

HARM REDUCTION DIGEST

The great cannabis classification debacle: What are the likely consequences for policing cannabis possession offences in England and Wales?

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The British government downgraded cannabis from a Class B to a Class C drug in 2004; but in 2008 it reversed this decision, and cannabis is due to be reclassified back to Class B in January 2009. In this Harm Reduction Digest, Paul Turnbull assesses the impact of reclassification to Class B focusing on policing and the legitimacy of drug law. The government cited the availability of stronger strains of cannabis and a large rise in the number of UK-based 'cannabis farms' as the reasons for this decision. This is set against a backdrop of a trend of declining levels of use in the UK and a number of jurisdictions throughout the world adopting civil rather than criminal procedures to deal with cannabis possession offences. It concludes that tougher penalties for cannabis possession will have little deterrent effect on use and that the focus of law enforcement is likely to continue to fall disproportionately on young men from black and minority ethnic groups. Turnbull concludes that a better approach would be to use targeted public health approaches to reduce cannabis use and harm.

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Introduction

The UK government recently announced the reversal of their previous decision taken in 2004 to reclassify cannabis from a Class B to a Class C drug. This was contrary to the advice provided by its own expert advisory committee, the Advisory Council on the Misuse of Drugs (ACMD). The view of the government was that reclassification back to Class B would enable 'stronger enforcement of the law' and prevent young people being targeted by dealers selling stronger strains of cannabis [1]. This paper considers the potential impacts of reclassification on policing cannabis possession offences.

Background

Cannabis is the biggest illicit drug market by far. The United Nations (UN) recently estimated that 166

million people aged 15–64 years, or 3.9% of the world's population, used cannabis during the year 2006 [2]. The UN also suggests that worldwide production of cannabis is stable; however, some of the main markets (North America and Western and Central Europe) for the drug appear to be in decline, whereas in some developing continents (e.g. Africa) use appears to be on the increase.

Trends in cannabis use in the UK

The most reliable measure of trends in cannabis use available in England and Wales is the British Crime Survey (BCS). However, this survey is likely to yield underestimates of the number of people using cannabis. Young people under 16 years old are not eligible to take part in the survey. It is also a household survey, so the homeless and prisoners are also not surveyed. The most recent data available are for the year 2007/08 and show

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Table 1. Proportion of the 16- to 59-year-olds reporting cannabis use in the past year or in the past month, between 1996 and 2007/08

Year	16- to 59-year-olds		16- to 24-year-olds	
	Past year	Past month	Past year	Past month
1996	9.5	5.5	26.0	16.1
1998	10.3	6.1	28.2	18.0
2000	10.5	6.4	27.0	17.4
2001/02	10.6	6.6	27.3	17.6
2002/03	10.9	6.7	26.2	16.6
2003/04	10.8	6.5	25.3	15.8
2004/05	9.7	5.6	23.6	14.1
2005/06	8.7	5.2	21.4	13.0
2006/07	8.2	4.8	20.9	12.0
2007/08	7.4	4.2	17.9	9.7

Source: Hoare and Flately [3].

that in the previous 12 months 2.3 million adults (or more than 7% of the population of England and Wales) used cannabis at some point during that year, with 1.3 million (or just more than 4% of the population) reporting use in the previous month [3]. As can be seen from Table 1, over the past 10 years the highest rates of cannabis use are concentrated among the young, with 18–28% of those aged 16–24 years reporting use of cannabis in the last year. Despite the high levels of use, there is a downward trend in the level of use for all age groups. During the period when the debate about cannabis classification was at its peak, there was a statistically significant fall in the use of cannabis according to the BCS [3].

Recent history of the cannabis classification debate in the UK

Table 2 provides a brief history of the key points in the classification debate. Decisions to reclassify or seek further advice on classification have been largely triggered by changes in the government minister holding the post of Home Secretary. Although there has been little change in the research evidence base of an increased level of harm attributed to cannabis use, three successive Home Office ministers have requested a reassessment of the evidence by the ACMD three times in the past 5 years. Unsurprisingly, the ACMD did not change its recommendations on the level of classification of cannabis (Class C), although they did voice concerns about the wider availability of stronger forms of cannabis [4].

Despite this assessment, the current Home Secretary decided to reclassify cannabis back to Class B, taking effect from January 2009.

Is there evidence for a policy reversal?

In the most recent request for ACMD advice, the Home Secretary asked the council to consider, in particular, the evidence of the impact of cannabis on mental health and perceived increases in strength and potency. Summarised below are the main points concerning the evidence of the impact on mental health and potency levels, which were of particular concern to the UK government.

The ACMD concerned itself mainly with the evidence on cannabis use and its impact on short-term mental health harms and its relationship to worsening symptoms of schizophrenia. Short-term harms to mental health include acute psychological reactions (such as feelings of euphoria, panic, paranoia and confusion) and effects on psychomotor performance (such as altered perceptions of space and time, impaired learning and memory and a loss of coordination). The committee, although acknowledging this type of reaction can occur, found little or no evidence for the prevalence of these reactions or whether they were becoming more common. However, the committee did express concern about the particular impact of cannabis use on driving skills.

The ACMD concluded that for those with pre-established schizophrenia there is clear evidence linking cannabis use to worsening symptoms. However, the committee "... found some evidence that cannabis use might precipitate chronic or enduring psychotic illness, there was not a clear causal relationship given a wide range of factors that could be of influence" (p. 16) [4]. They cited the work of Frischer and Croome who observed that both the prevalence and annual incidence of schizophrenia and the prevalence of psychoses had decreased between 1996 and 2005, the same period in which there had been a rise in the number of cannabis users. They concluded that the majority of young cannabis smokers do not develop psychotic illnesses, and that to prevent one case of schizophrenia in men aged 20–25 years you would need to prevent 5000 men from ever smoking cannabis [4].

In terms of cannabis potency the ACMD described some clear trends. They cited data from the Forensic Laboratory Service which showed that although the potency (as measured by THC content in cannabis) for resin and traditional herbal preparations has remained largely unchanged over the past 10 or so years, there had been an increase in the potency of sensemilla between 1995 and 2000, which has been sustained ever since. Sensemilla is now believed to dominate the cannabis market in the UK, where it is estimated to have 80% of the market share. It has been suggested that the average potency has increased nationally, but with large variations within and between different regions [5]. Potter concluded that the current trends in cannabis

Table 2. Cannabis classification events

Year	Classification event	Outcome
2000	Publication of Independent Inquiry of the Misuse of Drugs Act calling for reclassification to Class C and making possession 'non-arrestable'	Government reject reviews conclusions.
2001/02	Home Secretary (David Blunkett) announces considering reclassification	The ACMD and Home Affairs Select Committee support reclassification
2001/02	Lambeth Cannabis Warning Pilot	Judged a 'success', enjoyed public support
2003/04	Intervention of Prime Minister and Association of Chief Police Officers	Stalemate until 2004—reclassification to Class C with the retention of power of arrest
2005	Home Secretary (Charles Clarke) asks the ACMD to review the most recent evidence	The ACMD recommends no change—Home Secretary accepts advice—cannabis remains a Class C drug
2007	Home Secretary (Jacqui Smith) asks the ACMD to review the most recent evidence	The ACMD recommends no change—cannabis will be reclassified to Class B in January 2009

ACMD, Advisory Council on the Misuse of Drugs.

use place those susceptible to the harmful psychological effects associated with THC at greater risk. However, the ACMD [4] reminds us that the strength of the drug in itself may be less of a concern than the regularity of consumption and the volume consumed:

A parallel can be drawn between the use of high-strength cannabis and the consumption of alcohol. The public health consequences of alcohol use are not a simple function of the strength of the beverage. Rather, at a population level, it is the total quantity of alcohol that is consumed. (p. 25)

The ACMD concluded that the existing evidence on the impact of increased potency remains unclear, because there is no research on consumption patterns to set beside the drug seizure data. They pointed to the limited data on the potency of the product sold to the end users and their patterns of use, both of which are important factors when considering how stronger strains of the drug are packaged and sold and consumed [4].

Penalties and policing guidelines: Cannabis as Class C and Class B drug

At the time of writing this paper cannabis was still graded as a Class C drug. This means the following:

- Current maximum penalties are 2 years' imprisonment and/or an unlimited fine for possession, and 14 years' imprisonment and/or fine for supply.
- Police have the power of arrest for both possession and supply.
- The Association of Chief Police Officers (ACPO) guidance states that simple possession offences

committed by those more than 17 years old should be dealt with by a cannabis warning. It should be noted that a cannabis warning has fewer consequences for the offender than a formal caution. It can be delivered on the street, and does not result in a criminal record. The ACPO guidance states that police should arrest where there are aggravating circumstances, such as using cannabis near premises frequented by children, repeat offending, smoking cannabis in public and using cannabis in a situation where public order is threatened.

- There are more limited options for young offenders (those aged 17 years and less). Young offenders are ineligible for a cannabis warning, being subject to a separate system of graduated warnings after arrest. However, the ACPO guidance points out that on some occasions it might be more appropriate to avoid an arrest and to take less intrusive action. Cases can then be referred to Youth Offending Teams for subsequent action.

The Serious Organised Crime and Police Act (SOCPA) dispensed with the distinction between arrestable and non-arrestable offences. Under the SOCPA, an officer can make an arrest for any offence, where any of the following criteria are met:

- Arrest allows the prompt and effective investigation of an offence.
- The identity of the suspect cannot be established.
- The offender is at risk.

This changed police powers of arrest in such a way that it rendered obsolete much of the debate about the relationship between the classification of cannabis and the power of arrest for the offence. Reformers originally

argued for reclassification to Class C precisely because possession of a Class C drug was originally a non-arrestable offence, whereas possession of a Class B drug was arrestable.

As it turned out the main benefit of reclassification was that a cannabis warning could be used to dispose of a cannabis possession offence. Following this the police determined that post-reclassification cannabis warning would not be registered on the police national computer, and would not therefore form part of an official criminal record and could not be cited in court as evidence of previous offending. Currently, there is no legal limit on the number of cannabis warnings an individual can have, although individual police forces have policies restricting multiple warnings.

Although guidance on implementing the change to Class B has not yet been issued, the new system is expected to operate as follows:

- A maximum of 14 years' imprisonment and/or a fine for supply.
- For adults caught in possession of cannabis:
 - On the first occasion this is likely to result in a cannabis warning.
 - On the second occasion it is likely to result in a fine of £80.
 - On the third occasion it could result in an arrest.
 - The maximum penalty for possession will be 5 years' imprisonment.
- Juveniles found in possession of cannabis will be arrested, taken to a police station and receive a reprimand (for a first offence), final warning (for a second offence) or charge depending (for a third offence). Any young offender may have only one reprimand, and only one final warning, regardless of the offence, after which prosecution becomes mandatory.

The Home Office also hope to create additional powers such as further aggravating circumstances to be considered when sentencing decisions are being made [1].

The new system is not a simple return to the previous status quo when cannabis was a Class B drug. As described previously, a series of police penalties will be introduced which include an increasingly punitive penalties for adults caught in possession of cannabis on multiple occasions. Adults caught in possession of cannabis on the first and second occasions can be dealt with immediately, on the street, with only a minor administrative burden to the police and no need to take an arrestee to a police station. This together with the fact that a cannabis warning or fine counts as a 'sanction detection', one of the measures against which

police performance is judged, it is likely these disposals will be the most commonly used by the police in the future.

What are the likely consequences of reclassification?

Here I will draw on the international evidence on the impact of changes in cannabis legislation as well as empirical data from a series of three linked studies conducted in England since 1999 [6–8], the period in which the decision to reclassify has been made twice. This assessment will aim to consider the possible impact of the reversal in the classification of cannabis focusing on policing and the legitimacy of drug laws.

Policing

The Independent Inquiry of the Misuse of Drugs Act highlighted the fact that little was known about how the police enforced the law when discovering cannabis in the UK [9]. There was anecdotal evidence that police officers, on occasion, confiscated cannabis, 'throwing it down the drain', or did not proceed further with warnings or charges.

In 2001/02, May *et al.* undertook an analysis of policing cannabis as a Class B drug [6]. They described how the number of people cautioned and convicted for cannabis possession offences rose throughout the 1990s, peaking in 1998 at 84 310. Between 1998 and 2002 the number steadily fell to 65 750; however, after the decision to reclassify was announced in 2004 cautions and convictions rose again to 77 500. Most of these offences involved first-time offenders, who often came to light as a by-product of other investigations. Importantly, May *et al.* described the practice of 'postcode policing' or 'justice by geography' for cannabis possession offences. They found wide variations in the use of cautioning throughout England and Wales. Those found in possession of cannabis could expect to be treated differently dependent on where they were caught and whether or not the arresting officers decided to pursue cannabis offences or not. May *et al.* describe some officers as 'specialising' in policing cannabis offences taking a particular view that all offenders should be charged when found in possession, whereas other officers turned a blind eye or gave informal warnings.

In the early debates about reclassification, the police voiced their concern that if they were no longer able to arrest for cannabis possession offences, it would impact on their ability to detect more serious crimes. The belief among police officers was that arrest for cannabis often led to the detection of other offences. May's analysis of 30 000 custody records showed that an arrest for cannabis possession rarely led to the discovery of more serious crimes.

After the reclassification in 2004 as a Class C drug, cautions or convictions for Class B drugs dropped from just under 67 000 in 2003 to approximately 6500 in 2006. However, since 2004 there has been a steady increase in the number of people cautioned or convicted for Class C drugs from 663 in 2003 to more than 30 000 in 2006. Unfortunately, data for cannabis cautions and conviction for 2005/06 are unavailable. The data reported here include all cautions and convictions for Class B and C drugs. Before reclassification, cautions and convictions for Class C offences between 1998 and 2003 were between 264 and 663 for each year. It seems, therefore, safe to assume that the steep rise in Class C offences can be attributed to cannabis. These changes are likely to be as result of reclassification. Also, the rise in the use of cannabis warnings has been dramatic. Between 2005 and 2006 there were an additional 27 000 warnings given, resulting in an excess of 80 000 cannabis warnings in 2006 [10]. Given that there has been no evidence of growth in the prevalence of cannabis use over this period, the increasing number of police contacts for cannabis suggests two possible explanations: (i) that the police are now targeting cannabis users and giving them cannabis warnings; and/or (ii) that many cannabis contacts are now recorded as a cannabis warning when previously they would have been dealt with informally. This means that since reclassification more cannabis users have been dealt with formally by the criminal justice system than were previously when cannabis was as a Class B drug, a process known as net-widening.

Considering the new arrangements for policing cannabis in England and Wales, May *et al.* repeated their research on policing cannabis after reclassification to Class C [7]. As with their previous study, they found wide geographical variation in the way the arrangements for cannabis policing had been implemented. Although the new cannabis warnings were used, there use was by no means the norm and in some areas in which they conducted their research they were rarely used. Indeed, 'justice by geography' was still commonplace. They found that during the period 2000–2004/05 the number of people coming into police contact for cannabis offences had increased. This was likely to be due, in part, to police officers substituting cannabis warnings, which are recorded, or what used to be informal warnings. They also concluded that in some areas cannabis warnings were being used to increase 'sanction detection' rates. A cannabis warning differs from other on-the-spot warnings in that it counts as a 'sanction detection'. The performance of the police in the UK is judged in part by this rate.

A similar experience was described in South Australia after the introduction of fines for possession, using and cultivation of small amounts of cannabis [11]. This

suggests that when more lenient options are introduced, there can be definite move towards net-widening, with far more people proceeded against than previously.

There has long been an over-representation of people from black and minority ethnic (BME) groups within the criminal justice system in England and Wales [12]. It has been suggested that several factors could be interacting to account for this: the over-representation of BME residents in high-crime areas where stop-and-search tactics are used more widely; over-representation of BME groups as cannabis users; and the police targeting of BME suspects in high-crime areas [13].

May *et al.* found BME offenders were over-represented in cannabis offences after reclassification to Class C. Within three out of four sites where fieldwork was conducted well, over half of all contacts with the police for cannabis were with BME groups and over half of arrests were also.

Similarly, a study conducted in the Metropolitan Police Service area in London also found evidence of disproportionate policing of BME groups [14]. Young black men were found in possession of cannabis at exceptionally high rates: up to 300 offences and 280 offenders per 1000 of the population in a single year. This was 10 times the rate of their white counterparts. Also black adults were less likely to receive a cannabis warning and more likely to be arrested and processed.

Although there is no clear pattern to the recent arrest data or to how cannabis was policed as a Class B or C drug, it seems likely that, given the usefulness of cannabis warnings in meeting police sanction detection targets, the rates of offences coming to the attention of the police are at least likely to remain the same or increase. After rescheduling to Class B police activity may increase if only to indicate that there has been a change in the legislation. Previously (both before and since the reclassification to Class C), individuals caught in possession of cannabis could receive numerous cannabis warnings. With reclassification to Class B this will not be the case. The plans to introduce more severe sanctions for subsequent offences are likely to result in less use of informal warnings and a net increase in the number of cannabis users being fined and/or cautioned or convicted for possession. That is, further net-widening with increasingly punitive sanctions.

Policing young people

As mentioned earlier, reclassification from Class B to Class C did not change the way the law was applied to those aged 17 years and under which struck some commentators as unfair [7]. Young people aged 17 years and under are still required to be dealt with under the Crime and Disorder Act legislation, which means that

police officers have a duty to arrest those found in possession of cannabis. This appears to have resulted in young cannabis users becoming entangled in the criminal justice system because of their age, whereas cannabis users just 1 year older receive a cannabis warning.

The need to protect young people from early exposure to drugs is important. There is some evidence that persistent use of cannabis from a very early age can have a number of consequences. But it is questionable whether arrangements for policing any drug, let alone cannabis, have an impact on individual decisions to use. May *et al.* point out that there are a number of perverse effects to embroiling young people in the criminal justice system from an early age, including exclusion from school which may have a negative impact on educational attainment, tension in relationships with family and friends, and a possibility that future career opportunities may be affected [7]. Furthermore, the apparent unevenness of policing practice may cause unnecessary tension between police officers and young people.

Legitimacy

The most recent public opinion poll to consider cannabis-related issues was conducted as part of the ACMD review for the government in 2008. Although many of those who responded to the survey believed on face value that cannabis should be reclassified to Class A or B when questioned further there was little appetite for increased penalties for possession. More than two-thirds expressed the view that current penalties did not need toughening up, with 41% wanting penalties pegged at Class C levels and 27% wanting no penalty at all. The sole legal consequence of reclassifying cannabis to a Class B drug would be to increase the maximum penalty for possession from 2 to 5 years. The public may therefore view the penalties attached to cannabis possession once it has been reclassified as unfair or disproportionate.

Literature from around the world suggests that people are more likely to comply with the rule of law if they believe the enforcing authority to be legitimate [15]. In terms of policing, legitimacy of police action is enhanced if the police are seen as procedurally and substantively fair [16]. Police effectiveness is also likely to be enhanced if people are willing to cooperate and support their activities. Negative contact with the police, at an early age, is likely to create long-term damage to people's attitudes towards them. If the police deploy powers which are widely regarded as heavy-handed and inappropriate, this will be a major factor in shaping young people's assessment of police legitimacy. This is not to suggest that legislators should be slavishly responsive to the views of young people, but that they should factor into their decisions the wider conse-

quences of introducing changes that do not command the support of key subgroups of the population.

Criminalisation of cannabis use also affects the relationship between police officers and the wider public. It influences perceptions of legitimacy of law enforcement in various ways. First, there is the majority belief that tougher punishment for use is unnecessary [6]. May *et al.* state that cannabis use is one of the offences which is most likely to bring people into adversarial contact with the police, although it has increasingly become an unexceptional facet of daily life [6]. This is likely to erode police legitimacy, as enforcement of cannabis laws is perceived as unreasonable by those who get caught. Based on interviews with cannabis users who have had contact with the police for a cannabis offence, May *et al.* show large differences in satisfaction with the police between cannabis users and non-users in England and Wales, with 57% of non-cannabis users feeling fairly treated compared with only 28% of users.

In Australia a similar picture emerges. Lenton *et al.* have compared two groups: those who received a (non-criminal) notice for their cannabis use and a second group who ended up with a criminal record [17]. Both groups regarded themselves as non-criminal. The people who received a criminal record became less trusting and respectful and more fearful and hostile towards the police.

A second factor influencing the perceived legitimacy of the police is the selective way in which the laws are enforced: some individuals are more likely to be stopped, searched and arrested than others. As described earlier, the weight of police enforcement may fall disproportionately on some already marginalised groups—some minority ethnic groups, for example—where relations are already strained to a point where further damage should not be risked [6,18]. Relations between the police and black groups have been historically difficult, and the move back to tougher enforcement of the drug laws is, to say the least, unlikely to improve matters.

The state of flux in the classification of cannabis in England and Wales over recent years coupled with the use of inaccurate information by the media when reporting classification debate has, to some degree, contributed to confusion among the general public about the legal status and penalties attached to cannabis possession offences [8,19]. This is likely to have made, and will continue to make, the task of front-line policing cannabis offences more difficult. Even when the new policing arrangements have had time to bed-in, it is unlikely that certain sections of the population, particularly young people, will see the new arrangements as proportionate to the risks associated with cannabis use, either based on their own experiences of using or that of their families and friends, and hold the police

responsible for an 'unfair' law. This is likely to continue to erode the legitimacy of the police.

Concluding comments

Existing research does not provide strong evidence of a relationship between cannabis law and the prevalence of use. That is, there is little evidence that tougher cannabis laws make use less likely [19]. Long-term trends in cannabis use also appear not to be related to the legal approaches in different countries. Countries with very different approaches to the criminalisation of cannabis possession can have similar rates of use. The criminalisation of cannabis possession seems to have a limited deterrent effect [19]. Studies which have shown the impact of tougher legislation on cannabis possession indicate a very limited effect on adult use (with some adults modifying their cannabis-using behaviour) and no impact on young users [20]. Therefore, the classification of cannabis is unlikely to have any impact on individual decisions about whether to use the drug or not.

Van het Loo also points out that there is an important distinction to be made between the official policies of a country and how law and policy are enacted. As described earlier, local police force areas, and even officers, may also decide to prioritise cannabis policing differently. Policing cannabis as a Class C drug in England and Wales has resulted in a substantial increase in formal activity against cannabis users, even though the expectation was for less police action. To date, this 'net-widening' effect has to some degree been relatively benign; less cannabis users have been arrested, cautioned or convicted, more have been given warnings. However, cannabis law enforcement continues to fall disproportionately on young men from BME groups. The consequences of reclassification back to Class B and increased penalties, including a reduction in the use of warnings and the introduction of fines and charges for second and third time offenders, are yet to be seen, but are likely to result in many young people becoming enmeshed in the criminal justice system. As Lloyd points out, this is unlikely to result in increased rates of imprisonment as those who are given the most severe penalties for cannabis possession have concurrent offences [21]. Nevertheless, being drawn into the criminal justice system, particularly from a young age, can have a range of consequences on education and employment opportunities, and relationships with families and friends.

Given the available evidence, it would seem that reclassification of cannabis back to a Class B is likely to increase the harm to those caught in possession. If caught more than once, users will be fined or be arrested and charged, perhaps precipitating further

harm on the relationship between the police and young people, which in some inner city areas is already pressurised. If the policing of cannabis continues to fall disproportionately on young men from BME groups, reclassification will again put further strain on the relationship between these groups and police officers.

There is some evidence to indicate that a minority of users can develop problematic patterns of use which may lead to mental and/or physical health problems. Reclassification to Class B will not serve to reduce the chances of this occurring. Canadian research suggests that particular types of young people are more prone to developing problematic patterns of cannabis use, in terms of both the type and regularity of use. These tend to be young people who have had problems in school or who have poor family relations [22]. Rather than increasing the negative contact with the police and criminal justice system for many cannabis users as a consequence of reclassification, it would seem more important to develop targeted public health initiatives for such vulnerable young people.

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