



Don't Believe The Hype

**Cannabis Reclassification -
What it Really Means**

Don't Believe the Hype –
The Cannabis Reclassification Briefing
KFx – May 2001

KFx
Learning of Substance

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Cannabis Reclassification

1 Introduction:

In 23rd May 2001, the Home Secretary, David Blunkett, announced that he would be moving to reclassify Cannabis from Class B to Class C.

Many organizations have welcomed this development. It has widely been reported in the media as a *de facto* decriminalisation, and many people believe that the changes have already taken place.

The purpose of this briefing is, however, somewhat more prosaic. We wish to look in more detail at what changes have been proposed. This is firstly to ensure that workers are able to give accurate and up-to-date advice about the law to young people who use, or are contemplating using cannabis.

Secondly, the document explores some of the additional ramifications of this change and why we feel that other aspects of the Misuse of Drugs Act 1971, especially Section 8, will need to be revised in view of the cannabis reclassification.

2 Reclassification - Context

Controlled drugs are defined by their Class and Schedule. The Schedule defines who may possess, produce and supply the drug, and under what restrictions. The Class describes the penalties that offences relating to the drug attracts.

Currently, cannabis is a Schedule 1 drug; it is unlawful to possess and supply the drug unless licensed to do so by the Home Office, for research purposes.

Herbal cannabis and cannabis resin are Class B drugs, while some forms of liquid cannabis ("cannabis oil") are class A drugs.

The move proposed by the Home Secretary is to reclassify cannabis to Class C. Presumably this refers to herbal cannabis and cannabis resin, as it seems unlikely that forms of liquid cannabis which are currently Class A would be reclassified to C. No announcement has been made at this point regarding the rescheduling of cannabis.

3 How and when the changes may be introduced

No immediate change has been made to the classification of Cannabis and it remains at present a Class B drug.

The Home Office press release regarding the proposed changes describes the following process before any changes would be introduced:

- (1) To seek advice from scientific and medical experts on the Advisory Council for the Misuse of Drugs (ACMD) on their assessment of the arguments for re-classifying cannabis from Class B to Class C.
- (2) The ACMD has been asked to report to the Home Secretary within three months.

The home secretary also wants to take into account the findings of the Home Affairs select committee investigation into the Drugs Strategy and the evaluation of the current pilot in Lambeth on policing of cannabis offences. The pilot finishes at the end of December.

[Home Office Press Release:255/2001]

The Guardian [24.10.01] added that the reforms "*are expected to come into effect in the spring after they have been considered by the ACMD. This group of experts first recommended the change as long ago as 1981. Ministers will implement the change by an order in council after a debate in parliament.*"

4 Implications of Class C status

Assuming that cannabis becomes a Class C, Schedule 1 drug, it will have the following key implications.

- Unlawful possession and supply will remain criminal offences.

Supply:

- Supply and intent to supply, which can include one person passing a spliff to another, will carry a maximum sentence of five years imprisonment rather than the current maximum of 14 years.
- Because the maximum penalty for supply and intent to supply could be five years, these would remain arrestable offences.
- As these are arrestable offences, police will still have the power to stop and search people where they suspect supply of cannabis is taking place.

Possession:

- The maximum penalty for possession will drop from five years to two years.
- As the penalty for possession is lower than the five-year threshold, possession of cannabis will not be an arrestable offence. In order to prosecute someone for possession of cannabis, they would receive a summons to attend a magistrate's court.

Cultivation and Production:

- Cultivation and production of cannabis are covered by Section S6.(2) of the MDA. Unless revised otherwise, the production of cannabis would remain an arrestable criminal offence, carrying a maximum penalty 14 years.

5 Section 8 implications

Currently, Section 8 of the MDA obliges agencies to prevent the "smoking of cannabis and prepared opium" on premises that they manage. This clause has been amended by Section 38 of the Criminal Justice and Police Act 2001 (CJPA 2001) to "*administer or use a controlled drug that was unlawfully in any persons possession at or immediately before the time when it was administered or used.*"

This amendment has yet to come into force, awaiting guidance from the Home Office, followed by a Commencement order.

Despite the proposed reclassification of cannabis, organizations would, dependent on future legislative change, still have legal obligations under Section 8, as amended by Section 38, in relation to cannabis.

Under the old wording of Section 8, cannabis is specified as a drug that managers must stop people smoking on their premises. This would remain the case following reclassification of cannabis.

However, following reclassification the penalty for allowing cannabis smoking on premises would cease to be an arrestable offence.

Under Section 8(d) as amended by the CIPA 2001, the obligation to prevent cannabis use would still remain. Unless it were rescheduled, possession of cannabis would remain unlawful, and so managers would remain obligated to prevent its use on premises.

Ironically, the penalty under Section 8 for allowing use of Class C drugs to take place is currently a maximum of five years imprisonment, and is an arrestable offence. The penalty for a person permitting their premises to be used for smoking cannabis would be greater than the penalty for smoking cannabis!

This last point highlights the need to review the workability of Section 8, especially in view of the reclassification of Cannabis.

Organisations would be obliged to prevent the smoking of cannabis on premises. However, post reclassification, the police will have less power to assist organisations; as possession of cannabis would not be an arrestable offence, the police would have limited powers to intervene and would not be able to arrest the person in question.

This puts organisations, especially housing organisations, in an unenviable position. On the one hand they remain legally obliged to stop people using cannabis on their premises. But on the other hand, the resources available to them are curtailed and so will find it harder to fulfill their legal obligations.

We would suggest that this indicates an ongoing need to revise Section 8 in line with the recommendations of the Police Foundation Report.

6 Other housing issues

As cannabis use will no longer be an arrestable offence, it will fall outside the activities that would allow for possession proceedings based on conviction for "an arrestable offence in the vicinity of the property" under the Housing Act 1996.

However, as possession of cannabis remains illegal, it would constitute grounds for possession under tenancy clauses prohibiting "immoral or illegal use" within the premises.

Other Issues:

Organisations should continue to follow existing guidance relating to confiscation,

destruction and disposal.

7 Advice to young people using cannabis

(1) The law has not changed yet:

Many young people are unclear about the legal status of cannabis anyway and some continue to believe that it is legal to possess small amounts for personal use.

It is important that young people are aware that the law has not yet changed and it remains an arrestable offence to possess or supply cannabis.

(2) Cannabis will still be illegal

Young people should be aware that they can still be prosecuted and convicted even after cannabis has been reclassified. It is important to stress that it has not been made legal or decriminalized.

(3) Supply is still an arrestable offence:

Although possession of cannabis will cease to be an arrestable offence, supply will remain an arrestable offence. A person found in possession of cannabis, but who says that they are looking after it for a friend is committing an arrestable offence, regardless of the quantity.

(4) Crime and Disorder Act 1998

While the reclassification of cannabis is likely to mean fewer prosecutions for the adult population, this may not be the case for children. Under the Crime and Disorder Act 1998, cautions for young people were replaced by a system of reprimand and warnings.

A young person who commits an offence may initially receive a reprimand; once a young person has already received a reprimand, or where the seriousness of the offence warrants it, they may receive a warning. An offender receiving a warning will also be referred to a Youth Offending Team.

Young offenders can only receive a warning once (within a two year period) after which a charge will need to be brought.

So, if a young person's third offence is possession of cannabis, the only option available to the police is for the case to go to court.

As with other aspects of the reclassification, this highlights the need to review legislation holistically, and we would suggest that this aspect of the Crime and Disorder Act needs to be reviewed especially in light of the welcome proposal to reclassify cannabis.

7 Cannabis Cafes in the UK?

Much has been made of the reclassification of cannabis opening up the way for cannabis cafes in the UK. Indeed, a few have been established, furthering the belief that the law has already changed.

However, the proposed reclassification does **not** clear the legislative path for cannabis cafes this point.

The reason for this is two-fold and would require legislative change to resolve. This legislative change would require an Act of Parliament as it relates to Statute.

- Under Section 8(d) of the Misuse of Drugs Act, allowing cannabis to be smoked on premises remains an arrestable offence. This is true pre-section 8 Amendment and will be true post-amendment.
- Allowing supply of cannabis on premises is also an arrestable offence and will remain so.

It is certainly feasible that some local police forces could come to local arrangements allowing cannabis cafes to function at a local level. However, they would certainly not be any more “legal” than they were before cannabis was reclassified.

8 Don't believe the hype:

It is quite striking the extent to which even seasoned cannabis campaigners are viewing reclassification as *de facto* decriminalisation. Recapping some of the key points:

- **Cannabis possession is still illegal**
- **It can still carry a custodial sentence**
- **You will still get a criminal record if prosecuted**
- **Supply and production remains an arrestable offence**
- **It remains an arrestable offence to allow people to smoke cannabis on your premises.**

This is clearly not decriminalisation. It is merely a lowering of the penalties, and may also involve suggestions to local police forces about how they would like to respond to cases of possession.

This legislative fudge relating to cannabis is primarily beneficial to people who supply cannabis and the police. People using cannabis benefit the least.

The police benefit because, as the Brixton experiment demonstrated, it allowed the confiscation of cannabis without the hassle of arresting and charging people. More cannabis was seized from people during the Brixton Experiment than beforehand.

The people who supply cannabis benefit because the odds of getting arrested for supply diminish. With the policing of cannabis de-prioritised, and personal possession becoming non-arrestable, it becomes safer to have cannabis on you.

End users do not benefit. They can have their drugs confiscated. They can still receive a summons and ultimately face imprisonment. Their housing and employment rights can

still be jeopardised through cannabis use.

The most ill-thought out aspect of this whole situation remains cannabis as a so-called “gateway drug.” This has been an off-contested aspect of cannabis use – the idea that cannabis use leads on to use of “harder” drugs.

The only truth in this hackneyed idea is that when people are compelled to source their drugs through illegal routes, this increases access to other controlled drugs. One of the key benefits of changing cannabis’ legal status would be to break this relationship with other drugs.

The beauty of the licensed coffee-shops favoured in the Netherlands is that they do represent a clean break from other drugs and, to a lesser extent alcohol. The licence to run a coffee shop can be revoked if use or supply of “hard drugs” takes place.

The proposed reclassification does not achieve this end. Cannabis supply remains illegal. People are compelled to buy from dealers. There is therefore no separation.

9 Conclusion

The reclassification of cannabis would be a welcome development and would reduce the extent of criminalisation of people who use cannabis.

However, and even before we start to explore the wider issues of cannabis supply, enforcement, education etc, there are some immediate practical issues that agencies should be aware of, as outlined in this paper.

It is our hope that, in the process of consultation leading up to reclassification, the issues mentioned herein can be addressed and resolved more satisfactorily.

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This briefing is adapted from a Release/Inclusion briefing written by Kevin Flemen in October 2001. The revised briefing includes some additional commentary and do not necessarily reflect the views of Release. Release contact details are given below:

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