

THE BECKLEY FOUNDATION
DRUG POLICY PROGRAMME

A DRUGSCOPE BRIEFING PAPER



Reclassification of Cannabis in the United Kingdom

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The *Beckley Foundation Drug Policy Programme (BFDPP)* is a new project dedicated to providing a rigorous, independent review of global drug policy. The aim of this partnership between the Beckley Foundation and DrugScope is to assemble and disseminate information and analysis that supports the rational consideration of these sensitive policy issues at international level and leads to the more effective management of the widespread use of psychoactive substances. It brings together the Beckley Foundation, a charitable trust set up to promote the investigation of the science of drug use and DrugScope, the UK's leading independent centre of expertise on drugs.

SUMMARY

On 29 January 2004, an amendment to the drug laws came into effect in the UK that moved cannabis and its derivatives from Class B to Class C under the *Misuse of Drugs Act 1971*, the primary drug control legislation in the UK. This is likely to reduce the priority that law enforcement agencies give to combating the possession and use of cannabis and restrict the circumstances under which the police should arrest those found in possession of the drug. However, it would be a mistake to view this as an indication of a more general liberalising trend in UK drug policy or as necessarily a first step towards decriminalisation of cannabis use. The motivations for this policy change and the manner of its implementation are more complex.

BACKGROUND

For as long as reliable information has been available, the UK has had one of the highest prevalence rates for cannabis use of any country in the world. Despite some signs of stabilisation in the last five years, a high proportion of young people still admit to having tried cannabis. A UK Government survey reports that in 2000, 44% of 16 to 29-year-olds had used cannabis at some time in their lives, and that 22% had done so in the last year and 14% in the previous month (Ramsay M *et al*, 2001). These rates are among the highest in Europe and comparable to those for Australia, Canada and the USA. The 2003 Annual Report from the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) reports that cannabis use among young people varies widely across the European Union. The figure for the UK is 35% – the same as France and the Czech

Republic – this compares to Ireland 32%, Spain 30%, Netherlands 28%, Denmark 24%, Finland 10%, Greece 9%, Sweden 8%, and Portugal 8%. (EMCDDA, 2003). The United Nations Office of Drugs and Crime's (UNODC's) *Global Illicit Drug Trends 2003* report states that the annual prevalence for cannabis use as a percentage of the population over 15 years old is 15% in Australia, 10.6% in the UK, 9.3% in the USA and 8.9% in Canada (UNODC, 2003, pp 339-341).

Law enforcement agencies in the UK have traditionally been relatively active in policing the use of cannabis, producing some of the highest arrest rates in Europe throughout the last two decades. A recent study for one of the UK's leading research bodies, the Joseph Rowntree Foundation (JRF), concludes that of *all* known indictable offenders in England and Wales in 1999 (513,000), just under one in seven (69,377) had been

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cautioned or convicted for possession of cannabis (May T *et al*, 2002, p vi). In recent years, this has increasingly been recognised as a major factor in the growing bureaucratic workloads of the police, prosecution agencies and the courts. So the same JRF report concludes that, for 1999, 'the average time it took an officer to deal with a cannabis offence was five hours. In most cases officers were operating in pairs. This yields a figure of 770,000 officer hours or the equivalent of 500 officers' (*ibid*). Other criminal justice agencies – prosecuting authorities, courts – also expend considerable resources on dealing with cannabis possession cases.

The main instrument for managing this resource problem has been the extensive use of a police caution for cannabis possession offences. This is a procedure whereby an offender who admits to being guilty to a minor offence can be issued with a caution at a police station, rather than being charged and appearing in court. In the UK, cautions can be issued by the police for a range of offences, but have been most widely used for cannabis possession – by the late 1990s, over half of all arrests for this offence were being dealt with in this way (Corkery J M, 2002). This approach did reduce the burden on the courts arising from cannabis enforcement, but cautioning remains an intensive use of police time, still results in the creation of a criminal record for the offender and has been inconsistently applied across the country. The fact that the cautioning rate for cannabis possession has varied across police areas from 21% to 73% has led critics to argue that a law allowing for such wide discretion in levels of punishment for the same offence – from a caution to 5 years imprisonment – could lead to injustices.

In 1998, the UK Government launched a comprehensive 10-year strategy to tackle the drug problem. While this document said nothing specific about how possession of cannabis should be handled, it clearly stated that government resources should be concentrated on responding to 'the drugs that cause the greatest harm'. In the UK, this meant heroin and crack/cocaine. All the principal statutory agencies have since been asked to show how their policies and use of resources are compliant with these priorities and with targeting the most harmful forms of drug use.

CONCERNS LEADING TO REFORM

A number of factors supporting the need for change have all come together in recent years to drive forward reform:

- growing recognition that arresting cannabis users was not having any overall impact on the level of its use
- growing recognition of the costs to the taxpayer of all these arrests, the majority of which resulted in nothing more than a caution (the JRF study estimates that the cost of policing

cannabis in 1999 was £350 million (May T *et al*, 2002, pp 36-37)

- the policy consensus that government action should be concentrated on heroin and cocaine
- concern at the impact that a cannabis caution or conviction for an otherwise law-abiding citizen could have on their future career or travel plans
- concern at the wide variation in arrest and prosecution practice around the country
- pressure on police managers to concentrate their resources on offences that are of more concern to the public
- the broadly successful implementation of a scheme piloting the concept of not arresting cannabis users in Lambeth, South London
- a public and political debate that recognised the differential harms caused by different patterns of drug use.

The government has been more receptive to some of these arguments than others and while these issues were debated by ministers in the late 1990s, no policy action was taken at that time on the policing of cannabis. There were fears about the potential for an increase in problems associated with cannabis use – particularly in view of the increasing THC content* and the relationship between cannabis use and mental health problems. There was also uncertainty about the politics of reform; about how the media, opposition politicians, and the electorate would react to a perceived 'softening' of the line on drugs.

The case for law reform received added impetus with the publication of a series of landmark reports by highly respected bodies. Under UK law, controlled drugs are divided into three classes: A is for the most harmful – such as heroin and cocaine – and C is for the least harmful, such as steroids. Cannabis has historically been categorised in the middle, as a Class B substance, alongside amphetamines.

In 2000, an influential report for *The Police Foundation Independent Inquiry Into The Misuse Of Drugs Act*, which was chaired by Viscountess Runciman, called for the classification system to be more closely based on the scientific evidence of relative harm and consequently that cannabis should be reclassified to Class C under the Misuse of Drugs Act 1971. Ministers rejected the specific recommendation at that time, but were aware that sections of the media and political world supported change, agreeing that any inconsistencies in the classification system would ultimately bring the drug laws into disrepute. After the general election in June 2001, responsibility for drug policy passed to the Home Secretary David Blunkett. He quickly announced that he was considering the implementation of the reclassification and would be taking advice on the subject from the Advisory Council on the Misuse of Drugs and the Parliamentary Select Committee on Home Affairs.

THE PROCESS OF CHANGE

By the summer of 2002, both these committees had produced reports that supported the reclassification. The Advisory Council emphasised the need for the law to reflect the evidence of the potential for harm of different drugs in their legal classifications (ACMD, 2002). The Home Affairs Select Committee also highlighted the problem of the ineffectiveness of enforcement as a means of tackling cannabis use (HASC, 2002). These were the voices of some of the most influential advisory bodies in the UK. The government had doubts. In particular, the Prime Minister's Office was worried about the potential for a negative political and media reaction to any move to reclassify cannabis which could be portrayed as an admission of defeat in the battle against drugs. It was also felt that it would be difficult to explain to the general public that cannabis use and possession were not being made legal, even though this offence would not ordinarily be dealt with by police arrest and criminal prosecution.

Two 'balancing' measures were proposed to address these concerns.

- 1 It was decided that the possession of cannabis would still be an arrestable offence following reclassification. In the UK, there is a distinction in the Police and Criminal Evidence Act 1984 between arrestable offences (where a police officer has unconditional authority to demand that a suspect goes to a police station for further questioning or charge) and non-arrestable offences (where the powers of arrest are restricted – for example, to situations where the police officer cannot verify an individual's address). Previously, under the Misuse of Drugs Act 1971, possession of Class B substances was an arrestable offence, but possession of Class C substances was not. To minimise the impact of the reclassification on police officers' ability to arrest cannabis users, it was proposed that the power of arrest should be retained for cannabis and extended to other Class C drugs.
- 2 It was decided that the maximum penalties for supply of cannabis should remain highly punitive. The maximum penalty for supply offences relating to Class B drugs is 14 years imprisonment, while for Class C drugs it has been 5 years. The Government proposed that the penalties for supplying Class C drugs should be increased to 14 years, a change that was introduced under the *Criminal Justice Act 2003*. Part of the intention for this amendment was to demonstrate clearly that cannabis remained illegal and that supply of all controlled drugs continued to be viewed very seriously.

There has also been discussion about how the police should implement their revised powers. The JRF report looked at how cannabis possession was policed on a day-to-day basis in a

sample of local areas. It found that whether a user was arrested or charged – and the severity of the punishment he or she subsequently received – depended, to a significant degree, on the habits and opinions of individual police officers, rather than the policy of police management or of the Government. If reclassification was to be implemented consistently and fairly, then guidance would have to be issued to, and followed by, the 130,000 plus police officers throughout the country.

The Association of Chief Police Officers (ACPO) has issued guidance that makes it clear that there will be a general presumption *against* arrest for cannabis possession. But there are circumstances in which individuals may be arrested if their action is seen to extend beyond 'simple possession'. This will apply

- if people are smoking in public and flouting the law
- if they are 17 or under
- if they are caught in possession of cannabis in or around places where children congregate
- if people are known locally to be repeatedly in breach of the law.

Nor are the police being instructed simply to ignore instances of cannabis possession and use. They will still be expected to confiscate the drug and dispose of it appropriately, although the presumption will be that in the vast majority of cases, no further action will be taken. There are already concerns about maintaining consistency across the whole of the UK. Ministers in Scotland have indicated that Scottish guidance to police is unlikely to include the presumption against arrest.

The debate on the wisdom of reclassification has continued while the official processes of legal change have slowly taken their course. Expert opinion in the field has been divided. Some express concerns about the danger of sending a more tolerant message to young people. Others worry about the consequences of introducing a wider margin of police discretion – and an even greater potential for inconsistency – than existed before. Critics have pointed out that the legal position of police officers is essentially unchanged – they still have wide discretion on whether to arrest and possible penalties range from no further action to a period of imprisonment. There has also been considerable interest in the work of Robin Murray, professor of psychiatry at the Institute of Psychiatry and consultant psychiatrist at the Maudsley hospital in London, and others who have drawn attention to new evidence that heavy cannabis use appears to be linked to serious mental illness in some cases (Professor Murray is not himself opposed to reclassification). In January 2004, the current leader of the Conservative Party, Michael Howard, announced that his party would change the law on cannabis back again if elected to government. But the majority have broadly welcomed the move which has been widely greeted as a sensible rebalancing of the law.

The reclassification measure was introduced by Statutory Instrument No 3201 and came into force on 29 January 2004.

IMPACT OF THE CHANGE

The UK government is hoping that the reclassification will lead to a significant reduction in the costs – to police, prosecution agencies, courts and the corrective services – of enforcing the drug laws, without bringing about any significant increase in the level of cannabis use, or of incidents of crime, nuisance and anti-social behaviour that are related to use or supply. At the time of writing (April 2004), it is too early to assess impact, but some initial observations are possible:

The consideration of this potentially sensitive issue has been largely based on evidence and sound argument and relatively free from extreme ideological statements. This is largely due to the Government's consideration of the issue in terms of an appropriate scale of harms between different substances and the complementary focus on the issue of prioritising the deployment of scarce police resources – rather than presenting this issue as all about being 'tough' or 'soft' on drugs.

It continues to be extremely difficult to explain the exact nature of the enforcement regime to the general population, particularly young people. Some recent surveys indicate widespread confusion among young people as to what they are, and are not, allowed to do.

Whatever the letter of the law, the way in which it is enforced can still vary widely across the country. One of the potential weaknesses of the reclassification is that it leaves individual police officers with a great deal of discretion.

In a country that has experienced high levels of cannabis use over a long period there has been no widespread campaign against a more tolerant approach, but public opinion remains divided over the future direction of drug policy.

There will be official and non-governmental studies into the impact of the reclassification. Her Majesty's Inspectorate of Constabulary will be reviewing the way in which police forces implement the new system with particular attention to any indicators of inconsistent practice. The Joseph Rowntree Foundation will be conducting its own independent study on the impact of changes in police practice. This information should begin to emerge in late 2004. Ultimately, the success or otherwise of the reclassification will be measured by the savings in resources and the evidence of the impact of legal change on the level of cannabis use in the UK. Indicators of these criteria will emerge through routine statistics published by Government in the coming years.

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USEFUL WEBSITES

www.internationaldrugpolicy.org
www.beckleyfoundation.org
www.drugscope.org.uk

FOOTNOTES

*THC – Tetrahydrocannabinol – is the most important psycho-active ingredient in cannabis. In recent years, stronger strains of herbal cannabis have been developed containing between 8% and 20% THC.