

EXPLANATORY MEMORANDUM TO
THE MISUSE OF DRUGS ACT 1971 (AMENDMENT) ORDER 2008

2008 No. 3130

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Order in Council reclassifies cannabis, cannabis resin, cannabinal and its derivatives from Class C to Class B drugs under Schedule 2 to the Misuse of Drugs Act 1971, including any preparation or other product containing these substances.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative background

4.1 Schedule 2 to the Misuse of Drugs Act 1971 (the “1971 Act”) specifies drugs which are subject to control under the Act and groups them in three categories – Part I lists drugs known as Class A drugs, Part II contains Class B drugs and Part III lists Class C drugs. The three-tier system of classification (A, B and C) under the Act provides a framework within which criminal penalties are set with reference to the harm a drug has or is capable of having when misused and the type of illegal activity undertaken in regard to that drug.

4.2 Section 2 of the 1971 Act enables amendments to be made to the lists of drugs controlled under the Act by means of an Order in Council. Such Orders are subject to the affirmative resolution procedure which requires that they be approved by each House of Parliament. Section 2 also provides that the Secretary of State may not recommend the making of such an Order except after consultation with or on the recommendation of the Advisory Council on the Misuse of Drugs (ACMD).

4.3 The 1971 Act was passed by Parliament in line with the controls on cannabis – and many other drugs – agreed under the UN Single Convention on Narcotic Drugs 1961 for the purpose of providing “effective measures against abuse of narcotic drugs”. Further UN measures followed, including the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, which, among other things, requires parties to the Convention – subject to their constitutional principles and the basic concepts of their legal systems – to establish the possession of cannabis (and many other drugs) as a criminal offence. However, it is left to individual states to determine what level of sanctions to apply in conformity with their domestic law. It is this discretion which provides the scope for variation of the sanctions applied.

4.4 Cannabis and all other cannabis preparations and products were reclassified to Class C under the Misuse of Drugs Act 1971 (Modification) (No. 2) Order 2003 with effect from 29 January 2004, based on the available evidence and following a recommendation from the ACMD. Cannabinal and cannabinal derivatives and their esters or ethers had previously been Class A drugs whilst cannabis and cannabis resin were in Class B. The ACMD confirmed its position on Class C classification in December 2005 in response to a further request for advice from the then Home Secretary.

4.5 Having consulted the ACMD in July 2007, the Home Secretary announced, in May 2008, the Government’s intention to reclassify cannabis to a Class B drug, subject to Parliamentary

approval. Whilst the ACMD concluded that cannabis should remain a Class C drug, it is the Government's view that there is a compelling case to reclassify to Class B (see paragraph 7 below).

4.6 Reclassification of cannabis to a Class B drug has a number of consequences in terms of maximum penalties. For possession of cannabis as a Class B drug, the maximum penalty on indictment increases from 2 to 5 years' imprisonment. On summary conviction, in respect of which the majority of possession cases are dealt with, the maximum imprisonment penalty remains the same at 3 months, although the maximum fine that the Magistrates' Court can impose increases from £1,000 to £2,500. For the supply and production offences for cannabis, the maximum penalties on summary conviction increase to 6 months' imprisonment and/or a £5,000 fine (from 3 months and/or a £2,500 fine respectively). The penalties for other offences relating to cannabis are unaffected, including the maximum penalty on indictment for supplying or producing cannabis of 14 years' imprisonment and/or an unlimited fine.

5. Territorial extent and application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State for the Home Department, Alan Campbell, has made the following statement regarding Human Rights:

In my view the provisions of the Misuse of Drugs Act 1971 (Amendment) Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 In July 2007, the Prime Minister announced that the Government would consider the classification of cannabis again to see whether it was right that cannabis should be moved back to Class B, having regard to public concern about the potential mental health effects of cannabis use and, in particular, the use and availability of increased strengths of the drug, commonly known as "skunk", which has higher levels of the main psychoactive ingredient, tetrahydrocannabinol (THC). The Home Office's Cannabis Potency Study conducted in late 2007/early 2008 shows that "skunk" now dominates the UK cannabis market, accounting for approximately 80 per cent of street seized cannabis, with a potency of around 16%. This is a significant increase from the available evidence in 1995 which showed average potency levels of 6%. (See <http://drugs.homeoffice.gov.uk/publication-search/cannabis/potency?view=Standard&pubID=553869>.) The clear conclusion is that these increases have been fuelled by the massive growth in the commercial cultivation of cannabis in the United Kingdom in recent years.

7.2 In accordance with Cabinet Office guidelines, a three-month consultation was carried out as part of the public consultation on the new drug strategy, *Drugs: Our Community, Your Say*, which ran from July to October 2007. As part of the consultation, the Government asked for views on the classification of cannabis. On balance, consultation respondents were more likely to state that they were against a reclassification of cannabis. Those not in favour felt that it should be either left as a Class C drug or that if a legislative change were to take place, it should indeed be in the other direction, and that cannabis should be legalised. The findings at <http://drugs.homeoffice.gov.uk/publication-search/cannabis/cannabis-response?view=Standard&pubID=553861> were made available to the ACMD.

7.3 Following a referral for further advice by the Home Secretary in July 2007, the ACMD reported in April 2008 that, based on its harmfulness to individuals and society, the majority of its members considered that cannabis should remain a Class C drug. The ACMD's report, *Cannabis:*

Classification and Public Health, is available on the Home Office website at: <http://drugs.homeoffice.gov.uk/publication-search/cannabis/acmd-cannabis-report-2008?view=Standard&pubID=554031>. The Government has provided a formal response to the report.

7.4 The Government does not dispute the ACMD's findings on harm which are based on the current available evidence. The ACMD confirmed that cannabis use poses a real threat to health. Whilst it concluded that, in the population as a whole, cannabis most likely plays a modest role in the development of psychotic illness, it also accepted that the possibility that the greater use of higher than average potency cannabis may increase the harmfulness to mental health cannot be denied, more so if young people start to use at an early age or "binge smoke".

7.5 The Government has to maintain a classification for cannabis that takes account of its known risks to health as well as the potential long term impacts on health where the evidence is not conclusive at this time. The significant increase in both the market share of higher than average potency cannabis and its actual potency in the last few years in the UK are compelling factors. Where there is a clear and serious problem, but some uncertainty surrounding a drug's full potential to cause harm, the Government considers that it must err on the side of caution and take such preventative action as is necessary to protect the public.

7.6 In reaching its decision the Government has also taken into account wider issues such as public perceptions and the needs and consequences for policing priorities. Reclassifying cannabis to Class B will help drive the enforcement priorities to reverse the massive growth in commercial cultivation and will support the comprehensive package of measures used to tackle cannabis use as part of the Government's national drug strategy – *Drugs: protecting families and communities* – including prevention, education, early intervention and treatment. The strategy is available on the Home Office website at:

<http://drugs.homeoffice.gov.uk/publication-search/drug-strategy/drug-strategy-2008-2018?view=Binary>.

7.7 The law change and its consequences will be communicated to key stakeholders and the wider public, especially young people. The Home Office will also issue a Circular and the Association of Chief Police Officers will be re-issuing its guidance on policing cannabis to all police forces in England and Wales. Information about reclassification will be made widely available via FRANK – the Government's national drugs awareness campaign.

8. Impact

8.1 An Impact Assessment, Equality Impact Assessment and an Administration of Justice Impact Assessment are attached to this memorandum.

9. Contact

Richard Mullins at the Home Office, tel: 020 7035 0463 or e-mail: Richard.Mullins1@homeoffice.gsi.gov.uk, can answer any queries regarding the instrument.

Summary: Intervention & Options		
Department /Agency: Home Office	Title: Impact Assessment of the reclassification of cannabis to Class B under the Misuse of Drugs Act 1971	
Stage: Final	Version: Final (amended)	Date: 08/10/08 as amended 14/01/09
Related Publications: See Annex A		

Available to view or download at:

<http://www.drugs.homeoffice.gov.uk>

Contact for enquiries: **David Oliver**

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What is the problem under consideration? Why is government intervention necessary?

The availability and domestic production of higher than average potency cannabis has increased in the UK since cannabis was reclassified to Class C in 2004. The current classification of cannabis under the Misuse of Drugs Act 1971 does not take account of this change in circumstances and the potential yet unknown impact on health. Intervention by a change in classification, accompanied by a strengthened enforcement approach, is necessary to protect individuals and society from the harmful effects of cannabis.

What are the policy objectives and the intended effects?

To maintain a classification for cannabis that takes account of both the known harms, but also more uncertain and potentially serious health risks associated with higher than average potency cannabis with an appropriate enforcement response. The intended effects are to deter cannabis use, and support the existing declines, with escalated action against repeat offenders; and to reduce the availability of cannabis by refocusing enforcement agencies approach to tackling cannabis supply, production and the disruption of organised crime groups.

What policy options have been considered? Please justify any preferred option.

1. No change.
2. Reclassify to Class B, with the introduction of Penalty Notices for Disorder. This option is the preferred legislative option as it provides an appropriate classification, supports the national message that cannabis is harmful and illegal, provides a strengthened enforcement regime for adult repeat offenders and supports enforcement activity in respect of suppliers and commercial producers of cannabis.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The classification of cannabis will be subject to review, through the monitoring of Criminal Justice and British Crime Survey statistics to evaluate effects on enforcement and use.

Ministerial Sign-off For **SELECT STAGE** Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Alan CampbellDate: 14th January 2009

Summary: Analysis & Evidence

Policy Option: 2	Description: Reclassify cannabis to Class B, and introduce Penalty Notice for Disorder for use against possession offences
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' The main potential liabilities fall to the police and criminal justice system in implementing a more robust enforcement regime against cannabis users and suppliers. The single largest bearer of cost is the Court Service.
	One-off (Transition) Yrs	
	£ 0 7	
Average Annual Cost (excluding one-off)	£ 7.1m	Total Cost (PV) £ 50m

Other key non-monetised costs by 'main affected groups' No other costs have been identified.

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' It has not been possible to monetise the benefits of this proposal.
	One-off Yrs	
	£ 0	
Average Annual Benefit (excluding one-off)	£ 0	Total Benefit (PV) £

Other key non-monetised benefits by 'main affected groups' The strengthened enforcement regime is predicted to reduce cannabis use, which could be expected to have major benefits across government and society as a whole.

Key Assumptions/Sensitivities/Risks The estimates are based on assumptions about the rate of escalation of cannabis users and the likely sanctions which will be administered. The costs take no account of possible excess capacity in the criminal justice system, or other ways in which additional liabilities might be managed.

Price Base Year 2008	Time Period Years 7	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?		England and Wales		
On what date will the policy be implemented?		26 January 2009		
Which organisation(s) will enforce the policy?		MOJ/HO/Police/CJ		
What is the total annual cost of enforcement for these organisations?		£ As tables		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ 0		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro £0	Small £0	Medium £0	Large £0
Are any of these organisations exempt?	Yes	Yes	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)
Increase £ 0 **Decrease** £ 0 **Net Impact** £ 0

Key: Annual costs and benefits: Constant Prices

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background

Since January 2004, cannabis has been classified a Class C drug under the Misuse of Drugs Act 1971.

At the time of reclassification in 2004, the Association of Chief Police Officers (ACPO) introduced 'cannabis warnings' (then referred to as 'street warnings') in England and Wales. Since then, most offences of cannabis possession by adults have resulted in a cannabis warning and the confiscation of the drug. Revised ACPO guidance in 2006 advised that, in the absence of any aggravating factors, only two cannabis warnings should be issued before considering more severe disposals. Those that are prosecuted for unlawful possession are most likely to be dealt with in the Magistrates Court where the statutory maximum penalties are three months' imprisonment and/or a Level 3 (£1,000) fine. In respect of those cases that proceed to the Crown Court, the maximum penalties are two years' imprisonment and/or an unlimited fine. A young person under 18 years of age cannot be given a cannabis warning and is dealt with under the provisions of the Crime and Disorder Act 1998 which requires consideration of reprimand, final warning or prosecution.

Offences of unlawful supply, production and trafficking of cannabis are most likely to be dealt with in the Crown Court, where the maximum penalty is 14 years' imprisonment and/or an unlimited fine. This remained unchanged when cannabis was re-classified from a Class B to Class C drug in 2004, as the maximum penalty for all Class C drugs was increased from five years.

Rationale for intervention

The case for change in the current approach to cannabis policy can be examined in relation to two aspects: the legal classification; and the associated enforcement response.

Cannabis reclassification

- *Cannabis use, although falling in recent years, is still widespread*

Despite recent falls across all age groups, including young people, cannabis use is still widespread – 8.7 per cent of respondents to the British Crime Survey reported having used cannabis in 2005/06, and 5.2 per cent reported having used it in the month prior to that survey (Home Office Statistical Bulletin 15/06: <http://www.homeoffice.gov.uk/rds/pdfs06/hosb1506.pdf>). These figures translate into an adult population of users of between 1.7m (previous month) and 2.8m (previous year).

- *Cannabis use is associated with a wide range of physical and psychological harms and hazards*

Cannabis is a harmful drug which poses risks both to individual health and to society. There is clear evidence that it can produce both immediate and longer-term harms to mental health. The latest advice from the Advisory Council on the Misuse of Drugs (*Cannabis: Classification and Public Health*: <http://drugs.homeoffice.gov.uk/publication-search/cannabis/acmd-cannabis-report-2008?view=Standard&pubID=554031>) is that, whilst cannabis most likely plays a modest role in the *development* of psychotic illness in the general population, there is a significant possibility that the greater use of higher than average potency cannabis may increase the harmfulness to mental health, more so if young people start to use at an early age or 'binge smoke'.

- *Availability and use of the more dangerous higher strengths of cannabis has increased*

The use and availability of higher than average potency cannabis, commonly known as 'skunk', which has higher levels of the main psychoactive ingredient, tetrahydrocannabinol (THC), has increased in recent years. The Home Office's 2008 Cannabis Potency Study (<http://drugs.homeoffice.gov.uk/publication-search/cannabis/potency?view=Standard&pubID=553869>) reports that herbal cannabis was estimated to represent around 30 per cent of police seizures in 2002,

but 55 per cent in 2004/05. It further reports that 'skunk' now dominates the UK cannabis market, accounting for approximately 80 per cent of street seized cannabis, with a potency of around 16 per cent, compared with an historic norm of five per cent for cannabis resin. This is an important indication that total and average consumption of THC might actually be increasing over time, despite a declining population of users.

- *There has been significant growth in the commercial cultivation of cannabis in recent years*

The Serious Organised Crime Agency's *UK Threat Assessment of Organised Crime 2008/09* states that commercial cultivation of cannabis in the UK is rising. Between mid-2004 and January 2007, over 2000 cannabis factories capable of producing commercial quantities of 'skunk' were discovered in 41 police forces areas in England and Wales, and nearly 70 in five force areas in Scotland. The operations are often run by organised crime groups which use trafficked individuals, including children, for their workforce (*Kapoor, A 2007 : A scoping project on child trafficking in the UK. Child Exploitation and Online Protection Centre, London*).

Enforcement Response (Simple possession - England and Wales only)

Whilst the enforcement response must remain proportionate and offer discretion to police officers at every stage, the current enforcement response regime for unlawful possession of cannabis by an adult is subject to the following limitations, which are not acceptable for a Class B drug:

- *The current system of cannabis warnings does not adequately reflect the increased seriousness associated with repeat offending, more so as a Class B drug, and is subject to regional variation in implementation*

Issuing a cannabis warning for a second offence – being the same sanction as the first offence – fails to reflect the fact that repeat offending is more serious than first offending (as demonstrated by judgements and practice towards cannabis possession across the criminal justice system). Notwithstanding the fact that under current ACPO guidelines, no more than two cannabis warnings should be issued, and whilst police data does not readily provide national information on the number of repeat warnings given, there is compelling anecdotal evidence that individual offenders have received high numbers of warnings before any further action – if any – has been taken. The issue of multiple warnings can in part be attributed to varying local recording practices, which impact on an officer's ability to check systematically, whether a prior cannabis warning has been given to an individual, and hence whether stricter enforcement action is appropriate.

- *The current system of cannabis warnings is unlikely to represent a significant deterrent to illegal cannabis use*

The current use of cannabis warnings does not provide an adequately robust or standardised escalation process. This results in the risk and actuality that multiple warnings are issued to persistent offenders, with no other sanction or action. As a consequence there is no significant deterrent or other impact on these offenders' behaviour. It also does not support, and could contradict, the national message that cannabis use is harmful and illegal. Increased visibility of an effective response will also help address public perceptions and improve public confidence generally in enforcement and the criminal justice process.

Summary conclusion

Illegal cannabis use remains a sizeable problem, with a significant shift in the UK market towards higher than average potency cannabis. There is a significant possibility that the greater use of higher potency cannabis may increase risks to mental health. Where there is a clear and serious problem, but some uncertainty surrounding a drug's full potential to cause harm, the Government considers that it should err on the side of caution and take such preventative action as is necessary to protect the public. A strengthened enforcement regime is justified to support this reclassification, as well as to address limitations with the existing system, and is more likely to provide effective deterrence.

Objectives

Cannabis classification

The general objective of any drug's control and its classification is to support the overarching aim of UK drug laws- to protect individuals and society from the harmful effects of 'dangerous or otherwise harmful drugs.'

Specifically, the classification of cannabis should reflect known risks to health, as well as any potential longer term health implications. It should support any action to address the increased availability and use of higher than average potency cannabis and re-enforce the national message that cannabis use is harmful and illegal. It should also support the needs and consequences for policing priorities.

Cannabis enforcement response regime

The enforcement regime should facilitate an enforcement response commensurate with the legal classification of cannabis. It should tackle repeat offenders through a consistent and robust escalation process with the intended effect of deterring use. It should support enforcement action against dealers and tackle commercial production of cannabis, with the intended effect of reducing the availability of cannabis, particularly that of higher strength, and disrupting organised crime and human trafficking.

Options Appraisal

Identification of options

The discussion above indicates that there is rationale for changing the current legal regime governing the illegal possession, supply, production and trafficking of cannabis in respect of two dimensions:

- *The classification of cannabis*

There is good evidence (presented above) that the current classification of cannabis at Class C does not reflect the increasing availability of higher than average potency cannabis, which is associated with greater uncertainties regarding health risks. It also does not reflect the increasing prevalence of commercial cultivation of cannabis in the UK, with its associated links to organised crime.

- *The cannabis enforcement response regime*

The evidence presented above suggests that the present system of cannabis warnings, introduced when cannabis was reclassified to Class C in 2004, does not provide a deterrent to or otherwise impact upon offenders' behaviour, consistent with the increasing risks associated with an increase in higher potency cannabis. In addition, there is an issue of robustness and consistency in the way cannabis warnings are used. These factors suggest a case for increasing the severity of the enforcement response options in relation to cannabis possession and supply, production and trafficking of cannabis.

The options identification has therefore focused on these two dimensions. In addition, it is not considered appropriate to address the classification and enforcement questions independently. Cannabis warnings, for instance, were introduced specifically for the purposes of being consistent with reclassification of cannabis to Class C in 2004. Any decision to reclassify cannabis to Class B would therefore point towards a step change in the enforcement regime. Consequently, the option identification has only considered classification and enforcement as part of a single package.

In doing so, the introduction of Penalty Notices for Disorder (PNDs) as part of the escalation process for simple possession of cannabis for adults has been identified as part of the 'Option for Change.' The extension of the PND scheme is subject to public consultation by the Ministry of Justice, and separate legislative process and Parliamentary agreement. This impact assessment will not prejudice the outcome of the public consultation process. However, to ensure that it sets out the full proposed enforcement response, it has been prepared on the basis that PNDs will be available. Equally, the MOJ's impact assessment will fully reflect the proposed role that PNDs would play in the escalation process.

The option which is being proposed, and which will be compared against the option of 'doing nothing', is as follows:

The Option for Change

Reclassify to Class B: support a strengthened enforcement approach with the introduction of Penalty Notices for Disorder as part of an escalation process for possession offences

Following this option, cannabis will be reclassified to a Class B drug under the Misuse of Drugs Act 1971. The maximum penalties for offences relating to cannabis set by the legislative framework will change as follows:

Possession – the maximum penalty on indictment increases from two to five years' imprisonment. On summary conviction, the maximum imprisonment penalty remains the same at three months, although the maximum fine that the Magistrates' Court can impose increases from £1,000 to £2,500.

Supply, production and trafficking - the maximum penalties on summary conviction increase to six months' imprisonment and/or a Level 5/£5,000 fine (from three months and/or a Level 4 £2,500 fine respectively).¹ The maximum penalties on indictment are unaffected and remain at 14 years' imprisonment and/or an unlimited fine.

The rationale for a strengthened enforcement approach for possession for repeat offenders is set out above. Reclassification would be accompanied (subject to consultation by the Ministry of Justice and Parliamentary agreement) by the introduction of Penalty Notices for Disorder as part of the escalation process for simple possession of cannabis offences by adult offenders.

Notwithstanding police discretion and in the absence of any aggravating factors, escalation for simple possession by an adult offender would be modelled as follows:

- one cannabis warning for a first offence;
- one PND for a second offence;
- arrest for a third offence, then to be considered for further action – including release without charge, caution, conditional caution or prosecution. All subsequent offences are likely to result in arrest.

PNDs were introduced by the Criminal Justice and Police Act 2001 to provide the police with a swift, non-bureaucratic means of dealing with a specific range of offences. A PND recipient is required to pay a penalty fine (or can request a court hearing within 21 days). No admission of guilt is required. By payment of the penalty, the recipient discharges all liability for the offence. As a recordable offence, details would be entered in to the Police National Computer and, whilst the recipient does not receive a criminal record, the details of the PNC may be disclosed under an Enhanced Disclosure Certificate from the Criminal Records Bureau.

PNDs offer a proportionate response to a second offence. As with the issue of a cannabis warning, PNDs enable a police officer to exercise discretion in dealing with an offender without the need to arrest. They are available for use 'on the spot' and, whilst predominantly used on the street, can be used in the police station or elsewhere. PNDs provide an incremental step between a cannabis warning and arrest, which re-enforces the criminal offence but keeps police bureaucracy to a minimum. They impose a financial sanction (which a cannabis warning does not), which is proposed to be set at the current upper limit of £80. This provides an immediate and tangible criminal penalty which has greater potential to alter the behaviour of an offender than a cannabis warning alone. Notwithstanding the more serious nature of a second offence, it also avoids the offender receiving a criminal record (if the fine is paid). Cannabis use in public is far more common than other illicit drugs, and can be perceived to be linked with anti-social behaviour and public disorder, which PNDs are specifically designed to address.

The proposed fine of £80 for cannabis possession under current payment rates is commensurate with the average fine issued by the Magistrates Court. Consequently, the use of PNDs should not have a perverse impact on offenders pursuing a court hearing (with unnecessary impact of the criminal justice system), albeit with the risk of conviction, simply to secure a lesser fine.

Robust recording is a necessary element in the effectiveness of the escalation process to enable a police officer to identify whether a person has received any previous sanction for a cannabis-related

¹ The maximum penalties for cannabis cultivation on summary conviction remain the same at 6 months imprisonment and a level 5 fine.

offence. Whilst PNDs are recorded on the PNC, cannabis warnings are not. Local recording systems will be reviewed to support the strengthened enforcement response. ACPO will seek agreement amongst forces to record more accurately all cannabis warnings on local crime recording systems and are developing systems to enhance data consistency. One prospective example of this would be the gradual roll out of hand held mobile data acknowledged by ACPO as being able to bring benefits (uncosted) over the next two years. This will improve data collection, bringing greater opportunities in effectiveness for the recording of cannabis warnings and PNDs. The importance of improved data collection/intelligence will be emphasised in the revised ACPO Cannabis Guidelines, with individual forces accountable for their actions and performance in this regard.

The current arrangements for individuals who are under 18 years of age, through the Crime and Disorder Act 1998 – provisions of reprimand, final warning and charge – continue to offer an appropriate and proportionate approach for possession, with a Youth Offenders Team referral for assessment at any point. PNDs are not an appropriate disposal for young people in respect of drug offences. Therefore, no change is proposed in the enforcement regime towards individuals under 18 years of age.

The Do Nothing Option

Under this option, cannabis would continue to be classified as a Class C drug under the Misuse of Drugs Act 1971. The maximum penalties would remain unaltered as set out in the Background section.

Notwithstanding police discretion, there is no greater sanction for a second offence of simple possession than the first. The options available to the police in exercising their discretion in dealing with a possession offence other than by arrest are limited to issuing a cannabis warning, which is likely to continue to be the dominant police response.

Approach to appraisal

A model was developed to estimate how the proposed reclassification of cannabis might impact on cannabis possession offending, on the police and the CJS in comparison with the option of no change. This impact is driven by the population of offenders who are escalated into the system as they come into contact with the police. This in turn is dependent on a number of key assumptions which dictate how quickly and how often offenders are sanctioned. These assumptions include the rate at which they re-offend, the rate at which they desist (both through getting older and getting caught) and an annual overall decrease in the total cannabis-using population.

The model takes the 2006 number of cannabis warnings (80,000) as the starting volume of police contacts, and estimates the numbers of cannabis warnings and arrests we would expect to see in future years if current practice persisted. In the baseline (no change option), it is assumed that offenders are escalated into the CJS relatively slowly, reflecting the fact that under the current regime escalation is considered to be imperfect due to poor recording practices. There is therefore a relatively gradual increase in the number of arrests relative to the number of cannabis warnings.

Under the policy option, recording is assumed to be more complete, so that escalation happens relatively more quickly. Counteracting this, quicker and more robust escalation is assumed to result in a higher probability that an offender will desist. The model then calculates the numbers of cannabis warnings, PNDs and arrests we might expect to see over future years under the new policy option.

Once arrested, offenders pass through the CJS based on current practice and receive disposals following current proportions for Class C possession offences in the baseline, and Class B possession offences in the policy option model (<http://www.justice.gov.uk/publications/criminalannual.htm>). This generates CJS outcomes (arrests, proceedings, disposals) to which associated potential unit costs can be applied at each stage to estimate the potential impact in terms of potential costs and volumes to the police and CJS.

Estimates of unit costs applied to CJS outcomes have been obtained from the agencies involved, and from relevant research where available. These estimates are in the form of 'long-run marginal costs'. As a result, they are broad estimates of the expected cost of dealing with increased workload, but they do not necessarily reflect the actual costs in any particular situation or point in time. For instance, they do not reflect any short-run issues there might be around the

availability of resources or capacity for dealing with increased workload. They should therefore be seen only as rough guides to cost in the long run.

The following sections present estimates of the costs to the police and criminal justice system of the workloads forecast with the model under the baseline and policy scenarios. As just described, the model uses a large number of assumptions and data. The majority of these are evidence-based but in some cases judgement has had to be used. As a result, the estimates are subject to a degree of uncertainty, and should be viewed in this light.

Appraisal of Potential Liabilities

The Do Nothing Option

Table 1 presents estimates of the volumes of CJS outcomes for a period seven years into the future, under the Do Nothing option of no change in the legislative and enforcement regime for cannabis. A seven year period is selected as it coincides with the possible end of the next government Spending Review period. The baseline starts from the assumed current position of 80,000 cannabis warnings per year, which are estimated to result in 5,000 arrests on the basis of the current system of incomplete recording and escalation.

From Table 1, it can be seen that, over time, the total number of contacts with offenders by the police (and hence the rest of the CJS) is forecast to fall. This reflects the forecast reduction in the population of serious cannabis users, following recent trends (Home Office Statistical Bulletin 15/06), as well as the desistance of users which is assumed to follow (with a probability) their contact with the CJS.

Table 1

Estimated CJS volumes for cannabis possession, Do nothing option

Year	Police		HMCS and CPS				NOMS and Prisons				Community		Immediate	
	Warnings	Arrests	Cautions	Proceeded	Magistrates Trials	Guilty Plea	Crown Trials	Sentenced	Conditional Discharge	Sentence	Fines	custody	Other	
Base	80000	4910	2440	2560	780	1720	60	2340	560	270	1400	30	80	
2	74890	5790	2760	3150	950	2120	70	2870	690	330	1720	40	90	
3	70120	6520	2980	3670	1110	2470	90	3340	800	380	2000	50	110	
4	65700	7080	3110	4110	1250	2770	100	3750	900	430	2240	60	120	
5	61600	7480	3180	4470	1350	3010	110	4070	970	460	2440	60	130	
6	57810	7750	3180	4740	1440	3190	110	4320	1030	490	2580	60	140	
7	54300	7900	3150	4920	1490	3310	120	4490	1070	510	2690	70	150	
8	51040	7940	3080	5040	1530	3390	120	4590	1100	520	2750	70	150	

Proceedings include those for breach of a community sentence

Thus, a total of just under 85,000 contacts between the police and offenders in the starting year is forecast to fall to just under 60,000 by Year 8, a reduction of 30 per cent.

However, the distribution of police contacts with cannabis users does change over time, because the (variable) recording of cannabis warnings results in the gradual escalation of users into the CJS. Thus, the proportion and absolute number of arrests is forecast to rise over time, from just under 5,000 (six per cent of initial cannabis warning volume) to just under 8,000 (16 per cent of cannabis warning volume), a rise of 61 per cent. This is associated with a concomitant increase in other CJS outcomes, in the same proportion as current disposals, i.e. no change is assumed in the relative disposal of offenders as arrests increase.

Table 2

Estimated costs of enforcement against cannabis possession, Do Nothing option (£m)

Year	Criminal Justice System					Total CJS	Non-legal aid defence	Total
	Police	CPS	HMCS*	NOMS				
Base	2.65	0.65	3.48	0.37	4.50	1.28	8.42	
2	2.61	0.79	4.20	0.46	5.45	1.57	9.62	
3	2.56	0.91	4.83	0.54	6.28	1.83	10.66	
4	2.50	1.02	5.35	0.60	6.97	2.05	11.51	
5	2.43	1.10	5.75	0.65	7.51	2.22	12.16	
6	2.36	1.17	6.05	0.69	7.91	2.36	12.62	
7	2.28	1.21	6.24	0.72	8.17	2.45	12.90	
8	2.20	1.24	6.35	0.74	8.32	2.51	13.03	

*HMCS costs include court costs, legal aid and central funds costs

Table 2 presents estimates of the costs of current and future enforcement of cannabis possession under the Do Nothing option. This is broken down by CJS agency, and includes the costs of legal defence for those defendants who are not entitled to legal aid.

The overall costs of enforcement against cannabis possession are estimated to be just over £8.42million in the base year, about thirty percent of this amount being incurred by the police in terms of arrests and the issuance of cannabis warnings. The second major bearer of costs is the court service (42 per cent). Comparatively speaking, costs to prisons and probation are low, reflecting the relatively high proportion of fines issued as disposals for cannabis possession, and the relatively low number of probation and prison sentences.

Costs are forecast to rise from the base year to Year 8, to £13.03m (in real terms), or by 54 per cent. This is despite the fall in the number of contacts with the police estimated over the same period. In fact, costs to the police are forecast to fall as the number of contacts falls, but by proportionately less (17 per cent). This reflects the substitution over time of police effort on arrests for time currently spent on cannabis warnings, again reflecting (variable) escalation.

In total, enforcement against cannabis possession is estimated to cost just over £90m over the eight years considered in this appraisal.

The costs presented above do not include costs associated with custodial sentences for offenders convicted of cannabis possession offences. This is because unit costs for custody are difficult to estimate, and can vary significantly depending on whether the estimates are based on running costs alone or include capacity costs. However, the prison place requirement implied by the number of forecast disposals in Table 1 is small, ranging from four in Year 1 to eight in Year 8.

The Option for Change

Table 4 presents estimates of the potential volumes of CJS outcomes for a period seven years into the future, under the Change option of reclassification of cannabis to Class B, and escalation through consistent recording and implementation of cannabis warnings and PNDs for possession. As before, this starts from the assumed current position of 80,000 cannabis warnings per year, which are estimated to result in 5,000 arrests due to the current system of incomplete recording and escalation. (Hence, the first lines of Tables 1 and 4 are the same). The resulting CJS outcomes are calculated on the basis of current (2006) practice for Class B possession (<http://www.justice.gov.uk/publications/criminalannual.htm>).

Table 4

Estimated CJS volumes for cannabis possession, Change option

Year	Police		HMCS and CPS					NOMS and Prisons							
	Cannabis Warnings	PNDs	Arrests	Cautions	Proceeded	Magistrates Trials	Guilty Plea	Mag Court from PND	Crown Trials	Sentenced	Conditional Discharge	Community Sentence	Fines	Immediate custody	Other
Base	80000	0	4910	2440	2560	780	1720	0	60	2340	560	270	1400	30	80
2	65740	9370	5180	1510	3870	1150	2620	190	90	3420	930	570	1570	100	250
3	52610	16900	6210	1810	4640	1380	3150	340	110	4110	1120	680	1880	120	300
4	42850	20480	7950	2350	5900	1760	4000	410	140	5220	1420	870	2390	160	380
5	35530	21650	9640	2830	7180	2140	4870	430	170	6350	1730	1050	2910	190	460
6	29960	21420	11000	3150	8270	2470	5610	430	190	7320	1990	1210	3350	220	530
7	25640	20400	11920	3300	9090	2710	6160	410	210	8040	2190	1330	3680	240	590
8	22210	19000	12440	3310	9610	2870	6520	380	230	8510	2320	1410	3900	260	620

Proceedings include those for breach of a community sentence

From Table 4, it can be seen that, over time and as with the Do Nothing option, the total number of contacts with offenders by the police (and hence the rest of the CJS) is forecast to fall. This reflects the same forecast reduction in the population of serious cannabis users, following recent trends (Home Office Statistical Bulletin 15/06), as well as the desistance of users which is assumed to follow (with a probability) their contact with the CJS. However, the number of contacts is forecast to fall slightly faster under the Change option, because of the assumed higher probability that offenders will cease their offending following what is now more robust contact with the police and the CJS.

The distribution of potential police contacts with cannabis users again changes over time. The introduction of an escalation policy is associated with an immediate increase in the number of PNDs issued. This reflects the substitution of second-offence cannabis warnings for PNDs, as well as an increased number of second warnings associated with improved recording. The proportion and absolute number of arrests is forecast to rise over time, with a concomitant potential increase in other CJS outcomes, and more quickly than in the Do Nothing situation, again reflecting the forecast improvement in data collection on cannabis warnings. CJS outcomes change compared with the current situation, with

a potential relative shift towards more serious disposals, reflecting the Class B status of cannabis under this scenario.

Table 5 presents estimates of the potential liability associated with this possible increase in workload under the Change option. As before, this is broken down by CJS agency, and includes legal defence for those defendants who are not entitled to legal aid.

The overall potential enforcement liability in respect of cannabis possession in the base year is estimated to be just over £8.4 million as before. Year 2 represents the first year of operation of the new policy. The potential liability for this year is forecast to rise by 37 per cent to just over £11.5million.

Potential liabilities continue to rise from the base year to Year 8, and at a higher rate than under Do Nothing, again reflecting higher rates of escalation and potentially more severe disposals. The total in Year 8 is estimated at £24.15 million, a rise of almost 190 per cent over the period, and an increase of nearly 85 per cent over Do Nothing. This is despite the higher rate of desistance which occurs under this Change scenario.

The increased escalation and higher disposal severity rate associated with Class B status is forecast to result in a potential increase in prison place requirement by 26 in Year 8, to 34 in total. As with the baseline, the potential costs associated with this possibility are not included in Table 5.

Table 5
Estimated enforcement liability against cannabis possession, Change option (£m)

Year	Criminal Justice System					Total CJS	Non-legal aid defence	Total
	Police	CPS	HMCS*	NOMS				
Base	2.65	0.65	3.48	0.37	4.50	1.28	8.42	
2	2.65	0.92	5.43	0.55	6.91	1.97	11.53	
3	2.69	1.11	7.01	0.67	8.79	2.41	13.88	
4	2.74	1.41	8.84	0.85	11.09	3.05	16.89	
5	2.77	1.72	10.46	1.03	13.21	3.69	19.67	
6	2.76	1.97	11.72	1.19	14.88	4.22	21.86	
7	2.70	2.17	12.56	1.30	16.03	4.61	23.34	
8	2.62	2.29	13.01	1.38	16.68	4.86	24.15	

*HMCS costs include court costs, costs from PNDs, legal aid and central funds costs

In total, enforcement against cannabis possession is estimated to generate a potential liability of just under £140million over the eight years considered in this appraisal, a rise of 55 per cent over the Do Nothing scenario.

Supply, Production and Trafficking

The potential impact of reclassification associated with offences by suppliers, producers and traffickers of cannabis has been considered separately. The increase in commercial production in the UK will continue to have an impact on police and CJS costs, independent of reclassification, as enforcement action is being taken and the CJS is responding accordingly. In relation to potential liabilities via sentencing practice as a direct consequence of reclassification, the courts are expected to take into account the Class B status. Notwithstanding this, a seven year forecast of direct, additional potential liabilities has not been made at this time, for the reason that new guidelines for sentencing of drug offences is pending. The Sentencing Guidelines Council (SGC) will shortly be consulting, with a view to producing comprehensive and up to date guidelines for all drug offences. These guidelines are likely to be published in the course of 2009, taking into account the then current classifications. Whilst there is an expectation that these guidelines will make a clear distinction between Class B and Class C status, until that guidance is settled, establishing starting points and ranges for sentencing, the likely impact of reclassification in respect of sentencing for these offences cannot be determined at this stage. Pending new guidance, the Crown Court have and will continue to rely on current guideline judgments which were made when cannabis was a Class B drug, prior to the 2004 reclassification. It is also noteworthy that the maximum penalty on indictment for these offences will remain unchanged following reclassification at 14 years imprisonment and/or an unlimited fine. When cannabis was reclassified from a Class B to Class C drug in 2004, the maximum penalty for these offences did not change, consistent with Parliament's intent that the courts should continue to be able to impose substantial sentences where appropriate.

By contrast, in respect of proceedings in the Magistrates' Court, in May 2008 the SGC published revised Magistrates' Court Sentencing Guidelines which include guidelines on the supply and production of Class B offences. Class B status might be expected to result in slightly longer prison sentences (about one month, of which only half will be served in prison). The number of individuals sentenced to imprisonment in Magistrates Courts, however, is small at 67 in 2006.

Comparison of options

A comparison of the Change and Do Nothing options is useful on the basis of potential liabilities, revenues and benefits. Table 6 presents the difference in potential liability between the two options over the period under consideration.

Table 6
Estimated change in enforcement liability against cannabis possession (£m)

Year	Criminal Justice System					Total CJS	Non-legal aid defence	Total
	Police	CPS	HMCS*	NOMS				
Base	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2	0.04	0.14	1.23	0.09	1.46	0.40	1.90	
3	0.13	0.20	2.18	0.13	2.51	0.58	3.22	
4	0.25	0.39	3.49	0.24	4.12	1.01	5.38	
5	0.34	0.61	4.71	0.38	5.70	1.47	7.50	
6	0.40	0.81	5.67	0.49	6.97	1.86	9.23	
7	0.42	0.96	6.31	0.58	7.85	2.16	10.44	
8	0.42	1.05	6.66	0.64	8.36	2.35	11.13	

*HMCS costs include court costs, costs from PNDs, legal aid and central funds costs

It should be noted that, as discussed in the Approach to Appraisal section, these estimated possible changes in potential liability are based on estimates of long-run marginal cost, assuming no change in current practice. How any increase is actually managed in practice depends on the policy and operational response to it. Thus, the liability could manifest itself in additional costs incurred through increased funding and a raising of the level of CJS activity. In the event that there is excess capacity and no short-run flexibility in funding, they might result in no increase in costs at all. Finally, they might be managed in the form of a change in operational response, e.g. the development of quicker and cheaper processes for dealing with offenders.

This issue is related to the financial implications of the two options. Although not strictly relevant to the choice of option from an overall perspective, a comparison of the options from the perspective of revenue generation helps to identify the distributional consequences of the policy, and the implications for funding.

Table 7
Fine Revenue under the Do nothing and Change options (£m)

Year	Do nothing	Policy			Total	Difference
	Court Fine	PND	PND Fine	Court Fine		
Base	0.11	0.00	0.00	0.11	0.11	0.00
2	0.14	0.39	0.25	0.13	0.76	0.62
3	0.16	0.70	0.45	0.15	1.30	1.14
4	0.18	0.85	0.54	0.19	1.58	1.40
5	0.19	0.90	0.57	0.23	1.71	1.51
6	0.21	0.89	0.57	0.27	1.72	1.52
7	0.21	0.85	0.54	0.29	1.68	1.47
8	0.22	0.79	0.50	0.31	1.60	1.38

Table 7 presents estimates of the revenue streams under the Do Nothing and Change scenarios. Thus, the current situation is forecast to result in revenues of around £1.4million gross (i.e. before collection charges) over the period under consideration. Under the Change scenario, this rises to £10.5m, an increase of £9million, reflecting the use of PNDs and the more likely use of fines.

Benefits

The benefits of the policy have been calculated in terms of the change in the estimated population of serious cannabis users. These estimates are presented in Table 8. Thus, from a starting implied population of just over 400,000, the population under no change in regime is anticipated to fall to around 290,000.² This reflects gradual desistance through contact with the CJS system and ageing, and amounts to a reduction of around five per cent per year, consistent with current trends as measured by the BCS. The Change option is forecast to result in faster desistance because of the increased severity of disposals associated with a strengthened enforcement regime. Thus, the population of serious users falls from the same number at Base to just under 270,000 by Year 8, a fall of 23,000, or just under eight per cent.

Table 8
Estimated total population of serious cannabis offenders by year

Year	Population of offenders, Do Nothing	Population of offenders, Change	Difference	%
Base	416769	416769	0	0.00%
2	396179	396491	-312	-0.08%
3	376576	373297	3279	0.87%
4	357914	352153	5761	1.61%
5	340148	331124	9024	2.65%
6	323240	310103	13138	4.06%
7	307153	289260	17892	5.83%
8	291849	268836	23013	7.89%

Although we are not able to place a monetary value on this benefit for the purposes of this assessment, it can be expected that this desistance would result in a reduction in costs directly to users through improvements in health, and a reduction in costs to health service agencies in the form of a reduction in potential treatment burden.

It is also possible that reductions in cannabis use might be associated with reductions in crime and anti-social behaviour. Although there is no clear casual link between cannabis use and offending, there is evidence of an overlap. The Arrestee Survey (<http://www.homeoffice.gov.uk/rds/pdfs07/hosb1207.pdf>) showed that 47 per cent of arrestees reported that they had used cannabis in the past 12 months. The Offending Crime and Justice Survey 2005 (<http://www.homeoffice.gov.uk/rds/pdfs06/hosb1706.pdf>) found that, amongst 18-25 year olds, 15 per cent of offenders had not taken any drugs in the last 12 months compared with 34 per cent of offenders who had used non-Class A drugs in the previous 12 months, which again suggests the existence of an overlap between use of non-Class A drugs and offending behaviour.

Addressing the population of serious cannabis users may offer some potential to reduce the numbers of other, more serious, crimes. The current evidence base does not allow us to estimate the degree to which this might be the case.

Devolved Administrations

- *Scotland and Northern Ireland*

Whilst working to a common UK wide legislative framework, the Scottish Parliament has competence in relation to key matters which are relevant to the misuse of drugs, including the police and the criminal prosecution system. When cannabis was reclassified to Class C in 2004 the policing approach in Scotland did not change. Cannabis warnings were not introduced. The Association of Chief Police Officers Scotland's policy is that anyone found in the possession of cannabis was and continues to be reported to the Procurator Fiscal. Consequently, reclassifying cannabis to Class B is unlikely to have any significant impact the enforcement response to possession offences in Scotland.

² This is not an estimate of the actual number of cannabis users, but rather of the number who are likely to be subject to cannabis warnings and other enforcement due to their 'street use'.

Similarly, the position in Northern Ireland in relation to key matters which are relevant to the misuse of drugs, including the police and the criminal prosecution system differs from the approach adopted in England and Wales. When cannabis was reclassified to Class C in 2004 the policing approach in Northern Ireland did not change. Cannabis warnings were not introduced. The current policy is that those found in possession of cannabis was and continues to be reported to the Public Prosecution Service where a decision on cautioning or prosecution will then be made. Reclassification is unlikely to have any significant impact on the enforcement response to possession offences in Northern Ireland.

Impact on Drug Treatment Services, Health Services and the Department of Health/ Impact on Department for Children Schools and Families (DCSF) and Joint Youth Justice Unit (DCSF and MOJ)

It is not anticipated that there will be any additional costs to the Drug Treatment Services or the Department of Health as a direct result of cannabis reclassification to Class B. These services already exist and there is no introduction of direct referral for treatment for cannabis use associated with the change in classification and the enforcement escalation process. Neither is there likely to be any additional costs on health services via existing referral processes through Youth Offending Teams (see below).

It is not anticipated that there will be any additional costs to the Department of Children Schools and Families as a direct result of cannabis reclassification to Class B. Class B will re-enforce the Government's consistent national message to young people about the harms associated with cannabis use. The Home Office, DCSF and Department of Health lead on the delivery of communications campaigns and activity targeted on young people and families. FRANK already highlights the risks of cannabis and these messages will be refreshed within FRANK and other campaigns. The 2008 national drug strategy commits the Government to funding FRANK for the next three years. The costs associated with updating our messages on the harms of cannabis use in light of the ACMD's latest report and the legal status following reclassification will be met from existing resources, allocated to the FRANK campaign and the national strategy. In respect of any additional costs in respect of communications around reclassification, these are currently being identified within the Home Office.

Given the position will remain unchanged for under 18s who will continue to be dealt with under the Crime and Disorder Act 1998, there is unlikely to be any additional cost on Youth Offending Teams (and health services via their existing referral processes). Where the police issue a reprimand, they will continue to exercise their discretion to make a referral to the Youth Offending Teams (YOT) where it is decided that this is the most appropriate course of action for the welfare of the young person. Class B status may inform that decision but will not direct it. An automatic referral to a YOT will continue to be a requirement when a final warning is issued. Where substance issue needs are identified, a substance misuse worker attached to the YOT will carry out a further assessment and appropriate interventions will continue to be provided by either the YOT or another agency based on individual tailored requirements.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	Yes
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Annexes

Annex A

Home Office Documents

Advisory Council on the Misuse of Drugs; *Cannabis: Classification and Public Health*; Home Office 2008

Boreham et al; *The Arrestee Survey 2003-2006*; Home Office Statistical Bulletin; 2007
<http://www.homeoffice.gov.uk/rds/pdfs07/hosb1207.pdf>

Chivite- Matthews et al; *Home Office Statistical Bulletin: Drug Misuse Declared: Findings from the 2003/04 British Crime Survey*. Home Office, May 2005
<http://www.homeoffice.gov.uk/rds/pdfs05/hosb0405.pdf>

Hardwick.S & King.L; *Home Office Cannabis Potency Study 2008*; Home Office Scientific Development Branch, May 2008

HM Government; *Drugs: protecting families and communities. The 2008 drug strategy*, COI on behalf of HM Government, February 2008.

Ipsos MORI; *Drugs our community your say; A Report on the 2008 Drug Strategy Consultation; Views on Reclassifying Cannabis to a Class B Drug*; May 2008

Kershaw et al (eds); *Crime in England and Wales 2006/07 (4th Edition)*, Home Office Statistical Bulletin; 2007
<http://www.homeoffice.gov.uk/rds/pdfs07/hosb1107.pdf>

Roe.S & Man.L; *Home Office Statistical Bulletin: Drug Misuse Declared: Findings from the 2005/06 British Crime Survey*. Home Office October 2006
<http://www.homeoffice.gov.uk/rds/pdfs06/hosb1506.pdf>

Serious Organised Crime Agency; *UK Threat Assessment of Organised Crime 2008/09*. Home Office, 2008
<http://www.soca.gov.uk/assessPublications/downloads/UKTA2008-9NPM.pdf>

Other documents

Hales.G; Metropolitan Police Strategic Research Unit and Senior Fellow: *The Policing of Cannabis Possession in London; Examining Ethnic Disproportionality*, July 2007

Kapoor.A; *A scoping project on child trafficking in the UK*; Child Exploitation and Online Protection Centre, (Produced by CEOP on behalf of the Home Office and the Border and Immigration Agency), June 2007

Ministry of Justice; *Criminal Statistics 2006: England and Wales*; National Statistics Office on behalf of the Criminal Justice Evidence and Analysis Unit, Office for Criminal Justice Reform, November 2007
<http://www.justice.gov.uk/docs/crim-stats-2006-tag.pdf>

Warburton et al; *Policing cannabis as a Class C drug*; Joseph Rowntree Foundation, January 2007

Wilson et al; The Offending Crime and Justice Survey 2005; Home Office Statistical Bulletin; 2006
<http://www.homeoffice.gov.uk/rds/pdfs06/hosb1706.pdf>



Equality Impact Assessment

Preliminary Screening

Statistics & Research

Gathering Evidence through Community Engagement

Assessment & Analysis

Action Plan

The EIA Report



EQUALITY IMPACT ASSESSMENT	
	Group
	Directorate
	Unit

PRELIMINARY SCREENING

Name of Policy Writer	Ian Martin
Director General	Vic Hogg
Minister/ Permanent Secretary	Alan Campbell

Name of Policy: Reclassification of Cannabis from Class C to Class B and the introduction of an enforcement policy of escalation to include the issuing of PNDs for repeat adult offenders for cannabis possession.		This is a new policy
	X	This is a change to an existing policy
		This is an existing policy

Policy Aims, Objectives & Projected Outcomes

To maintain a classification for cannabis that takes account of both the known harms, but also more uncertain and potentially serious health risks associated with higher than average potency cannabis with an appropriate enforcement response. The intended effects are to deter and support the existing decline in cannabis use with escalated action against repeat offenders; and to reduce the availability of cannabis by refocusing enforcement agencies approach to tackling cannabis supply, production and the disruption of organised crime groups.

Will the policy have an impact on national or local people/staff?	YES
Are particular communities or groups likely to have different needs, experiences and/or attitudes in relation to the policy	YES
Are there any aspects of the policy that could contribute to equality or inequality?	YES
Could the aims of the policy be in conflict with equal opportunity, elimination of discrimination, promotion of good relations?	NO
If this is an amendment of an existing policy, was the original policy impact assessed?	NO

Cannabis was classified to Class C in 2004. There was no equality impact assessment at the time as cannabis remained an illegal substance and as such there were no wider implications for government departments or social groups in terms of equality issues.

It should be noted that the introduction of the proposed robust enforcement policy is dependent on the introduction of Penalty Notices for Disorder (PNDS) as part of the escalation process for simple possession of cannabis for adults offenders. The extension of the PND scheme is subject to public consultation by the Ministry of Justice, and separate legislative process and Parliamentary agreement. This equality impact assessment will not prejudice the outcome of that public consultation process. However, to ensure that it is in line with the proposed enforcement response, this equality impact assessment (EIA) has been prepared on the basis that PNDs will be available.

FULL IMPACT ASSESSMENT

STATISTICS & RESEARCH

What relevant quantitative & qualitative data do you have in relation to this policy?

Equality Target Areas	<p>How does the data identify potential or known positive impacts?</p> <p>How does the data identify any potential or known adverse impacts?</p>
<p>Race (consider e.g. nationalities, Travellers, languages)</p>	<p>The BCS has shown that use of cannabis is most prevalent amongst those from a mixed race background (25% had used it in the last year). This level of use was twice as high as those with a white or black ethnic background (both 11%). However, within the black ethnic group cannabis use in the last year was found to be significantly higher amongst those in the black Caribbean group (17%) than those with in the black African group (3%).³</p> <p>Research from the <i>Joseph Rowntree Foundation (Policing cannabis as a Class C drug, Jan 2007)</i> shows that black and minority ethnic groups were over-represented in the arrest and street warning statistics for cannabis possession. It further identifies “the need for police forces to monitor trends closely in the disposal of possession offences”. The researchers note: “in the study, people from black and minority ethnic groups were over-represented in the statistics for cannabis possession. If the public view the approach of their local police as inconsistent, confidence in low-level police work will be affected and the ability of patrol officers to police by consent will be weakened. The monitoring and the maintaining of accurate records of which groups are coming to police attention for cannabis possession offences could perhaps minimise this issue.”</p> <p>With regards to treatment for cannabis use the National Drug Treatment Monitoring System (NDTMS) provides comprehensive</p>

³ Aust and Smith (2003)

	<p>information relating to drug users in treatment. The annual review of the NDTMS data includes regression analysis to look for differential negative impact of the treatment system on different groups, including ethnicity.</p> <p>Statistics collected by some drugs services suggest less take up of Drugs services by BME groups, particularly Asian communities.⁴ There are some differences in treatment impact (retention and provisional outcome) attributable to drug of choice. The treatment system is motivated to deal with highest harm causing users, therefore a predominance of heroin users that in itself could have a differential negative impact on some ethnic communities who have a different drug of choice.</p> <p>Because certain ethnic groups, notably black Caribbean and black other, are over-represented among those caught in possession of cannabis, reclassifying cannabis and policy change in terms of enforcement, is likely to have a disproportionate effect on those groups.</p> <p>It is important to note that the effect of reclassification of cannabis to Class B accompanied by the change in policing response is an increase in the severity of disposals for adult repeat offenders rather than a direct increase on the number of disposals. The policing response for those under 18s remains the same. A potential negative consequence is damage to communication between the police and black males – notably black Caribbean and black other.</p>
<p>Disability (consider social access and physical access)</p>	<p>Analysis of the British Crime Survey shows little variation in levels of cannabis use by disability.⁵</p> <p>Although cannabis is, and will remain, an illegal substance, it is acknowledged that therapeutic use of cannabis is known. We are not aware of any statistics in relation to</p>

⁴ See overarching government Drug Strategy <http://drugs.homeoffice.gov.uk/publication-search/drug-strategy/drug-strategy-2008?view=Binary>

⁵ Chivite-Matthews et al (2006)

	users of cannabis for therapeutic purposes.
Gender	<p>Established data sources show that males are more likely to be users of cannabis than females. The school survey “<i>Smoking, drinking and drug use among young people in England</i>” found that boys aged 11-15 were more likely than girls of the same age to have taken cannabis in the last year (11% compared with 9%). Amongst the general population aged 16-59, the BCS shows that males were around twice as likely to have used cannabis in the last year as women (11.1% compared with 5.5%).⁶</p> <p>Research commissioned by the <i>Joseph Rowntree Foundation</i> (JFR) found that, in the four geographical areas examined, 94 per cent of those arrested for possession were male (May <i>et al</i> 2007). Similarly, analysis of data for London has identified that 94.5% of those accused of cannabis possession by the Metropolitan Police Service (MPS) in 2006 were male.</p> <p>Both these sets of data suggest that a disproportionately high number of males – or a disproportionately low number of females – have contact with the police for cannabis possession. To our knowledge, no research has been conducted which sheds any light on the reasons for this discrepancy.</p> <p>It is not anticipated that the proposed change in legislation and accompanying enforcement policy will have any effect on the proportion of males versus females who are dealt with by the police for either possession or supply of cannabis. However the data suggests that the policy will affect males more than females because of the higher rate at which they are represented in the policing of cannabis possession.</p>

⁶ Fuller (ed) (2006)

Gender Identity	None at present. To our knowledge, no data is available on gender identity in relation to cannabis use. It is not anticipated that the change in policy will have any disproportionate impact on transgender people.
Religion and Belief	None at present. To our knowledge no data is available on religion and belief and any associated use of cannabis, including Rastafarianism and the use of cannabis for purported religious/ spiritual purposes.
Sexual Orientation	<p>To our knowledge there is no clear data on sexual orientation in relation to cannabis use. One study into recreational drug use among clubbers in the South- East found that lifetime prevalence of cannabis use among those interviewed at gay venues were lower than the total lifetime prevalence among the rest of the sample (<i>Denhan and Saville, Home Office on-line report 43/03</i>). However the authors of this report query whether it is the type of dance event rather than the specific venue itself that attracts clubbers.</p> <p>It is not anticipated that the change in legislation and enforcement policy will have any disproportionate impact on lesbian, gay, bisexual or heterosexual people.</p>
Age	<p>The Advisory Council on the Misuse of Drugs (ACMD) in their 2008 report on <i>Cannabis: Classification and Public Health</i> highlighted that higher levels of young males (mean age 22.7yrs) were frequent cannabis users seeking higher levels of intoxication. Further findings from the BCS 2006/7 report cannabis is used more widely by younger people. “Cannabis is the drug most likely to be used frequently by young drug users [aged 16-24], with 37.0% of cannabis users using the drug more than once a month during the previous year”</p> <p>The ACMD in their 2008 report on <i>Cannabis: Classification and Public Health</i> highlights <i>JRF's</i> survey stating that the average age for first use of Cannabis for 11-19 yr olds users was 13.</p> <p>However in considering the impact of the</p>

	<p>proposed legislative and enforcement change for the purposes of this equality impact assessment it is important to consider that the treatment of under 18s with regards to enforcement action post reclassification will not change. The current system including the process of referrals to Youth Offending Teams will not alter. Therefore there will be little impact on the young other than a higher classification for cannabis would re-enforce a strengthened message to young people that cannabis is unlawful and harmful.</p>
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What research have you considered commissioning to fill any data gaps?

For example, you may need to ensure quantitative & qualitative data groups include stakeholders with respect to this policy.

N.B Include any recommendations in your action plan

An Ipsos MORI survey; *“Drugs: Our Community, Your Say. A Report on the 2008 Drug Strategy Consultation”* was commissioned to seek views on the Government’s Consultation paper on the new drug strategy in July 2007. Diversity issues were raised in response to this. Cannabis was a one of the main subjects on the commissioned report and was a live discussion throughout the consultation. Some specific views on reclassifying cannabis to a Class B drug were given as part of this see <http://drugs.homeoffice.gov.uk/publication-search/cannabis/cannabis-response?view=Binary> .

Who are the stakeholders, community groups, staff or customers for this policy area?

- Drug users, their children, their families and all members of communities impacted by illegal drug use.
- Practitioners working in drug treatment services
- Advisory Council on the Misuse of Drugs (ACMD)
- The National Treatment Agency for Substance Misuse (NTA)
- Primary Care Trusts (PCTs)
- Inter-agency drug action teams and local partnerships, including Drug Action Teams (DATs), Drug and Alcohol Action Teams (DAATs) and Crime and Disorder Reduction Partnerships (CDRPs).
- Enforcement agencies and all parts of the Criminal Justice System
- Educational institutions
- Local Authorities
- The Home Office
- Department of Health
- Department for Children Schools and Families
- Ministry of Justice
- Department for Work and Pensions
- Department for Communities and Local Government
- Other UK governments, Wales, Scotland and Northern Ireland
- Charity and Voluntary groups (numerous groups including Drugscope, NACRO, Phoenix Futures, Joseph Rowntree Foundation)

What are the overall trends and patterns in this qualitative & quantitative data?

- In some areas there is a need to work to improve local needs assessment. This is central to improving relevant service provision following arrest and sanction for possession of cannabis.
- To achieve economy of scale there is some disadvantage to rural communities. Additional data gaps relate to transient communities e.g. travellers and emerging communities.
- Qualitative data highlights a concern was raised over the potential therapeutic use of cannabis⁷

Please list the specific equality issues that may need to be addressed through consultation (and further research)?

- Disability equality duty includes a requirement to have regard to the need to promote positive attitudes towards disabled people. Cannabis is an illicit, controlled drug and its reclassification should have no bearing on its alleged therapeutic use, because supply and possession of the drug for such purposes remain unlawful and demand is led by health considerations, not classification or enforcement. There is a lack of data in relation to users of cannabis for therapeutic purposes. However, prosecution of such users is rare and courts take full account of all the circumstances in determining any sentence. Also, it is important to note that the policy implications associated with the legislative change are for repeat offenders that come to the attention of the police. The majority of those using cannabis for alleged therapeutic purposes will be those who use in their own home and unlikely to come to the attention of enforcement agencies/ police. There is therefore nothing to suggest a risk that users of cannabis for these purposes will be disproportionately targeted as an impact of the legislative and enforcement policy changes.
- There is a need to address issues of differential access to treatment ensuring barriers are removed for service users.

⁷ Ipsos Mori <http://drugs.homeoffice.gov.uk/publication-search/cannabis/cannabis-response?view=Binary>

GATHERING EVIDENCE THROUGH COMMUNITY ENGAGEMENT

INTERNAL STAKEHOLDER ENGAGEMENT: Consulting & involving Other Government Departments, Staff, Agencies & NDPBs

Does this policy affect the experiences of staff? How? What are their concerns?	
Staff	The reclassification of cannabis and a strengthened enforcement response could affect staff in treatment services, in enforcement agencies, in education and children's services, staff throughout the criminal justice system and those concerned with benefits and needs assessment and provision. They have been consulted during the overall consultation process and in this equality impact assessment, via surveys where questions have specifically focussed on the classification of cannabis.

How have you consulted, engaged and involved internal stakeholders in considering the impact of this proposal on other public policies and services?

For example your policy may affect access to housing, education, health, employment services.

Consultation took place with the public and other stakeholders as part of the overarching Drug Strategy for 2008-2018 where the classification of cannabis was an open subject. The development of the specific policy on reclassification of cannabis has included all departments and partners involved in delivering both this and the drug strategy e.g. the Ministry of Justice and ACPO.

What positive and adverse impacts were identified by your internal consultees? Did they provide any examples?

Positive Impacts:

Reclassification of cannabis to a Class B and a strengthened enforcement policy of escalation for repeat offenders will impact positively on individuals and communities.

Reclassifying cannabis to Class B will help drive enforcement and protect communities against the drug's potential to cause harm. Increased visibility of a more effective enforcement response for repeat offenders in cannabis possession will help address public perceptions. This might impact positively on protecting communities by supporting efforts to tackle local drug related offending and anti-social behaviour, although there is no clear causal link between cannabis use and these activities. This re-enforces the Government's national message that cannabis use is harmful and illegal and sits within the overarching aims of the Government's 10 year Drug Strategy including prevention, education, early intervention, enforcement, treatment

and reintegration. This further re-enforces enforcement priorities in tackling commercial cannabis cultivation and works towards reducing the availability of cannabis, particularly higher than average potency cannabis.

Adverse Impacts:

As noted above there is a possible adverse impact on some groups, particularly some BME groups and male offenders where there is statistically a disproportionate number of caught and prosecuted offenders compared to the national population.

Some of the diversity agenda relating to drug strategy is driven by the difference between use of cannabis and the focus of provision of treatment services to the highest harm causing users and those who put others at greatest risk. This may have implications for some groups in areas where the focus of provision is primarily or exclusively focussed on those who use the highest harm causing drugs (crack or heroin) or inject. This issue will be dealt with under the wider strategic plans of the 2008 Drug Strategy to '*Ensure that the needs of all groups are met*' see

<http://drugs.homeoffice.gov.uk/publication-search/drug-strategy/drug-action-plan-2008-2011?view=Binary>

EXTERNAL CONSULTATION & INVOLVEMENT

How did your engagement exercise highlight positive and negative impacts on different communities?	
Parts of the consultation did identify potential adverse impact in some areas and beneficial impacts on others such as local communities.	
Voluntary Organisations	<ul style="list-style-type: none"> No unwanted impacts for local communities and voluntary organisations through raised awareness of cannabis. Services already exist and there are no new links between enforcement and referral.
Race	<ul style="list-style-type: none"> Concern about the proportion of young black males and over representation of contact with the police for cannabis possession identified. However the policy change will not increase this disproportionality as it does not focus on increasing initial police contacts.
Faith	<ul style="list-style-type: none"> No connections found in relation to the use of cannabis and religion/ belief.
Disability Rights	<ul style="list-style-type: none"> Concern expressed over the alleged therapeutic use of cannabis, notwithstanding that cannabis is already and will remain unlawful.
Gender	<ul style="list-style-type: none"> No anticipated effect on male/ female ratio. Possible greater impact on males than females owing to higher representation of males in contact with the police via cannabis possession offences as identified through <i>JRF</i> report and <i>MPS</i> report.
Gender Identity	<ul style="list-style-type: none"> No anticipated effect either positive or negative.
Sexual Orientation	<ul style="list-style-type: none"> No anticipated effect either positive or negative.

Age

- The legislative change on the classification of cannabis and the associated strengthened enforcement response will not have any negative impact on young people. The current arrangements for individuals who are under 18 are governed by the Crime and Disorder Act 1998 and provide an appropriate, proportionate response which will not change. The police have the option of issuing a reprimand, subject to discretion, and then making a referral to the Youth Offending Team where the most appropriate course of action for the welfare of the young person is decided. Class B status may inform that decision but will not direct it. An automatic referral to a YOT will continue to be a requirement when a final warning is issued. Where substance issue needs are identified, a substance misuse worker attached to the YOT will carry out a further assessment and appropriate interventions will continue to be provided by either the YOT or another agency based on individual tailored requirements.
- There are positive implications for young people as Class B will re-enforce the Government's consistent national message about the harms associated with cannabis use.

ASSESSMENT & ANALYSIS

Does the EIA show a potential for differential impact on any group(s) if this proposal is introduced?

Formal consultation process (July 2007) with 5000 copies of full consultation document (**Home Office**; *Drugs our community your say*. Government consultation document: July 2007) and 300 000 public-facing leaflets widely circulated- some responses raised diversity and equality concerns which were used for this EIA. Additional Ipsos MORI survey work included in-depth interviews with national stakeholders, carrying out case studies with current service users, ex-service users and drug users not engaging with services, practitioners and general public and an omnibus survey of a representative example of 2044 members of the public. This survey included a specific section in relation to views on reclassifying cannabis to a Class B drug.

Additional consultation was carried out with the Department for Children, Schools and Families with young people and those involved with young people.

A specific consultation event in December 2007 for the equality impact assessment for the 2008 Drugs Strategy involved frontline practitioners and former drug users who now deliver services. (see <http://drugs.homeoffice.gov.uk/publication-search/drug-strategy/drug-strategy-2008?view=Binary>)

It will also be important to ensure that all communities are engaged and consulted on enforcement activities at local level to ensure the support of the criminal justice system.

The above analysis notes that there is an over-representation among certain BME groups, notably black Caribbean and black other, for those who have initial contact with the police for possession of cannabis. Reclassifying cannabis and the associated change in enforcement response will not correct this disproportionality. Equally, it is unlikely to increase the disproportionality of initial police contacts. This is because the proposed changes do not directly focus on initial police contacts but on severity of disposals for repeat offenders of cannabis possession.

The data are silent on the issue of repeat offenders however it is unlikely that any existing disproportionality would vary.

Does this policy have the potential to cause unlawful direct or indirect discrimination? Does this policy have the potential to exclude certain group of people from obtaining services, or limit their participation in any aspect of public life?

Reclassifying cannabis to Class B and introducing a strengthened enforcement response will not cause unlawful discrimination.

How does the policy promote equality of opportunity?

A strengthened enforcement policy of escalation promotes a consistent national approach. This offers a potential to improve communities affected by drug misuse.

How does your policy promote good relations? How does this policy make it possible for different groups to work together, build bridges between parallel communities, or remove barriers that isolate groups and individuals from engaging in civic society more generally?

Through the introduction of a consistent policy of escalation the reclassification of cannabis can encourage different groups to work together to the benefit of local communities as a whole. An escalation policy will produce better individual outcomes enhancing opportunities for more cohesive community relations and working towards protecting communities against harm.

How can the policy be revised or additional measures taken, in order for the policy to achieve its aims without risking any adverse impact?

The Government's decision to reclassify cannabis to a Class B drug, subject to Parliamentary approval, is a preventative measure. It has taken into account the ACMD 2008 report on *Cannabis: Classification and Public Health*. The ACMD made a series of recommendations including, further research into the use of cannabis, support to parents and communities, and potential extension of the British Crime Survey. A comprehensive public-health based programme of work covering a range of activities from education through to specialist treatment has been undertaken in relation to cannabis. Taking on board some of the issues will inform the policy in relation to the classification of cannabis. Further to this, the 2008 Drug Strategy works to a programme of three year action plans where the classification of cannabis is one of the strategic objectives.

Are there any concerns from data gathering, consultation and analysis that have not been taken on board?

There are some areas as highlighted above where there is insufficient data, such as the known therapeutic use of cannabis, or data that is generic rather than on specific groups.

ENSURING ACCESS TO INFORMATION

How can you ensure that information used for this EIA is readily available in the future?

- The full report on the equality impact assessment will be made available for those reviewing the policy at different stages.

How will you ensure your stakeholders continue to be involved/ engaged in shaping the development/ delivery of this policy?

- There is continual liaison with both internal and external stakeholders. This engagement will continue.

How will you monitor this policy to ensure that the policy delivers the equality commitments required?

- The classification of cannabis will be subject to review, through the monitoring of criminal justice and British Crime Survey statistics to evaluate effects on enforcement and use. Further actions relate to diversity and equality issues, including a commitment as part of the overarching Government 2008 Drug Strategy, to conduct a qualitative survey of the experiences of equality target groups in accessing services, which can be seen in a wider sense as including experiences of enforcement agencies. These action plans are refreshed on a three-yearly basis and progress in achieving actions is reviewed.

ACTION PLAN

Recommendations	Responsibility	Actions required	Success Indicators	Target Date	What progress has been made?
Data Collection	Home Office (Home Office Statistics Crime Surveys)	Continue current data analysis	Up to date and routine data on drugs usage available	Ongoing	
Publication Arrangements	Home Office Drug Strategy Unit	Publish summary of EIA along with final strategy	EIA on Home Office web site	October 2009	
Monitoring & Review Arrangements	Local partnerships, commissioners and service providers	Local providers to establish monitoring systems across diversity strands	Improved baseline and continuing data	Ongoing	
Improve recording of Cannabis Warnings	<p>Consideration to be given to CWs being recorded as part of the Annual Data Requirement (ADR) but further work is required in light of the green paper and a need to reduce Police bureaucracy.</p> <p>ACPO has committed to seek agreement amongst police forces to more accurately record all cannabis warnings.</p>	<p>HO to pursue ADR issue in relation to the issuing of cannabis warnings to act as lever to improve local recording and monitoring as a whole.</p> <p>ACPO to encourage forces to accurately record all cannabis warning on local crime recording systems and to work to developing systems to enhance data consistency.</p>	As part of the national data set, the Police would also have accurate ethnicity data to improve capability to analyse impact upon different groups. This would lead to better quality data and more effective analysis of impact, including data on repeat offending.	Early 2009	

Ensure needs of all groups are met	NTA and the Healthcare commission/ DH	Conducting improvement review of diversity practice (http://drugs.homeoffice.gov.uk/publication-search/drug-strategy/drug-action-plan-2008-2011?view=Binary)	Improved treatment response to diverse communities	By March 2009 (as per 2008 Drug Strategy Action plan)	
Consideration of cannabis measures in wider strategic plans (2008 Drug Strategy Review and in line with the government response to the ACMD report and recommendations: <i>Cannabis: Classification and Public Health</i> ; Home Office, 2008.	Home Office Drug Strategy Unit	Equality issues included in action plans on overarching Drug Strategy where cannabis classification is a strategic objective	Measures on all drugs related strategic objectives will be included in three year action plans.	Ongoing	

THE EQUALITY IMPACT ASSESSMENT REPORT

Background:

On 7 May 2008, the Home Secretary announced the Government's intention to reclassify cannabis to a Class B drug, subject to Parliamentary approval. This decision reflects the known risks, as well as the potential more uncertain longer term impacts on health, in particular those associated with the use of higher than average potency cannabis. In reaching its decision the Government has also taken into account wider issues such as public perceptions and the needs and consequences for policing priorities.

To reflect the more serious status of cannabis as Class B, a strengthened enforcement approach for possession for adult repeat offenders via a consistent and robust escalation process is justified.

Methodology:

The Equality Impact assessment is based on:

- A document review of previous equality impact assessments on elements of drugs policy including the EIA for 2008 Drug Strategy.
- The results of the Ipsos MORI consultation on the Government's July consultation paper (**Home Office**; *Drugs our community your say*. Government consultation document: July 2007).
- See **Annex A** for a full list of document references that have informed this equality impact assessment.

Consultation & Involvement:

As part of the consultation for the Government's 2008 drugs strategy "*Drugs: protecting families and communities. The 2008 drug strategy*" specific questions were asked in relation to the reclassification of cannabis to Class B. An equality consultation event took place in relation to the 2008 Drugs Strategy where cannabis classification was an open subject.

Assessment & analysis

Key Findings from the data collection and community engagement

- **Positive Impacts:**

Reclassification of cannabis to a Class B and a strengthened enforcement policy of escalation for repeat offenders will impact positively on individuals and communities.

Reclassifying cannabis to Class B will help drive enforcement and protect communities against the drug's potential to cause harm. Increased visibility of a more effective enforcement response for repeat offenders in cannabis possession will help address public perceptions. This might impact positively on protecting communities by supporting efforts to tackle local drug related offending and anti-social behaviour, although there is no clear causal link between cannabis use and these activities. This re-enforces the Government's national message that cannabis use is harmful and illegal and sits within the overarching aims of the Government's 10 year Drug Strategy including prevention, education, early intervention, enforcement, treatment and reintegration. This further re-enforces enforcement priorities in tackling commercial cannabis cultivation and works towards reducing the availability of cannabis, particularly higher than average potency cannabis.

- **Adverse Impacts:**

As noted above there is a possible adverse impact on some groups, particularly some BME groups and male offenders where there is statistically a disproportionate number of caught and prosecuted offenders compared to the national population. However in noting this it is important to note that the effect of classification to Class B and a strengthened enforcement approach is an increase in the severity of disposals associated with police contact in relation to cannabis offences. There is no direct association with increase in initial police contact. Therefore there is no direct implication that there will be an increase in the disproportion in numbers of those caught and prosecuted than already exists.

Some of the diversity agenda relating to drug strategy is driven by the difference between use of cannabis and the focus of provision of treatment services to the highest harm causing users and those who put others at greatest risk. This may mean a reduced focus on some groups in areas where the provision is primarily or exclusively focussed on those who use the highest harm causing drugs (crack or heroin) or inject.

Other key issues:

A key issue is the lack of current and relevant data on the specific aspect of cannabis usage for therapeutic purposes. Additionally the lack of data on cannabis usage and sexual orientation and gender identity means that there is a gap in this analysis, although it is not anticipated there will be any disproportionate impact on these groups.

Recommendations

To improve the understanding of equality and diversity needs the Government undertook, as part of the 2008 Drug Strategy, to conduct an analysis of the sources of data and information relating to diversity that were available at a national and local level. The classification of cannabis is a strategic objective within the 2008 Drugs Strategy. Action plans that support the 2008 Drug Strategy and report on progress against plans will be published on a regular basis. This demonstrates the Government's progress and commitment to ensuring equality in the provision of services for all communities. (*Drugs: protecting families and communities. the 2008 drug strategy*) refers. Further, the classification of cannabis will be subject to review, through the monitoring of criminal justice and British Crime Survey statistics to evaluate effects on enforcement and use.

NTA and the Healthcare Commission are undertaking an improvement review of diversity that involves benchmarking each drug partnerships performance on diversity with provisional results expected in September 2008. This review will look at targeted improvement work between September 2008- January 2009 and monitor progress against plans. Once this stage is over, guidance on good practice, drawn from local partnerships will be published (estimated publication date March 2009). This supports long term monitoring of diversity issues in relation to cannabis and has the potential to identify positive and negative impacts of the policy.

In terms of monitoring the issue of cannabis classification and the associated enforcement response, the 2008 Drug Strategy refers to an independent Drug Strategy Diversity Forum. The purpose of this forum is to meet on an ad hoc basis to consider specific issues which have arisen. This will provide a further opportunity for capturing any equality and diversity matters that arise once the classification of cannabis and associated enforcement response is implemented. Forum members communicate regularly with the secretariat, based in the

Home Office, and can raise issues of concern, including any differential impact resulting from a reclassification of cannabis.

There is an issue with the lack of data and evidence on the use of cannabis for therapeutic purposes. The Drug Strategy Diversity Forum includes members from organisations representing people with disabilities. Any differential impact on people with disabilities resulting from cannabis reclassification would therefore be raised through this Forum.

Date of EIA Report

Date of Publication of Results

Ensure that the EIA Report is published on the Home Office website before your policy/programme is implemented.

ANNEX A: List of documents reviewed

Home Office Documents

Advisory Council on the Misuse of Drugs; *Cannabis: Classification and Public Health*; Home Office, 2008

Aust.R & Smith.N; *Ethnicity and Drugs Use: Key findings from the 2001/2002 British Crime Survey*. Home Office 2003
<http://rds.homeoffice.gov.uk/rds/pdfs2/r209.pdf>

Chivite- Matthews et al; *Home Office Statistical Bulletin: Drug Misuse Declared: Findings from the 2003/04 British Crime Survey*. Home Office 2006
<http://www.homeoffice.gov.uk/rds/pdfs05/hosb0405.pdf>

Deehan A & Saville E; *Calculating the risk: recreational drug use among clubbers in the south east of England. Home Office online report 43/03*. London: Home Office; 2003

HM Government; *Drugs: protecting families and communities*. The 2008 drug strategy, February 2008
<http://drugs.homeoffice.gov.uk/publication-search/drug-strategy/drug-strategy-2008?view=Binary>

Home Office; *Drugs our community your say*. Government consultation document: July 2007.

Home Office; Equality Impact Assessment on the Crime Strategy: July 2007

Home Office; Equality Impact Assessment on the Drug Strategy: 2008

Ipsos MORI; Presentation on results of drug strategy consultation: emerging findings: 2007

Ipsos MORI; *Drugs our community your say; A Report on the 2008 Drug Strategy Consultation; Views on Reclassifying Cannabis to a Class B Drug*: May 2008
<http://drugs.homeoffice.gov.uk/publication-search/cannabis/cannabis-response?view=Binary>

Other documents

Duffy et al; *Cannabis supply and young people*; Joseph Rowntree Foundation: December 2007

Hales.G; Metropolitan Police Strategic Research Unit and Senior Fellow: *The Policing of Cannabis Possession in London; Examining Ethnic Disproportionality*: July 2007

Fountain.J et al; *Helping prisons to meet the drug service needs of black and minority ethnic prisoners*; University of Central Lancashire (UCLAN): 2007

Fountain.J et al; *Issues surrounding the delivery of prison drug services in England and Wales, with a focus on black and minority ethnic prisoners*, University of Central Lancashire (UCLAN): 2007

Fuller.E (ed); *Smoking, drinking and drug use among young people in England in 2006*, The Information Centre (on behalf of the National Centre for Social Research and the National Foundation for Educational Research). 2006

<http://www.ic.nhs.uk/webfiles/publications/smokedrinkdrug06/Smoking%20Drinking%20and%20Drug%20Use%20among%20Young%20People%20in%20England%20in%202006%20%20full%20report.pdf>

Warburton et al; *Policing cannabis as a Class C drug*; Joseph Rowntree Foundation: January 2007

Why we are asking you to complete this assessment:

The Ministry of Justice is responsible for policy on penalties, offences and sentencing, legal aid, the courts, tribunals, prisons and probation. If your proposal were likely to have an impact on any these of areas, we must be consulted as soon as possible. Complete and forward the completed questionnaire to the email address: administrationofjustice@justice.gov.gsi.uk If you have any queries about this form, please e-mail or telephone the officials below.

Section One - Your Contact Details

Name/Dept: Ian Martin, Home Drug Strategy Unit

Contact details: Drug Strategy Unit, 2 Marsham Street, London SW1P 4DF

Section Two – The proposals

1. Please provide a brief overview of your proposal and its objective including geographic coverage.

Reclassification of cannabis from Class C to Class B under the Misuse of Drugs Act 1971 with the introduction of Penalty Notices for Disorder (PNDs) as part of an escalation process for repeat offenders of cannabis possession. The aim of this policy is:

To maintain a classification for cannabis that takes account of both the known harms, but also more uncertain and potentially serious health risks associated with higher than average potency cannabis with an appropriate enforcement response. The intended effects are to deter and support the existing decline in cannabis use with escalated action against repeat offenders; and to reduce the availability of cannabis by refocusing enforcement agencies approach to tackling cannabis supply, production and the disruption of organised crime groups.

2. Does the proposal change existing policy or will it be introducing new policies?

This is a change to the existing legislation and enforcement policy rather than a new policy.

The change of reclassifying cannabis to Class B will be accompanied by a more robust policy of escalation in relation to cannabis possession for repeat adult offenders. This will be modelled on one cannabis warning (CW) for a first offence, one Penalty Notice for Disorder for a second offence and then arrest for a third offence, to then be considered for further action- including release without charge, cautioned, conditional caution or prosecution. Any subsequent offences for cannabis possession are likely to result in arrest. This new enforcement policy for possession will, as with the current policy, be subject to police discretion.

This differs from the current policy where, notwithstanding police discretion, CWs were the only means by which action could be taken without the need to arrest. Police officers will retain operational discretion at all times to deal with the offender as appropriate in the circumstances.

It should be noted at this stage that the extension of the PND scheme is subject to public consultation by the Ministry of Justice, and separate legislative process and Parliamentary agreement. This administration of justice impact assessment will not prejudice the outcome of the public consultation process. However, to ensure that it sets out the full proposed enforcement response, it has been prepared on the basis that PNDs

will be available.

3. Who is likely to be affected and in what numbers?

Repeat adult offenders for cannabis possession are likely to be affected by this policy, subject to police discretion and guidelines, reclassification will increase the severity of the disposals associated with arrests for possession and supply of cannabis across the criminal justice system. See table 1 below for potential volumes:

Table 1

Year	Total Arrests	Total Plead guilty (initial trial)*	Total Magistrates trial*	Total Crown	Acquitted and eligible for central funds (50% of total acquitted)	Committed for sentence	PND Court Appearances*
Base	0	0	0	0	0	0	0
2	-613	503	198	17	37	17	187
3	-302	679	272	23	48	22	338
4	869	1233	512	42	79	37	410
5	2157	1862	787	63	114	54	433
6	3246	2420	1030	83	145	69	428
7	4029	2848	1217	97	169	80	408
8	4502	3128	1340	107	184	88	380

* Assume 50% eligible for legal aid

To estimate the volume of people affected by this policy we have considered the population of active offenders who cycle through the CJS as they come into contact with the police. The starting point for the volumes used are based on 2006 figures of 80 000 cannabis warnings per year. This population of active offenders is dependant on a number of key assumptions; these assumptions include the rate at which they re-offend, the rate they desist (both as a function of time and of getting caught) and the annual overall decrease in the total offending population. Given these assumptions and using the current number of cannabis warnings (80,000) as the starting rate of police contacts, we estimate the numbers of CWs and arrests we would expect to see if current practice persisted, and the numbers of CWs, PNDs and arrests we might expect to see under the new policy option. Once arrested, offenders filter through the CJS based on current practice and the associated disposals follow current proportions for Class C possession offences under the current policy and Class B possession offences in the new policy option model. This model provides an estimate, it is not an exact science, the above figures reflect potential volumes. Operational guidance and practice could significantly influence the volumes downwards.

4. Please provide details of the legislative vehicle that will introduce these changes.

Schedule 2 to the Misuse of Drugs Act 1971 (the “1971 Act”) specifies drugs which are subject to control under the Act and classifies them in three categories. The three-tier system of classification (A, B and C) under the Act provides a framework within which criminal penalties are set with reference to the harm a drug has or is capable of having when misused and the type of illegal activity undertaken in regard to that drug.

Section 2 of the 1971 Act enables amendments to be made to the lists of drugs controlled under the Act by means of an Order in Council. Such Orders are subject to the affirmative resolution procedure which requires that they be approved by each House of Parliament. Section 2 also provides that the Secretary of State may not recommend the making of such an Order except after consultation with or on the recommendation of the Advisory Council on the Misuse of Drugs (ACMD). The reclassification of cannabis will be introduced through this mechanism by the Misuse of Drugs Act 1971 (Amendment) Order 2008.

Section Three – Legal Aid

1. Is your proposal likely to have an impact on Legal Aid? If your proposal affects the private or third sector, estimate the likelihood of individuals being prosecuted under the proposed sanctions.

This proposal potentially has an impact on the number of people who have an entitlement to legal aid. The policy of escalation whereby a cannabis warning is issued for a first offence, a PND for a second offence and arrest for a third offence means that outcomes across the criminal justice system are likely to change compared to the current situation. There is likely to be a relative shift towards more serious disposals and an increase in court activity reflecting the Class B status of cannabis.

2. If yes, which type of legal aid is likely to be affected: Criminal, Civil and Family or Asylum

Criminal legal aid will be affected by this policy.

3. If yes, do you expect Legal Aid costs to increase or reduce consequently or do you expect demands on central funds? Please provide details below

It is likely that there are potential liabilities to legal aid as there will be more individuals within the court system. See table 2 and table 3 below for existing costs, and potential liabilities under the new policy for legal aid based on the estimated volumes in table 1 as above.

Table 2

Year	Baseline Costs (£m)			Policy Costs (£m)			Potential Liabilities (£m)		
	Legal Aid Total	Central Funds	Court costs bourne by individual	Legal Aid Total	Central Funds	Court costs bourne by individual	Legal Aid Total	Central Funds	Court costs bourne by individual
Base	2.13	0.16	1.28	2.13	0.16	1.28	0.00	0.00	0.00
2	2.55	0.19	1.57	2.61	0.26	1.97	0.06	0.07	0.40
3	2.90	0.22	1.83	3.15	0.31	2.41	0.25	0.09	0.58
4	3.19	0.25	2.05	4.01	0.40	3.05	0.83	0.15	1.01
5	3.40	0.27	2.22	4.86	0.48	3.69	1.46	0.21	1.47
6	3.56	0.29	2.36	5.56	0.56	4.22	2.01	0.27	1.86
7	3.65	0.30	2.45	6.06	0.61	4.61	2.40	0.31	2.16
8	3.70	0.31	2.51	6.35	0.65	4.86	2.65	0.34	2.35

Table 3

Breakdown of Potential Liabilities (£m)

Year	Legal Aid costs from police station	Plead guilty mag	Magistrates trial	Crown	Legal Aid from PND court appearances	Committed for sentence	Acquittal costs bourne by central fund	Legal Aid Total	Central Funds	Court costs bourne by individual
Base	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2	-0.17	0.08	0.07	0.04	0.03	0.01	0.07	0.06	0.07	0.40
3	-0.09	0.11	0.10	0.05	0.06	0.01	0.09	0.25	0.09	0.58
4	0.24	0.20	0.19	0.10	0.07	0.02	0.15	0.83	0.15	1.01
5	0.61	0.31	0.29	0.15	0.07	0.03	0.21	1.46	0.21	1.47
6	0.92	0.40	0.38	0.20	0.07	0.04	0.27	2.01	0.27	1.86
7	1.14	0.47	0.45	0.23	0.07	0.05	0.31	2.40	0.31	2.16
8	1.27	0.52	0.49	0.25	0.06	0.05	0.34	2.65	0.34	2.35

Section Four - Sentencing, Offences and Appeals

Sentencing and Offences

1. Please explain the proposed sentence, and where appropriate if youth offending is being targeted.

Reclassifying cannabis to a Class B and introducing a policy of escalation in terms of enforcement changes the maximum penalties for offences in relation to cannabis in the following way:

Possession – the maximum penalty on indictment increases from two to five years' imprisonment. On summary conviction, in respect of which the majority of possession cases are dealt with, the maximum imprisonment penalty remains the same at three months, although the maximum fine that the Magistrates' Court can impose increases from £1,000 to £2,500.

Supply and production - the maximum penalties on summary conviction increase to six months' imprisonment and/or a Level 5/£5,000 fine (from three months and/or a Level 4 £2,500 fine respectively). The penalties for other offences relating to cannabis are unaffected, including the maximum penalty on indictment for supplying or producing cannabis of 14 years' imprisonment and/or an unlimited fine.

The courts will be expected to take the Class B status into account when sentencing for the range of cannabis related offences

Youth offending is not targeted as part of this legislation and policy change. The current arrangements for individuals who are under 18 years of age, through the Crime and Disorder Act 1998 – provisions of reprimand, final warning and charge – continue to offer an appropriate and proportionate approach for possession, with a Youth Offenders Team referral for assessment at any point. PNDs are not an appropriate disposal for young people in respect of drug offences. Therefore, no change is proposed in the enforcement regime towards individuals under 18 years of age.

2. What are the resource implications arising from this for correctional services costs?

N/A

3. Why are you proposing a criminal sanction? Please explain if alternative sanctions such as civil fines have been considered.

Cannabis is an illegal substance, subject to criminal sanction already. PNDs are being proposed because they provide an incremental step between cannabis warnings and arrest, which re-enforces the criminal offence. Evidence suggests that the present system of cannabis warning introduced when cannabis was reclassified to Class C in 2004, does not provide a level of deterrence which are consistent with the risks associated with the illegal cannabis market. To reflect the more serious status of Class B, a strengthened enforcement approach for possession is required.

4. What are the advantages and disadvantages of using the criminal law to address this behaviour?

PNDs are proposed because they would provide an incremental step between cannabis warning and arrest, which re-enforces the criminal offence but keeps police bureaucracy to a minimum. They impose a financial sanction (which a cannabis warning does not). This provides an immediate and tangible criminal penalty which has a greater potential to alter the behaviour of an offender than a CW. Notwithstanding the more serious nature of a second offence, it also avoids the offender receiving a criminal record (if the fine is paid or successfully defended).

5. Do you expect the sanctions to create the need for more prison places? If so please estimate how many

Only a very small proportion of offenders for cannabis possession are sentenced to immediate custody. Based on 2006 outcomes for sentencing for Class B offences the proportion is 0.03% with an average sentence of 6 weeks of which 50% is served.

The potential impact of reclassification associated with offences by suppliers, producers and traffickers of cannabis has been considered separately. The increase in commercial production in the UK will continue to have an impact on police and CJS costs, independent of reclassification, as enforcement action is being taken and the CJS is responding accordingly. In relation to potential liabilities via sentencing practice as a direct consequence of reclassification, the Courts are expected to take into account the Class B status. Notwithstanding this, a 7 year forecast of direct, additional potential liabilities has not been made at this time, for the reason that new guidelines for sentencing of drug offences is pending. The Sentencing Guidelines Council (SGC) will shortly be consulting, with a view to producing comprehensive and up to date guidelines for all drug offences. These guidelines are likely to be published in course of 2009, taking into account the then current classifications. Whilst there is an expectation that these guidelines will make a clear distinction between Class B and Class C status, until that guidance is settled, establishing starting points and ranges for sentencing, the likely impact of reclassification in respect of sentencing for these offences cannot be determined at this stage. Pending new guidance, the Crown Court have and will continue to rely on current guideline judgments which were made when cannabis was a Class B drug, prior to the 2004 reclassification. It is also noteworthy that the maximum penalty on indictment for these offences will remain unchanged following reclassification at 14 years imprisonment and/or an unlimited fine. When cannabis was reclassified from a Class B to Class C drug in 2004, the maximum penalty for these offences did not change, consistent with Parliament's intent that the courts should continue to be able to impose substantial sentences where appropriate.

By contrast, in respect of proceedings in the Magistrates' Court, in May 2008 the SGC published revised Magistrates' Court Sentencing Guidelines which include guidelines on the supply and production of Class B offences. Class B status might be expected to result in slightly longer prison sentences (about one month, of which only half will be served in prison). The number of individuals sentenced to imprisonment in Magistrates Courts, however, is small at 67 in 2006.

Appeals: Civil and Criminal court appeals/ Tribunals

6. Does your proposal create a new right of appeal or route to judicial review? If yes, how will these be handled?

N/A

7. Has the use of alternative dispute resolution (ADR) procedures (including mediation, conciliation and ombudsman schemes) been considered?

N/A

8. Do you expect more or fewer cases to come to the Courts Service or Tribunals Service because of the proposal?

It is likely that more cases will come through the court services because of the principle of an escalation process leads to an increase in the severity of disposals. Consequently there is likely to be a rise in activity in the courts. How any increase is actually managed in practice depends on the policy and operational response to it.

9. What do you expect the impact to be on the Courts Service or on the Tribunals Service (or both)? Are those impacts likely to require new IT systems, forms, data requirements, training or guidance for court or tribunal staff?

The legislative change to extend PNDs to cannabis possession, which is at present subject to pending consultation, will necessarily relate to all Class B drugs, guidance issued by both the Ministry of Justice and ACPO will specifically enforce that PNDs will only be available for possession of cannabis.

Section Five – Enforcement

1. Will the proposals have an impact on HM Courts Service Enforcement? For example, do you expect an increase in workload for the courts in collecting unpaid fines?

Any impact on the non payment of fines will not impose further disproportionality to the payment rate of PNDs/ Court fines. That is to say the proposed fine of £80 for cannabis possession under current payment rates is commensurate with the average fine issued by the Magistrates Court. Consequently, the use of PNDs should not have a perverse impact on offenders pursuing a court hearing (with unnecessary impact of the criminal justice system), albeit with the risk of conviction, simply to secure a lesser fine.

However the principle of escalation, to be subject at all times to police discretion and operational guidance, may increase the number of fines issued because it focuses on the severity of disposals. This could increase potential liabilities to the courts linked to the increase in volumes of offenders that pass through the system (see tables 3 and 4 below). The option for change has only considered classification and enforcement as part of a single package. In doing so the introduction of Penalty Notices of Disorder as part of the escalation process for repeat offenders of cannabis possession has been identified. The extension of the PND scheme is subject to public consultation by the Ministry of Justice, and separate legislative process and Parliamentary agreement. It is not the intention that this will prejudice the outcome of the public consultation process. However, to ensure that it is in line with the proposed enforcement response, this Legal Aid impact assessment has been prepared on the basis that PNDs are available. It should however be noted that these estimated possible changes in potential liability are changes in opportunity costs, assuming no change in current practice. How this increase is managed depends on the policy and operational response.

Table 3
PND outcomes
 Volume
 estimates

Year	Paid	Not paid	Magistrates Court	No Outcome	Fine	Fine Paid	Fine Not Paid	HMCS Recoup	Legal Aid applicable from PND
Base	-	-	-	-	-	-	-	-	-
2	4,871	4,122	187	187	4,122	2,061	2,061	2,061	21,170
3	8,791	7,438	338	338	7,438	3,719	3,719	3,719	38,205
4	10,651	9,012	410	410	9,012	4,506	4,506	4,506	46,289
5	11,259	9,527	433	433	9,527	4,763	4,763	4,763	48,934
6	11,136	9,423	428	428	9,423	4,711	4,711	4,711	48,400
7	10,610	8,977	408	408	8,977	4,489	4,489	4,489	46,111
8	9,882	8,362	380	380	8,362	4,181	4,181	4,181	42,950

**Table 4
PND total liability
estimates**

Year	Paid	Not paid	Magistrates Court	No Outcome	Fine Paid	HMCS Recoup	Total
Base	-	-	-	-	-	-	-
2	-	-	63,885	-	-	716,929	780,815
3	-	-	115,291	-	-	1,293,811	1,409,102
4	-	-	139,686	-	-	1,567,568	1,707,253
5	-	-	147,668	-	-	1,657,143	1,804,811
6	-	-	146,055	-	-	1,639,045	1,785,100
7	-	-	139,150	-	-	1,561,558	1,700,708
8	-	-	129,609	-	-	1,454,488	1,584,097

1. Are you able to estimate whether your proposal will lead to a change in the number or type of judges required?

There is no necessary employment of additional judges as a direct impact of this policy.

2. If more judges need to be appointed, when will they be needed?

There is no direct need as a result of the legislative and policy change.

3. Are there likely to be new judicial training requirements as a result of the proposals?

Other than the issuing of sentencing guidelines it is not likely that any further training will be required.

MOJ officials will consider your completed questionnaire. If no impacts are identified this should be agreed with each MOJ named contact and recorded on the "Complementary Impact Test" sheet of the Impact Assessment. However, if a potential impact is identified you will need agree an estimate of costs with MOJ and agree arrangements for the costs to be met.