

CANNABIS: CHALLENGING THE CRIMINAL JUSTICE SYSTEM

A Public Discussion Document

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The outcome of the cannabis debate cannot be predicted, but changes to the law must not take place without the most careful consideration of all the issues.

You have a legitimate and important role to play - but only if you are willing to ask and address tough questions about the intentions, successes and failures of past and current and proposed efforts.

This may require a fresh approach!

CONTENTS

- 1. International Treaty Considerations Page 2
- 2. Elements of Risk Page 4
- 3. Random Drug Testing Page 5
- 4. Drugs and Human Rights Page 6
- 5. Legalise Cannabis Alliance Principles and Proposals Page 7
- 6. Recommendations Page 7
- 7. Bibliography and Associated Reading Page 8



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If society is to achieve any success in its effort to reduce personal and social damage through drugs use, we must continually re-examine our own understanding and attitudes to drug use, misuse and abuse. It is worth noting that the overwhelming majority of those who use cannabis are not "problem users" and "normal" use ought not be labelled as "abuse".

We also need to examine the successes, failures and costs of past and present control regimes.

Can we really justify punishing people for cannabis possession or growing a few plants when clearly neither individual nor society benefit through the prosecutions?

How does the implementation of law conflict with Human Rights, harm minimalisation and good policing?

Above all it is essential to instigate a continuing dialogue between government, drug agencies, police AND users.

We need to create a just and workable legislation that reduces harm from drugs without infringing upon personal privacy and the rights to choose ones own lifestyle and beliefs.

We need legislation that is aimed at PROTECTION, not control.

To achieve this, we encourage:

- a) A truly open and honest dialogue among professionals, government, the public and the cannabis using community,
- b) Meaningful discussions on whether it would be preferable to have a system of licensed cannabis retail outlets incorporating all necessary quality control and harm reduction provisions, rather than criminal supply chains that seem unstoppable,
- c) Discussion between Government, employers and workers representatives (TUC) on the value, reliability, cost and the need for universal testing for recent past cannabis use.

To ensure constructive consultation we invite you to reproduce this document [unedited] and forward to anyone expressing a prior interest.

Don Barnard & Alun Buffry

Legalise Cannabis Alliance

1. INTERNATIONAL TREATY CONSIDERATIONS

- 1.1 Part of the solution to protect otherwise law-abiding people who use cannabis from potential dangers, such as the risk of imprisonment, exposure to bad quality cannabis and addictive substances and the general world of crime, would be to allow legal regulated outlets for supply and to allow people to grow a few plants at home! This would remove many of the dealers out of the equation, divorce the connections of cannabis with hard drugs and reduce exposure to crime.
- 1.2 Government insists that major change to legislation is not possible because of the UK obligations to international treaties - THIS IS SIMPLY NOT TRUE. If the UK decides that a system other than prohibition is most appropriate for protecting public health and welfare and for deterring illicit trafficking, the government is not obliged by virtue of the Single Convention to maintain a prohibition policy.
- 1.3 A legal regulated control of cannabis use and supply is an entirely legitimate collective purpose, enforceable with all appropriate civil and criminal sanctions and in accord with the UK Government's international obligations:
- 1.4 Consideration of the international treaties are vital to the discussion of cannabis policy:
- 1.5 The Single Convention on Narcotic Drugs, 1961,
and
Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
- 1.6 The Single Convention on Narcotic Drugs 1961 [amended 1972]: [1]
 - 1.6(1) Article 36 of The Single Convention on Narcotic Drugs 1961 requires the signatories to adopt such measures to ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally.
 - 1.6(2) Paragraph 3 of Article 28; The Parties shall adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant.
 - 1.6(3) Article 22 of the Single Convention reads as follows: In all cases in which, in light of the circumstances prevailing in the country or area of a Party, prohibition of the cultivation of the poppy plant, coca plant or cannabis plant is, in the view of that Party, the most appropriate measure for protecting public health and welfare and to prevent the narcotic substances from finding their way to illicit trafficking, the Party involved can prohibit cultivation.
 - 1.6(4) Article 2(5) requires:
 - (a) A Party shall adopt any special measures of control which in its opinion are necessary having regard to the particularly dangerous properties of a drug so included; and
 - (b) A Party shall, if in its opinion the prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug except for amounts which may be necessary for medical and scientific research only, including clinical trials herewith to be conducted under or subject to the direct supervision of the Party - It must be emphasised, however, that Article 2(5) is not mandatory. Rather, special measures of control can be imposed if, in the opinion of the Party, they are 'necessary' or 'appropriate'.
 - 1.6(5) The 1972 Protocol added a second subparagraph (s-Para 1(b)) to Article 36, paragraph 1:
Notwithstanding the preceding subparagraph, when abusers of drugs have committed such offences, the Parties may provide, either as an alternative to conviction or punishment or in

addition to conviction or punishment, that such abusers shall undergo measures of treatment, education, after-care, rehabilitation and social reintegration. [1]

1.7 The Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.

1.7(1) Among other things, this requires individual states - subject to their constitutional principles and the basic concepts of their legal systems - to establish the possession of cannabis, as a criminal offence under their domestic law. The states are free, however, to determine what level of sanctions to apply to such an offence in conformity with their domestic law." [1]

1.7(2) At face value, it is difficult to see how the Misuse of Drugs Act 1971 could be amended within in the terms of the UN Conventions to allow 'a legal regulated supply'.

1.7(3) However, these treaties are much more subtle and flexible than they are sometimes interpreted. They provide provisions and discretion for varying interpretations to allow for alternatives to punishment. [1, 2, 3, 4, 5, 7]

1.7(4) Nothing in the convention requires signatory States to establish the possession, purchase or cultivation of controlled cannabis for the purpose of non-medical, personal consumption as a criminal offence, if to do so would be contrary to the constitutional principles and the basic concepts of UK domestic legal system. [1,2,3,4,5,7]

1.8 *"The term 'possession' used in the penal provisions of the Single Convention means only possession for the purpose of illicit traffic. Consequently, unauthorized possession and purchase of narcotic drugs including cannabis for personal consumption need not be treated as punishable offences or as serious offences".*
[Adolf Lande, Sec. UN Permanent Central Narcotics Board and UN Drug Supervisory Body and drafters of the 1961 Convention]. [1, 4]

1.9 *"The requirement that Parties limit the use of drugs to medical and scientific purposes does not require them to attain that goal by providing penal sanctions for unauthorized 'use' or 'personal consumption' of drugs."*
(Noll, a senior legal officer of the United Nations Division of Narcotic Drugs) [1, 4]

1.10 *"The word 'possession' in Article 36 refers not to possession for personal use but to possession as a link in illicit trafficking.' The Commission concluded that measures such as "an educational program and similar approaches designed to discourage use" could be employed to meet treaty obligations."*
(U.S. National Commission on Marihuana and Drug Abuse) [1, 4]

1.11 *"...[none] of the three international drug Conventions insist on the establishment of drug consumption per se as a punishable offence. Only the 1988 Convention clearly requires parties to establish as criminal offences under law the possession, purchase or cultivation of controlled drugs for the purpose of non-medical, personal consumption, unless to do so would be contrary to the constitutional principles and basic concepts of their legal system... None of the Conventions requires a party to convict or punish those who commit such offences, even when they have been established as punishable; alternative measures may always substitute for criminal prosecution."*
[United Nations Drug Control Panel, World Drug Report, New York: Oxford University Press, 1997:185].

"Cannabis has been demonised by being placed on the wrong side of the law for reasons that are purely historical. It did not happen to be in common use in the developed world when the international conventions on drugs were first signed. Now it is, and the law is out of date."
FRANCIS WILKINSON, Chief Constable of Gwent from 1997 to 1999.
"Human Rights Act will make cannabis legal", The Times, 20 February 2001.

2. ELEMENTS OF RISK

- 2.1 We often hear the phrase "harm reduction" in relation to cocaine and heroin users and addicts, but we seldom hear anything about harm reduction for cannabis use. The real risks from illegal cannabis use need to be recognised and tackled.
- 2.2 Are we to assume that Government, despite its own warnings that cannabis is a dangerous substance, does not consider it important to advise cannabis users on safer use? The idea that cannabis ought to be criminalized because it is harmful is a key feature of the authoritarian mindset. It's an idea that allows for criminalising just about any imaginable activity, since almost nothing in this world is harmless. Cannabis isn't harmless, but it isn't nearly as harmful as many substances we consume every day. [12, 13]
- 2.3 There have been so many reports and studies on the physical and psychological risks of cannabis use that it would not be possible to list them here. [1] For a review of this scientific evidence [8, 13]
- 2.4 Here are two astounding conclusions:
- 2.4(1) *"In strict medical terms marijuana is far safer than many foods we commonly consume. For example, eating ten raw potatoes can result in a toxic response. By comparison, it is physically impossible to eat enough marijuana to induce death."* DEA Judge Francis Young [12]
- 2.4(2) *"Cannabis is remarkably safe. Although not harmless, it is surely less toxic than most of the conventional medicines it could replace if it were legally available. Despite its use by millions of people over thousands of years, cannabis has never caused an overdose death."* Lester Grinspoon, MD, Harvard Medical School.
- 2.5 In spite of all the efforts to prove otherwise, medically, socially and even chemically it would be hard to find a substance safer than cannabis. A small minority of people do suffer some negative effects when using cannabis, but this number is extremely small. Some people may experience unwelcome effects. If this happens they should stop using it. Cannabis is unique among intoxicants in that all harmful effects are reversible on cessation of use. The biggest health RISK for cannabis users is not that cannabis per se is harmful, but maybe the way cannabis is used in combined with tobacco. Those using cannabis-tobacco combinations experience the effect of two drugs. People are introduced to tobacco from smoking joints. Smoking tobacco on its own doesn't give the same experience. [9, 10, 11]
- 2.6 Many users may feel a need for a joint, not realising that it is their tobacco addiction. Clearly, it is not a good thing if people who use tobacco in joints start smoking at regular intervals in order to satisfy the craving for tobacco products with all the attached risks!
- 2.7 Another serious problem is the so-called 'Soap Bar Hash' (also called 'Moroccan'). This may be polluted with all sorts of unknown dangerous substances. [14, 15]
- 2.8 The main "non-health" risk to the individual cannabis users, besides that of prosecution, is exposure the hard drugs and criminal activities through their visit to an illegal cannabis supplier, That is particularly important for young people, many of whom become alienated from a society that appears to condemn them to criminality - and remember that a very large number of young people use cannabis, no doubt a much higher number than suggested by surveys.

Any sensible and just legislation must tackle these risks!

"Relatively few adverse clinical effects from the chronic use of marijuana have been documented in humans. However, the criminalization of marijuana use may itself be a health hazard, since it may expose the users to violence and criminal activity"
The Kaiser Permanente Study - "Marijuana Use and Mortality"
April 1997 American Journal of Public Health.

3. RANDOM DRUG TESTING

- 3.1 Government policy is emulating the USA with a coercive abstinence agenda. [16, 17]
- 3.2 Random testing and passive 'sniffer' dogs for recent use of illegal substances has become the central point of our Government's anti-drug strategy. Everyone over the age of 18 (and the Government wants to reduce this to 14) who comes into contact with the criminal justice system is tested for drugs. But this is not exclusive to criminals it also applies to people visiting rehab centres and clinics, anyone in private or state schools, members of the armed forces and of course drivers, to name but a few.
Note: **at present cannabis use is not tested for in the criminal justice system.**
- 3.3 **The next thing on the Governments agenda is random drug testing of all workers. [25]**
- 3.4 Drug testing advocates claim that illegal drug use costs companies billions in accidents, lost productivity and absenteeism - yet they produce no real evidence in support of this! [16, 17, 18]
- 3.5 Drug tests in the workplace have little to do with health and safety and a lot to do with controlling workers and propping up the Government's ailing anti-drug war. They are often violations of civil liberties. What right does an employer have to control out-of-work activities when they don't affect work? [16, 17, 18]
- 3.6 Drug tests tell more about a person than just use of illegal drugs. An employer can find out whether a person is pregnant, or taking prescribed drugs. [16, 17]
- 3.7 Unscrupulous employers may turn people down for employment because their condition may prove expensive in the future. [16]
- 3.8 Drug tests are notoriously fallible, and false-positive results are common. Drug test companies' literature admits that they cannot test for impairment and that the false positive rate using proper laboratory practice is around 5%. Add into that bad sample management and laboratory practice and the proportion of false positives could be as high as 20%. [16, 17]
- 3.9 Cannabis hemp seed oils have shown false positive results for cannabis on tests in the USA. [17]. Considering a person can absorb substance through the skin, anyone using Tan Stand Shops should also be wary. Oils used contain cannabis hemp seed oils.
- 3.10 Many over-the-counter and prescription NSAIDs (non-steroids anti-inflammatory drugs) such as Ibuprofen, Avil, Nuprin, Pamprin, Anaprox, Tolectin, Ifenoprofen, Lodine, Motrin (to name but a few) also show up for illegal cannabis use on many tests. [Homegrowers Manual, ISBN 0 9543728 0 8, p 227]
- 3.11 Public authorities should be wary of taking disciplinary action on one of these tests, because it would be strongly arguable in tribunal that such disciplinary action was unfair. Anyway, if an employee's drug use in or out of work is affecting their work performance, then that should be obvious to their superior, if they are a good man-manager. [16, 17]

"Government officials have a vested interest in getting corporate America to underwrite their war on drugs. To that end they've disingenuously lumped together employees who come to work impaired by drug use or alcohol with employees who use drugs off the job, labelling them collectively bad for business. The real questions for managers today are how much lost productivity is attributable to resources diverted for universal or random drug testing and how many excellent employees have been fired or never hired due to invasive drug screenings? Savvy stockholders might be interested."

'Junk science drove America to drug testing', St. Petersburg Times, January 30, 2000.

4. DRUGS PROHIBITION AND HUMAN RIGHTS

- 4.1 The hopes of reformers were high that the Human Rights Act 1998 [19] would strengthen the drive for drugs law reform. The incorporation into English law of the *rights of privacy* in Article 8 of the European Convention of Human Rights offered to defendants the real prospect of a defence against drug-possession and personal consumption charges. Prosecution for personal consumption constituted an “interference” with the defendants “private life”, the reformers reasoned, which could not be justified under the specific terms of the Convention. Those arguments remain strong, and persuasive.
- 4.2 So persuasive indeed, that the UK prosecuting authorities now avoid simple “possession” charges altogether. They have clearly come to the same conclusion, about Article 8. Attractive “deals” are now commonly offered to those charged with “minor” personal possession offences. All the indications are that full criminal proceedings are now being limited to the “aggravated” charges – possession of large quantities of *drugs (in excess of personal consumption requirements)*, dealing or “trafficking”, supply to minors, growing or manufacturing prohibited substances, and permitting the use of premises for drugs purposes. This self-imposed restriction itself constitutes a victory for the human rights cause.
- 4.3 But the victory is of limited scope. For the Human Rights Act (Article 8) does not offer any defence to these “aggravated” charges.
- 4.4 Article 8 continues, however, to exercise its influence. There is a powerful Article 8 case to be made against the appalling Regulations which classify drug consumption (including cannabis) as a “relevant disability” justifying the withdrawal of a driving licence. Mandatory drug testing [20, 21] poses a range of different issues, according to its administrative context. Testing by private employers remains a matter of personal contract, falling outside the Human Rights Act. For public employees, its legality will turn on its relevance to the functions performed by the employee. And within the context of judicial proceedings, its legality will turn on its precise statutory context: there is no neat *Yes/No* test. But we should continue to monitor the gradual creep of drugs testing, and remain vigilant to identify its abuse.
- 4.5 The Human Rights Act has played a leavening role in that wider sea-change of public and political opinion. Nine MPs and one British MEP are now publicly committed to the legalisation of all drugs.
- 4.6 It is true that the prosecuting authorities, by adopting a sophisticated enforcement strategy, have avoided any high-level challenge in the Court of Appeal, where it really matters. But nobody should lose faith with Article Eight. This great human rights declaration has already softened the style of public law enforcement in the UK, and it retains huge potential to drive back the boundaries of abuse by public authorities.
- 4.7 And it remains true that, while the statutory drugs-prohibition regime remains in place, the judicial process will remain a cat-and-mouse game, with reformers constantly harassing the Authorities. It is only the comprehensive legalisation of supply and consumption that will bring to individuals the full recognition of their personal freedom and the sovereignty of their personal judgment in the conduct of their own lives. That is a worthy goal, and Article 8 will continue to offer support to those seeking to achieve it.

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5. LEGALISE CANNABIS ALLIANCE: PRINCIPLES AND PROPOSALS

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5.1 Principles

- We believe the use of cannabis ought to be a matter of choice and not of law.
- We believe that the prohibition of cannabis is against the public interest.
- We believe that the prohibition of cannabis contravenes Human Rights.
- We believe that the prohibition of cannabis inhibits the use of a beneficial resource.
- We believe that the legalisation of cannabis is a very important step that should be taken to benefit the people and their environment.

5.2 Proposals

- That cannabis and cannabis products should be removed from the UK Misuse of Drugs Act, thereby being legalised.
- That the possession, cultivation and use of pure cannabis and cannabis products be free from prosecution.
- That cannabis be re-introduced into our society.
- That high priority be given to the cultivation of cannabis for the express purpose of the localised production of virtually cost-free fuels through the process of pyrolysis on cannabis biomass, and as a source of fibre and hurd.
- That provision be made to enable the setting up of public establishments where the use of cannabis is permitted.
- That provision be made to enable the setting up of outlets for the legal supply of cannabis.
- That at least the same level of protection be given to the cannabis consumer as is given to the consumers of other commodities: weights and measures, quality etc.
- That all prisoners presently held only on cannabis convictions or charges be released from custody without delay and that all criminal records for cannabis offences be expunged.

6. RECOMMENDATIONS - CONSULTATION

- 6.1 The risks and damage created for the cannabis user through the law itself outweighs the risks of using cannabis itself. The law fails to control quality or source of supply and continues to alienate large sections of society, leaving millions of people of all ages to the agendas of criminalised suppliers, some of whom may expose cannabis users to hard drugs and criminal activity.
- 6.2 Legislation ought to be directed at protection, not control, with help and safety advice available when required.
- 6.3 There is a powerful argument for allowing the introduction of "cannabis cafes", similar to the Dutch model that has successfully reduced drugs harm in Holland.
- 6.4 Any future cannabis legislation ought to incorporate the interests of society and the individual, and be based upon the principles of international law, risk management and effective policing.
- 6.5 We recommend that Government establish a forum involving cannabis (drug) users as well as criminal justice employees and drug agencies.

"Penalties against a drug should not be more dangerous to the individual than the use of the drug itself; and where they are they should be changed. Nowhere is this more clear than in the laws against the possession of marijuana."

President Jimmy Carter

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