

Smoke Screen

Trying to understand the Government position on the reclassification of Cannabis.

Introduction:

Over the past few months, the Government has made it clear that it intends to reclassify cannabis. In July 2002, following months of leaks and speculation, more concrete proposals emerged. However, rather than making things clearer, they have made the situation more confusing. The following briefing is intended to take stock of the various changes that are being mooted and their implications.

What does the Government want to do?

The Government wants to reclassify Cannabis, moving it from Class B to Class C. This would normally mean that penalties for possession and supply would be reduced. However, the Government will also seek to change the penalties for supplying Class C drugs, and also change the law relating to when people can be arrested for possession of class C drugs. These are discussed below.

What difference will the move from Class B to Class C make?

Possession of Class B drugs carries a maximum sentence of five years and/or a fine; supply carries a maximum fourteen year sentence and/or a fine. Other class B drugs include Amphetamines (speed).

At present possession of Class C drugs carried a maximum sentence of 2 years and/or a fine. Supply currently carries a maximum sentence of five years and/or a fine.

The Government intends to change the penalties for supply of Class C drugs so that it carried a maximum sentence of 14 years and/or a fine. This means that supply of class B and class C drugs would carry the same penalty.

Usually, offences that carry a maximum sentence of less than five years are not "arrestable" offences. So normally, it would not be possible to arrest you for possession of a class C drug. However, following lobbying from the Police, the Government wants to ensure that people can still be arrested for possession where there are "aggravating" circumstances.

Has the reclassification taken place yet?

No! Cannabis is still Class B and will remain so until the subsidiary legislation has been put in place. It is likely to remain Class B at least until next summer.

This means that you can still get arrested for possession of cannabis, and it still carries a maximum sentence of five years for possession.

When it becomes Class C, under what circumstances could I get arrested for possession?

This is not clear at this point; in various forums, Blunkett has made different suggestions. He has spoken of an offence of “aggravated possession.” He has suggested a number of examples of this including

- using in public
- blowing smoke in a policeman’s face
- being in possession/using” near young people/near a school
- using in the workplace
- flagrantly breaking the law (!)
- using in a way liable to cause a breach of the peace.

How will this be taken forward?

In the medium term, the Government will need to pass legislation to create the new offences of aggravated possession. With some parts of the legislation, such as the reclassification, the Home Secretary can do this with an *Order in Council* which does not require a vote in Parliament. However, new legislation will require a vote and opens up the possibility that Opposition MPs could make substantial challenges to the legislation.

In the meantime, the Home Secretary has asked the Association of Chief Police Officers (ACPO) to draft guidance on what circumstances people should be arrested until reclassification takes place.

Does this mean that the “Brixton Experiment” is to be expanded?

The Government has said that they want to see the Brixton Experiment expanded first across London and then across England.

This means that the Government will recommend that, in most possession cases, people should have the drug confiscated and receive a warning. Where there are aggravating factors, the guidance will suggest that the person should be arrested.

It is important to stress that this is guidance only. Any police officer and any regional police force will be free to disregard this guidance and continue to arrest people for possession of cannabis while it is a class B drug. Some police forces may choose to do so, and the Home Office cannot force a regional police force to obey this guidance.

Can I still be stopped and searched for if police suspect that I have cannabis on me?

Yes. You can. And whereas before, many police officers would have just ignored small quantities of cannabis, it will now be easier for them to confiscate and/or summons you. In Brixton more cannabis was seized off users during the period of the experiment, as it did not entail a huge amount of paperwork for police.

I've read in the media that, when cannabis is reclassified, this will put in the same legal class as Steroids and antidepressants. Is this true?

No, it is not. It is a mistake being made by the media. Anabolic steroids are class C drugs, but they occupy a different *schedule* to Cannabis. Cannabis is a schedule 1 drug, which means that possession and supply is unlawful and it has no medical uses. Anabolic steroids are schedule 4(ii) drugs. This means that supply without authority is unlawful but possession of steroids is not unlawful. You cannot be prosecuted for possession of steroids; you can be prosecuted for possession of cannabis.

The comparison with anti-depressants (e.g. Prozac) is also inaccurate. Anti-depressants are typically covered by the Medicines Act, not the Misuse of Drugs Act, and so there is no offence of possessing them without prescription. The media and others are confusing anti-depressants with tranquillisers like Valium and other benzodiazepines. With these drugs, possession without a licence is illegal and carries a maximum sentence of two years for possession.

Does this mean that the penalties for supplying benzos will go up?

Presumably, yes. Supply of tranquillisers without authority will carry a maximum sentence of fourteen years.

How about people who use cannabis for medical reasons?

They are not exempted from the legislation. At some point, some cannabis-derived medicines will enter the market and these will occupy a different schedule to cannabis and cannabis resin. Possession of these on prescription will be legal. Possession of other forms of cannabis will not be.

What about Cannabis Cafes?

The Government has made its opposition to cannabis cafes very clear and expects the police to shut down such operations. In such situations they would be able to prosecute people for possession and café managers for allowing use or supply to take place on the premises.

What's that bit about premises?

As the law stands, it is an offence to allow the use of cannabis on premises that you occupy or manage. This means that if you allow use to take place in your home, workplace, or a leisure venue, you could be prosecuted. Worse still, unless premises legislation is revised, allowing premises to be used for smoking cannabis will remain an arrestable offence and will carry a larger sentence than actually possessing cannabis itself. Organisations and individuals will still be obliged to prevent cannabis use and supply in premises that they occupy and manage.

What is classed as “supply”?

The definition of supply is not based just on quantity, but also on intention and action. So passing a spliff can count as supply, and even supplying a small quantity can count as supply. The maximum penalty for supply of cannabis is fourteen years as a class B drug and is likely to remain 14 years when the tariffs for class C drugs have been raised.

In the media, the reclassification of Cannabis has been compared to the way traffic offences are handled. Is this a fair comparison?

No, not at all. The only similarity is the way that they are processed. Typically, you would give your name and address and later get sent a summons to magistrates court in the post. The big difference is that for possession of cannabis you could get a criminal conviction, a fine, community sentence or a custodial sentence. This would mean that you would have a criminal record that could affect housing, employment and travel.

How will this all affect people under 18?

This is really unclear at the moment. According to the Crime and Disorder Act, young people can no longer keep receiving cautions from the police. They can receive a reprimand, then a final warning, before having to be put before the court. It is not clear how the revised laws relating to cannabis will be applied to young people though it is likely that some approach other than the “confiscate and warn” approach will be used.

Discussion points:

In summary, the proposed changes to cannabis legislation are a lot less significant than has been suggested. If all the changes go through as planned, the penalties for supply will remain the same. The penalties for possession will go down from five years to two years though police will retain power to arrest when it suits them.

Some people will still be brought before the court and will, generally receive fines although some people will still receive custodial sentences. They will also get criminal records.

The only source of cannabis will remain in the hands of illegal suppliers and this means that the hoped for separation of cannabis and other controlled drugs will not happen.

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