre produced from mature stalk of any such plant, and

(c) seed of any such plant;

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PART IV TO SCHEDULE 2

"cannabinol derivatives" means the following substances, except where contained in cannabis or cannabis resin, namely tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives;

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THE STRICT LEGAL POSITION

- **CBD @ 100% purity is *not* a controlled drug.**
- **CBD with a measurable amount of THC or other controlled cannabinoid, will be a MDA Class B drug.**
- **IF a medical claim is made, it will be a "medicinal product" under the HM Regs 2012: must be licensed by the MHRA.**

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MEDICINAL CANNABIS

- **The *Misuse of Drugs (Amendments) (Cannabis and Licence Fees) (EW&S) Regulations 2018* (in force: 1.11.18)**
- **A CBMP - defined by reg.2(1) of the 2001 MD Regs (inserted by reg. 3 of the 2018 Regs) as:**

  ….a preparation or other product, other than one to which paragraph 5 of part 1 of Schedule 4 applies, which—

  (a) is or contains cannabis, cannabis resin, cannabinol or a cannabinol derivative (not being dronabinol or its stereoisomers);

  (b) is produced for medicinal use in humans; and—

  (c) is—

  (i) a medicinal product, or

  (ii) a substance or preparation for use as an ingredient of, or in the production of an ingredient of, a medicinal product;

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Save for administration to animals for research purposes, a person must not order or supply a CBMP for the purpose of its administration, unless:

(i) the supply is a "special medicinal product" for use in accordance with a prescription or direction of a "specialist medical practitioner"; or

(ii) the product is an "investigational medicinal product" without a "marketing authorisation", for use in a "clinical trial"; or, (

iii) it is a "medicinal product" with a "marketing authorisation" (reg.16A(1), (2) of the 2001 Regulations, inserted by reg.4 of the 2018 Regulations).

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- **A "specialist medical practitioner" means a doctor included in the register of specialist medical practitioners kept under section 34D of the Medical Act 1983(2) (the Specialist Register): reg.16A(6)).**
- **A person must not self-administer a CBMP by the smoking of the product (other than for research purposes in accordance with reg.13): reg.16A(3) of the 2001 Regulations, inserted by reg.4 of the 2018 Regulations).**
- **There is a UK/EU regime for obtaining a "marketing authorisation" (detailed: HM Regs [Directive 2001/83/EC]).**

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D.I.Y. CANNABIS 'MEDICATION' – MYTH 1

"Exempt product" definition (MD Regs 2001) very limited:

"exempt product" means a preparation or…product...which contains a controlled drug, where—

(a) the preparation or…product is not designed for administration of the controlled drug to a human being or animal;

(b) the controlled drug in any component part is packaged in such a form….that it cannot be recovered by readily applicable means or in a yield which constitutes a risk to health; and

(c) no one component part of the product or preparation contains more than one milligram of the controlled drug….

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D.I.Y. CANNABIS 'MEDICATION' – MYTH 2

- **Whether legal, w/o licence, to import "industrial hemp" less than 0.2% THC? -- NO!**
- **Hemp = "cannabis" within MDA 1971**
- **The 0.2% threshold relates to EU rules relating to cultivation of hemp [chiefly for industrial purposes].**
- **Processing hemp buds and flowers does NOT make the product legal.**

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PREVENTING HARM

SUPERVISED DRUG CONSUMPTION FACILITIES ?

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Prevalence of 'drug litter' in Glasgow city - 2017

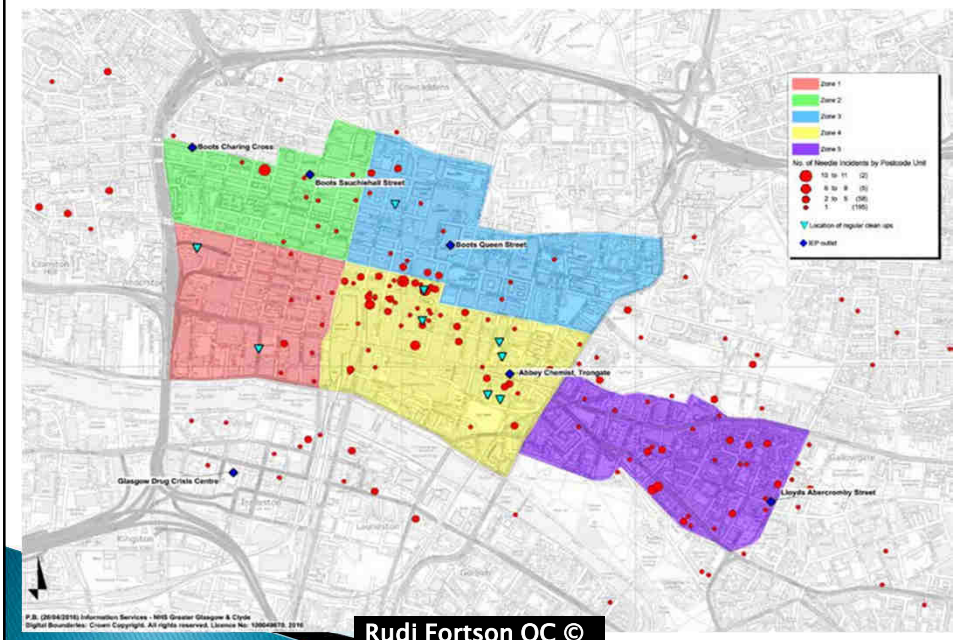

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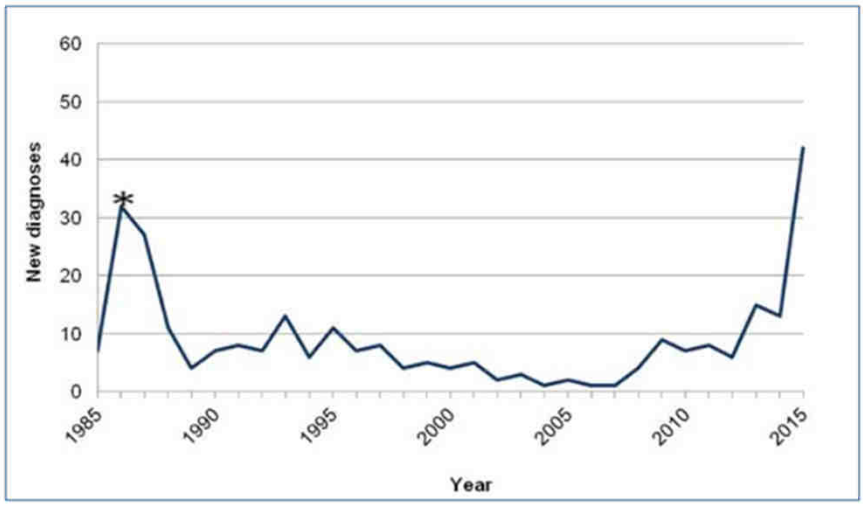
Figure 1. New HIV diagnoses among people who inject drugs in NHSGGC, 1985-2015.



* The first blood tests for HIV became widely available in 1985-1986; this peak therefore represents the detection of a large number of prevalent but previously undiagnosed cases.

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SUPERVISED DRUG CONSUMPTION FACILITIES

1. **DCRs aim to reduce morbidity and mortality; reduce drug use in public; promote access to social, health and drug treatment facilities.**
2. **At least 92 DCRs exist in several jurisdictions.**
3. **More facilities opening; more under consideration.**
4. **The UK has no DCRs.**
5. **DCRs have an evidence base that is growing with experience.**
6. **Reaching a threshold of 'perfect evidence' is unattainable, but the available evidence suggests that the benefits outweigh the harms.**

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8. **There is no 'one size fits all' approach.**
9. **DCRs are not required in every town or city.**
10. **DCR's as a *system* of interventions.**

TYPES

a. Medicalised:

Barcelona

b. Mobile.

c. Community.

Barcelona

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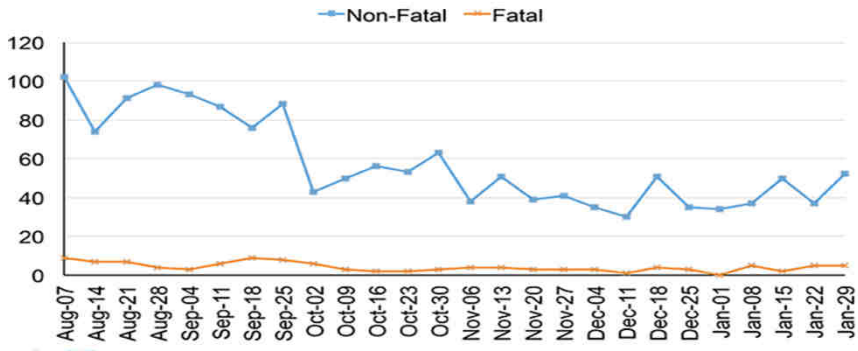
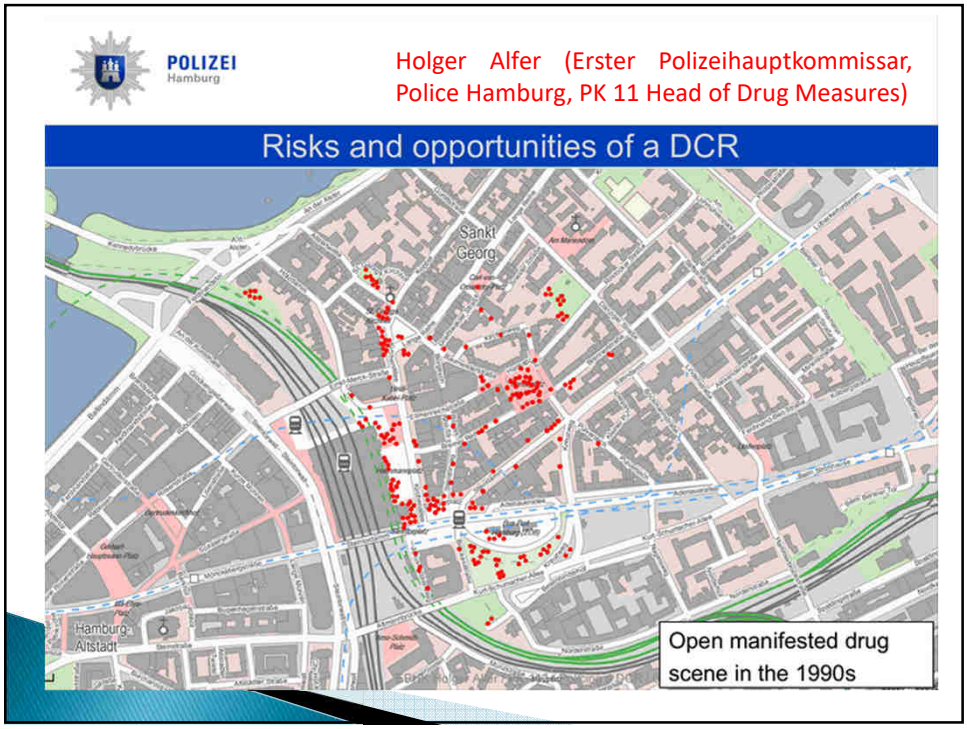
TORONTO - "THE WORKS"

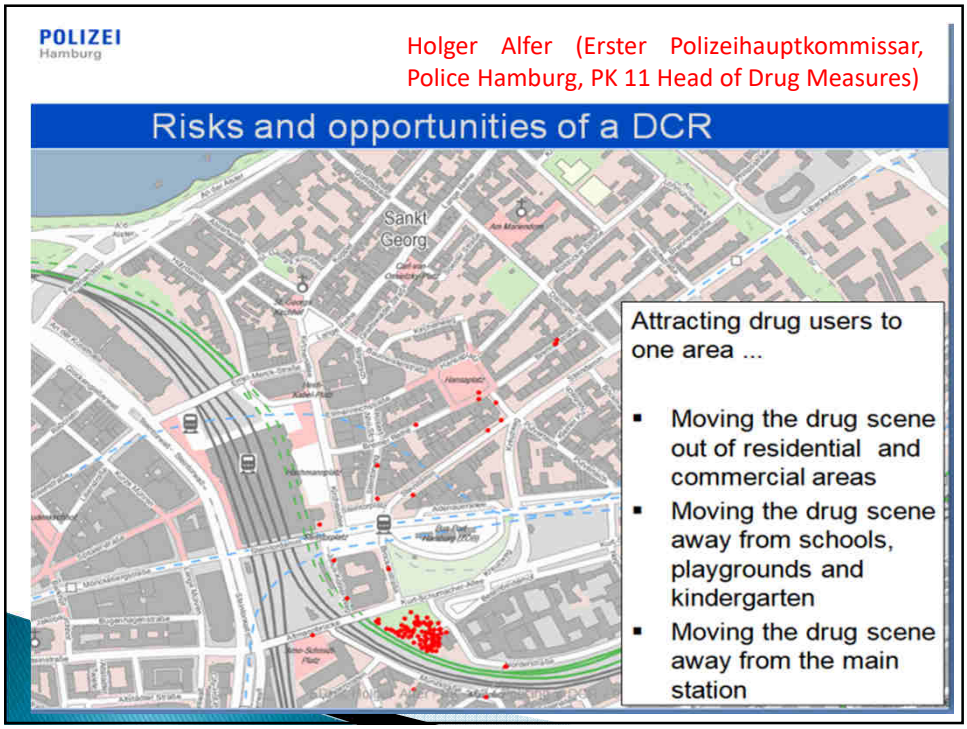
Initial results

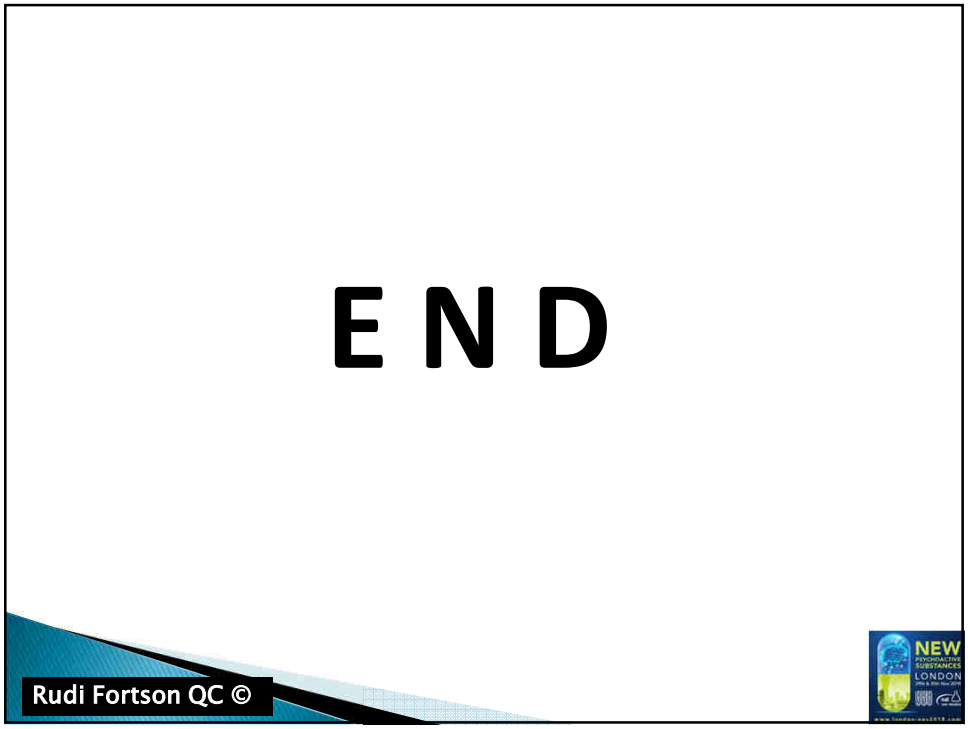


TORONTO Public Health

Shaun Hopkins (Manager of the Toronto Public Health needle exchange program The Works);


POLIZEI
Hamburg
Holger Alfer (Erster Polizeihauptkommissar, Police Hamburg, PK 11 Head of Drug Measures)
Risks and opportunities of a DCR
Sankt Georg
Hamburg Altstadt
Open manifested drug scene in the 1990s


POLIZEI
Hamburg
Holger Alfer (Erster Polizeihauptkommissar, Police Hamburg, PK 11 Head of Drug Measures)
Risks and opportunities of a DCR
Sankt Georg
Attracting drug users to one area ...
Moving the drug scene out of residential and commercial areas
Moving the drug scene away from schools, playgrounds and kindergarten
Moving the drug scene away from the main station


E N D
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NEW
PSYCHOACTIVE
SUBSTANCES
LONDON