

# TRANSFORM

## DRUG POLICY FOUNDATION

### Submission to the Advisory Council on the Misuse of Drugs 2008 review of Cannabis Classification

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### Background and Introduction

In January 2004 Transform welcomed the Government's interest in reducing penalties associated with cannabis use by reclassifying cannabis from B to C. It was a step in the right direction, leading to fewer pointless arrests, and saving significant police resources that could be more effectively directed elsewhere. Our briefing produced at the time<sup>1</sup> was critical of the way in which the reforms have been developed and implemented, and highlighted how failing to fully decriminalise personal possession has arguably made policing cannabis use more confusing (particularly the way in which penalties for supply of class C drugs were effectively upped to the level of class B).

However, Transform's most significant criticism was that the reforms do nothing to address the issue of illegal supply and its associated harms to the health of users, and to wider society (in terms of crime creation). This will remain the case whilst cannabis is prohibited under the MDA 1971, regardless of its classification. This briefing addresses 4 key points:

- **Why is cannabis classification being reconsidered yet again?** We suggest that the motivation for this review (like the last one) is primarily political, rather than being based on new knowledge about risk/harms, and that it is a distraction from the wider failings of prohibition globally and domestically.

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<sup>1</sup> [http://www.tdpf.org.uk/Policy\\_General\\_CannabisReclassification.htm](http://www.tdpf.org.uk/Policy_General_CannabisReclassification.htm)

- **There is no evidence that changes in classification have meaningful or measurable impacts on harms related to production supply or use.** Neither the Home Office nor the ACMD have considered this question, or produced any evidence to demonstrate a positive impact, despite its being absolutely central to the operation of the ABC classification system.
- **The cannabis classification debate is a distraction from wider conceptual and practical flaws with the ABC classification system which continue to be ignored by the ACMD, Home Office and Government.**
- **The malfunctioning classification system sits at the heart of a hopelessly outdated and demonstrably counter-productive legislative framework based on a punitive prohibitionist paradigm. A shift to an evidence based public health approach to addressing the drugs problem is long overdue.**

### **Why is the classification of cannabis being reconsidered yet again?**

The political context of the decision to once again refer cannabis back to the ACMD cannot be ignored.

The first re-review was announced very publicly by then Home Secretary Charles Clarke (who unusually press released his letter to the ACMD) in March 2005 – just two months before a General Election. The pre-election period is traditionally one where the main parties showcase how *'tough'* they are on law and order issues. The Conservative party had been making political capital out of the cannabis issue, regularly deploying familiar clichés about the Government *'sending out the wrong message'* and being *'soft on drugs'* and by this point they had loudly proclaimed their intention to reclassify cannabis as class B if they won the election (worryingly making no mention of any role for the ACMD in this decision)<sup>2</sup>. Also of note is that at the same time the Lib Dems had been taking flak for their *'soft'* drug policy (which calls for legal regulation of cannabis in the longer term<sup>3</sup>) from both of the other main parties.

Transform viewed the Government's move to refer cannabis back to the ACMD as transparently politically motivated rather than as the result of substantial new evidence of links between cannabis use and mental health problems as was suggested. The move effectively neutralised any political attacks from the Conservatives and potentially hostile media, and conveniently kicked the cannabis issue off the political agenda until well after the election.

It is no coincidence that the reclassification issue then re-appeared in the run up to the (at the time widely expected and touted) Autumn 2007 General Election, in an almost exact mirror of the experience from three years earlier, except this time it was announced by the (new) Prime Minister himself, rather than the Home Secretary. The majority of mainstream political analysis at the time saw the new PM's

<sup>2</sup> Ironically David Cameron sat on the Home Affairs Select Committee that in 2001 and supported the recommendations for cannabis reclassification (B to C), and for the Government to *'initiates a discussion within the [UN] Commission on Narcotic Drugs of alternative ways—including the possibility of legalisation and regulation—to tackle the global drugs dilemma'*

<sup>3</sup> <http://www.libdems.org.uk/media/documents/policies/10DrugLawReform.pdf>

announcement as part of an attempt to draw a line under some of the more controversial policy initiatives of his predecessor (simultaneously announced initiatives included revising plans for super-casinos and a potential U-turn on extended pub hours<sup>4</sup>) whilst establishing his 'moral' credentials with Conservative voters and the media.

It is worthy of note that in Gordon Brown's first major conference speech he stated that '*drugs are never going to be decriminalised*'.<sup>5</sup> Added to this one of his early acts was to call on his entire cabinet to disclose their former cannabis use. Many had, and once the smoke had cleared, the way was paved for his populist move regards reclassification. The focus on cannabis classification provided the added bonus of diverting attention away from the all too obvious failings of the sham consultation on the ten-year drug strategy (the accompanying document described by the ACMD as '*self-congratulatory*'<sup>6</sup>) and the new strategy (due to be published in March this year).

### **New evidence of links between cannabis and mental health problems?**

Research into the effects of cannabis has been ongoing with a steady stream of new studies building on our knowledge in this area. In recent years this work has undoubtedly received far more attention than it might otherwise have, due to the increasing politicisation of the reclassification issue. A number of recent studies have enjoyed wide media coverage but essentially re-stated what was already known. Media coverage of drug harms has largely failed to convey the nuance and ambiguities in the research conclusions, instead defaulting to emotive 'anec-data' and shock headlines based around cherry picked or misrepresented statistics, giving the false impression that there has indeed been a glut of genuinely revelatory new conclusions about cannabis harms – and specifically that they are dramatically increasing. In the drugs field it is difficult to think of a body of research that has received more political and media attention.

Obviously all drugs have dangers and cannabis is no exception. It is clear and universally accepted that in a minority of users, primarily younger teenage users, heavy/long term users or those with predispositions to mental health problems (more often all three) cannabis use presents a small but real risk of causing significant health harms. However, it is worth noting that this was well known and acknowledged by the ACMD in previous reports on cannabis and informed their 2004 recommendation to reclassify cannabis, based on *relative* harms (Transform understands that reclassification had first been recommended by ACMD as much as twenty years ago). In other words the emerging research contributes to our growing understanding of cannabis use and its effects but refines rather than fundamentally changes the accepted conclusions about the risks associated with the drug.

At no point has the ACMD or the Government ever suggested that cannabis is 'harmless'. A Class C classification does not suggest this as the two year imprisonment penalty for possession clearly indicates. Whilst the implementation of the change was inadequate it is of note that the repeated semantic association of '*Class C*' and '*reclassification*' with '*sending out a message*' that cannabis is '*harmless*' or '*safe*' has, ironically perhaps, come entirely from Government's political

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<sup>4</sup> It now appears that under pressure from the Drinks lobby this is being dropped

<http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2008/01/03/ndrink103.xml>

<sup>5</sup> for details see: <http://transform-drugs.blogspot.com/2007/09/gordon-brown-friend-of-mafia-enemy-of.html>

<sup>6</sup> ACMD attacks consultation document <http://transform-drugs.blogspot.com/2007/12/key-advisers-attack-new-drugs-policy.html>

opponents (most notably the Conservative Home Affairs shadow), media opponents (most notably the Daily Mail and the Independent on Sunday), and opponents of the reclassification move within the wider drugs field. They have, to a large extent, created their own mythical pro-cannabis propaganda against which to fight.

Recently emerging high profile cannabis research has significantly included a Lancet meta-study on cannabis and psychosis. The main report headline, that cannabis smoking increases the risk of schizophrenia by 40%, achieved saturation media coverage for a science story, being covered by over 500 news outlets. No attempt was made to put this headline figure into any kind of statistical context, and anything that could reasonably be described as intelligent discussion of the policy relevance of the paper in relation to the drug's legal status was almost completely lacking<sup>7</sup>.

The conclusions of the Lancet paper, that cannabis use involves a small risk of mental health problems, is hardly revelatory and does not contradict the findings of previous ACMD reports (which presumably examined much of the same evidence). This has been known for over a century. Here, for the record, is what the Indian Hemp Commission<sup>8</sup> concluded **over a century ago**, in 1894:

*“Mental Effects:*

*In respect to the alleged mental effects of the drugs, the Commission have come to the conclusion that the moderate use of hemp drugs produces no injurious effects on the mind. It may indeed be accepted that in the case of specially marked neurotic diathesis, even the moderate use may produce mental injury. For the slightest mental stimulation or excitement may have that effect in such cases. But putting aside these quite exceptional cases, the moderate use of these drugs produces no mental injury. It is otherwise with the excessive use. Excessive use indicates and intensifies mental instability (1:264).”*

The Lancet meta-study tries to quantify certain risks (mental health problems) and suggests, not unreasonably, that these are very real for a small proportion of heavy users, noting that there is a dose response in the phenomenon (the more you use the greater the risk - also hardly a surprise), suggesting that 800 cases of schizophrenia would not have occurred if none of the UK's 6.2 million cannabis users had ever tried it. The estimate of a 0.00125% risk of schizophrenia for cannabis users (or you could equally well claim, 99.99875% likelihood of not getting schizophrenia) was mentioned, as far as Transform can ascertain, in **none** of the media coverage, with the 40% increased risk statistic providing a far sexier and attention-grabbing headline. Whilst horribly out-gunned in terms of coverage, there has been some more rational and balanced science coverage of this paper<sup>9</sup>:

## **Problems with current thinking on drug classification**

Transform maintains that the classification system is fundamentally flawed. Drug harms are mediated by the nature of the user, the dose of drug consumed and the method of consumption. Translating generalised health and social harms at a

<sup>7</sup> The Lancet, it has to be said, clearly courted this coverage. It played up the 40% figure in the press release headline at a key juncture on the policy debate (on which the paper does not comment).

<sup>8</sup> <http://www.druglibrary.org/Schaffer/Library/effects.htm>

<sup>9</sup> [Blah cannabis blah blah blah blah](#) Ben Goldacre's Bad Science column in the Guardian considers the poor media coverage of the Lancet paper

[Will One Joint Really Make You Schizoid?](#) From Stats.org at George Mason University, which notes that whilst cannabis use has leapt since the 50s, schizophrenia diagnosis has remained constant....

population level into criminal penalties for individuals is both unscientific and unjust. It cannot be ethical to administer (or increase) penalties for the majority of users whose use causes negligible harm (to themselves or others) because a small proportion of users experience real difficulties or mental health problems.

There is no evidence that changing the classification of cannabis will have any meaningful impact on patterns of cannabis use, indeed some of the leading experts in cannabis and mental health including Prof Ferguson<sup>10</sup> and Robin Murray<sup>11</sup> have been keen to highlight the irrelevance of enforcement in what is primarily a public health issue. The small amount of research that has been done in this area<sup>12</sup> suggests that policy law and enforcement are at best marginal factors in drug taking decisions especially for the vulnerable groups, young people and those with mental health problems. Criminal law is supposed to prevent crime, not 'send out' public health messages. When this has been tried it has been spectacularly ineffective, as the unprecedented ballooning of cannabis use over the last 34 years demonstrates. Moreover it has been actively counterproductive, making drugs more dangerous not less, whilst simultaneously fostering distrust of police and public health messages amongst young people (see appendix 2 for more detailed discussion).

Significantly the level of criminality associated with a particular drug, as determined by the classification system, can itself negatively impact on the harm associated with that drug<sup>13</sup>. In the case of cannabis, the fact that it is produced and supplied via a profit-driven underground criminal market has fuelled the increasing prevalence of more potent strains which deliver increased profit to weight ratios. When translated through the prism of the Misuse of Drugs Act the ABC harm rankings become, to a significant degree, strangely self-fulfilling. The more a drug is criminalised (by moving it up the rankings) the more risky its use becomes and the more social harms are created, including those associated with its production and supply. Given that there is no evidence that these increased harms are offset by any deterrent effect associated with classification<sup>14</sup> the whole system seems even more bizarrely unscientific and unsustainable.

## Discussion and Conclusions

The debate around drug law reform remains intimately entwined with the wider populist law and order debate. The question of how cannabis should be policed has often become confused by emotive anecdotes and misrepresented data concerning the harm associated with cannabis use, or debate around the moral rights and

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<sup>10</sup> "Arrest/conviction for a cannabis related offence did not reduce the use of cannabis: of those arrested/convicted, 95% either increased their use or continued with the same level of cannabis use subsequent to their arrest" "the law was ineffective in reducing cannabis use" Fergusson DM, Swain-Campbell NR, Horwood LJ. Arrests and convictions for cannabis related offences in a New Zealand birth cohort. *Drug and Alcohol Dependence*, 2003; 70(1), 53-63

<sup>11</sup> Teenage schizophrenia is the issue, not legality. <http://comment.independent.co.uk/commentators/article2368912.ece>

<sup>12</sup> The best arguably being research on the impact of the South Australian Cannabis Expiation Notice (CEN) system, which having commenced in 1987 is the longest running and most researched Australian scheme, concluded that rates of recent (weekly) use by adults, and rates of use among young adults and school students had not increased at a greater rate in South Australia than other States which maintained criminal penalties (Donnelly, Hall, & Christie 2000).

<sup>13</sup> This phenomenon was acknowledged by Professor David Nutt in his evidence to the Science and Technology Select Committee report on drug classification, whilst being questioned by Evan Harris MP. See <http://transform-drugs.blogspot.com/2007/03/lancet-and-drug-harms-missing-bigger.html>

<sup>14</sup> For more discussion see: 'Classification and deterrence: where's the evidence?' <http://transform-drugs.blogspot.com/2006/10/classification-and-deterrence-wheres.html>

wrongs of drug use generally. It is vital that the ACMD, as an independent body of expertise, is not drawn into the political gamesmanship, or swept along by the sporadic media and politically fuelled drug panics that have cast a long shadow over the UK's failing drug policy for the past two generations.

The aim of drug policy should be to reduce the harm drugs cause, both to users and the wider community. Current policy is demonstrably failing to do this and it is only by rational consideration of the evidence, both of prohibition's failure, and of policy alternatives that we can take positive steps toward this goal.

There is an ongoing debate about the extent of cannabis risks, and research has often been selectively used to bolster the case for and against legislative reform (reclassification and/or legalisation/regulation). From Transform's perspective the debate around health risks is a distraction from policing and law reform issues:

- An effective drug policy would accept the reality of widespread cannabis use and implement measures that reduce harm to users and the communities in which they live
- The dangers presented by cannabis, in its various forms, point towards increased and better prevention and education for young people and potential users as part of a co-ordinated, evidence based public health strategy for reducing drug harms. This should be based on well established harm reduction principles and public health education methodology, including a clear message that the best way to avoid harm is not to use at all

The classification debate is a distraction from the bigger debate around prohibition – one we believe the ACMD is obliged to engage with in a structured and meaningful way. Drugs need to be legally regulated because they are dangerous, not because they are safe, indeed the greater the dangers of using cannabis, the greater the importance of strict legal regulation and control of cannabis markets. If the Government is serious about getting rid of illegal dealers and reducing the harm associated with cannabis use the only effective course of action is to have legally regulated and appropriately licensed outlets. This would:

- Largely remove the illegal profits, collapse the illegal market, and put illegal dealers out of business
- Allow more effective prohibitions on sales to minors
- Enable quality control of the product and health warnings, potency and dose information, and harm reduction information on packaging and at point of sale
- Free up scarce resources (and potentially generate tax revenue) for public health based prevention, education and harm reduction initiatives

To the objective observer the intellectual problems with the classification system are as obvious as its abject and ongoing failure on all meaningful indicators. The Government's response to criticism, which now includes detailed and thoughtful work from the Police Foundation (2000), the Home Affairs Select Committee (2002), The Science and Technology Select Committee (2006), the RSA (2007), and even the ACMD (Pathways to Problems 2007) and its technical advisors writing in the Lancet (2007), has been nothing more than contemptuous and is entirely lacking in intellectual or empirical credibility. The Science and Technology Select Committee's 2006 conclusion that the system was '*not fit for purpose*' was altogether too diplomatic.

There is certainly potential for ranking different drugs along the various vectors of drug harm that might usefully include; toxicity, addictive potential, particular risks for

specific populations (e.g. sex, age group, mental health) safety critical activities (e.g. driving) or behaviors (e.g. injecting, poly-drug use, pregnancy). However, this sort of information does not lend itself to the broad generalisations of a simplistic ABC system, however well thought out the placing of individual drugs may be. People need honest and accurate information about drug risks so they can make informed decisions; the ABC system singularly fails to deliver.

More significantly, the debate over which drugs should be in which class is a distraction from the more profound problem that the ABC system exists primarily to determine a hierarchy of criminal penalties, and there is no evidence whatsoever to demonstrate that this approach has either criminal justice or public health benefits. The Government's refusal to honour the promise Charles Clarke made to the House of Commons in January 2006, to hold a review of the classification system is transparently a politically motivated one. Their *'belief'* that the system is effective, when the opposite is demonstrably the case is simply not acceptable and should be a profound concern to everyone in policy making, law and the wider drugs field.

## Recommendations

### Short term

- That the ACMD maintain their long held position that cannabis should be a class C drug under the current system.
- That the long promised review of the entire drug classification system (not merely the classification of individual drugs within it) be undertaken with some urgency. This should include a detailed consideration of the effectiveness of an ABC hierarchy of criminal penalties for different drug in achieving desired criminal justice and public health outcomes. (A call for such a review has also come from Drugscope and the Home Affairs Select Committee, the RSA, the Science and Technology Select Committee, **and indeed the ACMD**)
- That the ACMD make strong objections to the way in which its role and authority is being undermined by Ministers announcing reclassification decisions regards cannabis before the ACMD have reported back<sup>15</sup>. The ACMD should further ask why the classification issue was included in the recent strategy consultation document, when such decisions are clearly the remit of the ACMD (which already consults extensively).

### Medium term

- That the ACMD deliberations consider the specific harms created by prohibition, and disentangle these from the harms created by drug use per se. Specifically; prohibition related crime, the mass criminalisation of young - often vulnerable - individuals, and the exacerbation of drug harms to users (when drugs are produced and supplied through illicit channels).
- That the ACMD actively consider the policies of decriminalisation and legalisation/regulation of cannabis and all other currently illegal drugs in line with its remit in *"preventing the misuse of such drugs or dealing with social problems connected with their misuse"* and *"restricting the availability of such drugs or supervising arrangements for their supply"*.

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<sup>15</sup> Gordon Brown is on the record saying that *"we are about to make changes to the cannabis law"*  
<http://transform-drugs.blogspot.com/2007/09/brown-on-cannabis-it-gets-worse.html>

## Appendix 1

### Problems with media coverage distorting public understanding of the science of drug harms

#### 1. The Independent on Sunday

The UK media seems to go through cyclical bouts of ‘reefer madness’ during which a combination of poor science and sensationalist reporting combine to fuel a classic drug panic. Such panics are characterised by shock headlines and are invariably accompanied by equally weak policy analysis – usually defaulting to knee-jerk enforcement-led responses involving increasing penalties for possession and (especially) supply. Sadly, key politicians have all too often exploited (and fuelled) these panics.

Whilst such hysterical and ill-informed reporting and analysis is familiar ground for the tabloids, their ranks were joined in early 2007 by the Independent on Sunday with its surprising retraction of long-time its support for the decriminalisation of cannabis. The now famous ‘Cannabis Apology’ lead story was followed by a flood of cannabis coverage; no less than 17 news items and comment pieces in 5 weeks (all except three either hyping the dangers of the drug or calling for its users to be punished).

There is not the room in this briefing to go through all this in detail but much of the shoddy coverage and analysis have been patiently deconstructed on the Transform blog<sup>16</sup>. The Independent on Sunday contacted Transform for a response to its coverage, and the following was submitted, although sadly not printed:

*"The IOS makes the mistake of confusing their legitimate concern with the health impacts of cannabis misuse amongst a small group vulnerable young people, with support for the failed ideological policy of prohibition. Rather than supporting an evidence-led regulatory response based on public health and harm reduction principles, they advocate a policy that has not only failed to address the problems they describe (and has arguably created many of them), but also one that offers no prospect of sorting them out. The blanket criminalisation of millions of non-problematic occasional users for which the IOS has now re-stated its support, cannot be justified on the basis of a relatively tiny vulnerable population, especially of teenage heavy users, who have serious problems with the drug (even if this group has grown proportionally with the overall population of users over the last three decades). This is akin to prohibiting cars because of a small population of teenage joy-riders.*

*Cannabis use undoubtedly involves risk, as does all drug use, legal or illegal. But these risks have been well documented and well understood for generations. The debate around our response to cannabis use is not well served by hype and misrepresentation of statistics on potency, impact on*

<sup>16</sup>

[How the Independent on Sunday got it horribly wrong on Cannabis](#)  
[The Independent's born-again drug war: Round Two](#)  
[The Independent and cannabis: on it goes](#)  
[Cannabis potency update: IOS digs in, ONDCP 'fess up](#)  
[Independent debunks itself on cannabis potency](#)  
[More Independent on Sunday reefer madness exposed](#)

*mental health, or treatment and addiction – all of which last week’s IOS coverage was guilty of. This was scaremongering in the cause of an attention-grabbing headline, very much in the pattern of many previous cannabis scares and precisely the sort of moral panic the recent RSA report criticised for historically distorting policy priorities. The IOS also perpetuate the misunderstanding that the cause of cannabis law reform is predicated on the fact that cannabis is harmless. On the contrary – the exact opposite is true: it is precisely because drugs are dangerous that they need to be appropriately regulated and controlled by the State rather than being left in the hands of unregulated criminal profiteers. This remains true however harmful a particular drug is shown to be.”*

## **2. Skunk and potency confusion**

The increasing market prevalence of more potent hydroponically cultivated cannabis (rather unscientifically described in the media under the catch-all term ‘skunk’) is itself a manifestation of illegal market economics. In a similar fashion to the prohibition-fuelled emergence of crack cocaine, stronger varieties of cannabis (whilst they have always been available) are more expensive and consequently more profitable for the increasing number of small to medium scale indoor growers. In some areas in the UK they have become the only available cannabis products on the market. Users in Holland are presented with a range of products of differing strength and the strongest varieties are far from being the most popular. In this context it would be negligent for any serious discussion around changes to the drugs legal status to not consider the potential negative impacts of increasing the criminality involved.

Transform agrees with the analysis in the UKCIA submission to the ACMD’s 2005 review regards misunderstandings about what skunk is, how potency and strength of cannabis are measured, and the lack of research into what cannabis users are actually consuming, where and how. There is a massive knowledge gap here that makes policy decision making even more difficult.

Suggestions that ‘skunk’ should have a separate classification are clearly impractical.

There is also a mistaken assumption that stronger varieties of cannabis mean that users will inevitably consume more of the active ingredients, thus increasing health harms. This overlooks any concept of free will or personal volition amongst users in gauging their level of intoxication. Most consumers do not drink vodka in pints any more than they smoke skunk in the same volume as weaker cannabis varieties. The reality is that most users will consume cannabis as they would alcohol; until they reach the desired level of intoxication - and then stop. This so-called ‘auto-titration’ accurately describes the majority of rational cannabis consuming behaviour. This might, for example, involve nothing more complex than putting marginally less cannabis in a joint when mixing it with tobacco.

Unexpectedly strong varieties of cannabis will doubtless lead to more inadvertent overdoses with unpleasant and occasionally dangerous side effects for the inexperienced or unwary. However it is also clear that drug using behaviours adapt very quickly and cannabis users are perfectly capable, and indeed likely, to make dosage decisions that accord with pleasure-seeking rather than unpleasant side effects or overdose.

The fact that there is more than one active component in cannabis complicates the considerations of potency. Along with the more widely discussed and researched THC is the CBD component. These two drugs can have different absolute and relative potencies in different strains of cannabis – their effects present different risks to the users and also interact with each other in ways that are poorly understood but may increase or decrease some specific risks (CBD has anti-psychotic effects mitigating against risk from potentially psychotic effects of THC). This issue was touched upon in the ACMD 2005 review, section 2.3, but is not mentioned in section 5 concerning potency, which is defined in the glossary only in relation to THC (nor is it mentioned at all in the 2002 review). This is an important area of the research to understand and consider.

## Appendix 2

### Wider problems with the classification system

The problem runs much deeper than whether certain drugs are mis-classified.

The UK's ABC drug classification system has been in place since the Misuse of Drugs Act 1971, but its history can be traced back further to the 1961 UN drug convention to which the UK and over 160 other states are signatories. All EU member states (and most other signatories) classify drugs roughly according to the conventions, using the annexes from the 1961 convention and the 1971 convention (which list some 250 substances) as the guide, although there are some notable differences between states. These annexes prescribe the level of legal controls required by signatories for each category or 'schedule' of drug, nominally ranked according to harmfulness. The UK has therefore been locked into a prohibitionist legal system for more than 45 years, legally binding under international law (both EU and UN), that *requires* the criminalisation of production, supply and possession of non-medical use of some psychoactive drugs, the penalties for which are determined by a classification system also broadly established under international law.

Much of the 1961 convention was drafted in the 1940's, in an era when patterns of drug use and drug related harms were dramatically different to those we face today. At the time the key concept of using a harm-based hierarchy of criminal penalties as the central plank for the wider aim of eliminating drug use was, whilst perhaps instinctively sensible, entirely without evidential foundation. The only major experiment with such a prohibition had been US alcohol prohibition in the 1920s, a benchmark for poorly thought out drug policy led by moral imperatives rather than evidence of effectiveness. However, the essential tenets of this prohibitionist paradigm – using criminal law to enforce the moral view that all drug use is unacceptable - have remained largely unchanged since the Victorian temperance movement.

A historical perspective, therefore, suggests that it has been international and domestic political forces, rather than rational analysis of available evidence, that have defined mainstream drug policy thinking and the classification system in the UK. Drug policy remains an intensely emotive and politicised issue, intimately intertwined with the populist and partisan law and order debates. Political discourse has been dominated by tough-talking rhetoric and drug war posturing, and it is in this context that the demonstrably unscientific, un-evidenced and ineffective system of drug classifications/punishments has evolved.

## **Why the Classification system is fundamentally flawed:**

### **1. There is no evaluation or review of the classification system against meaningful indicators.**

Before trying to establish if the classification system is effective we must ask what it is seeking to achieve. The Misuse of Drugs Act 1971 seeks to reduce the availability and misuse of prohibited drugs.

However systems of policy evaluation and review that do exist are woefully inadequate, with neither drug availability nor levels of misuse (or health harms related to use) being measured in a meaningful or consistent way (the Drugs Harm Index has been widely denounced and is not taken seriously by most in the drugs field). The Government simply has no way of establishing the impact of changes in the classification of individual drugs, or the effectiveness of the system as a whole.

### **2. The system is based on the un-evidenced assumption that criminal penalties are an effective deterrent and that stronger penalties are a stronger deterrent.**

At the heart of the classification system, and indeed the entire prohibitionist paradigm within which it operates, is the assumption that criminal sanctions are an effective deterrent to use; and specifically for the ABC classification system, that the heavier the sanctions the stronger the deterrence. However, there is no published research undertaken by the Home Office to establish any evidential base for this key assumption. Crucially there is also no evidence to show that key target groups understand or pay any attention to the classification system when making drug taking decisions.

The Science and Technology Select Committee challenged the Government on this very specific point in conclusion 34 of their 2006 report 'Drug Classification: Making a Hash of it?':

***"We have found no solid evidence to support the existence of a deterrent effect, despite the fact that it appears to underpin the Government's policy on classification. In view of the importance of drugs policy and the amount spent in enforcing the penalties associated with the classification system, it is highly unsatisfactory that there is so little knowledge about the system's effectiveness".***

The Government response is shockingly dismissive and inadequate

*'The Government fundamentally believes that illegality is an important factor when people are considering engaging in risk-taking behaviour.....'*

*'It believes that the illegality of certain drugs, and by association their classification, will impact on drug use choices, by informing the decisions of dealers and users. Imposing penalties on the offence of possession is intended to deter use, particularly experimentation by young people.'*

*'.. the Government accepts that there is an absence of conclusive evidence in relation to the deterrent effect of the existing classification structure....'*

*'..The Government will consider ways in which the evidence base in the context of the deterrent effect can be strengthened."*

The Select Committee very clearly points out: 'we have found no solid evidence to support the existence of a deterrent effect'. The Government produced nothing to challenge this beyond their 'belief' in the existence of such an effect and yet they rejected the committee's conclusion outright regardless. This is an issue of sound science and evidence based policy, not faith, belief, or ideology, and there is no way around the conclusion that this response is entirely unacceptable as the basis for any

sort of rational policy making.

The scant independent research that has been done in this area suggests that the law and its enforcement are, at best, marginal factors in drug taking decisions - especially for the most excluded groups who are most vulnerable to problematic use; young people, those with mental health problems and those from socially deprived communities. Studies in Australia and the US have compared levels of cannabis use between different states with different enforcement regimes for cannabis offences (from harsh penalties to de-facto decriminalisation) and found no significant link between harshness penalties and incidence of use.

The wider point here is that criminal law is intended to prevent crime, not 'send out' messages on public health. When this has been tried it has been spectacularly ineffective, as the unprecedented ballooning of drug use over the last 36 years demonstrates with some clarity. Moreover it has been arguably been actively counterproductive, by fostering distrust of police and public health messages amongst young people.

### **3. Alcohol and tobacco are not included in the classification system**

It is this omission that truly lays bare its fundamental lack of consistency, reasoning or evidence base. Any and all medical authorities will acknowledge that the greatest harm to public health from drugs stems from alcohol and tobacco use. Under any realistic assessment of toxicity, addictiveness and mortality rates both drugs would certainly be criminalised and prohibited under the current system, as was notably acknowledged in the high profile Lancet paper 'Development of a rational scale to assess the harm of drugs of potential misuse' by David Nutt, Leslie A King, William Saulsbury, Colin Blakemore<sup>17</sup>. The reason they are absent from the classification system is that they are, for entirely political/historical reasons, absent from the international prohibitionist legal system. This distinction is arbitrary, perverse and illogical.

### **4. Drug harms are mediated by the nature of the user, the dose of drug consumed and the method of consumption – making a system based upon broad sweep single classifications for each drug fundamentally unscientific, and meaningless in most practical terms.**

As an example, the classification system makes no distinction between coca leaf and crack (they are both Class A). However coca chewing is low dose and slow release and is not associated with significant health harms (and even has some benefits) – whereas crack smoking is high dose and rapid release and consequently associated with high harm/risks. Similarly some drugs are low risk if used occasionally but become increasingly high risk with increasing intensity and regularity of use. The classification system makes no allowance for more responsible or moderate use of any illegal drug and completely ignores the possibility that some drug use may, on balance, be beneficial (pleasure, relaxation, pain relief etc). Whilst policy makers and wider society easily make the distinction between responsible and irresponsible alcohol use, current legislation and most political discourse allows no such distinction for illegal drugs. Consider for example the following words of Tony Blair (foreword to the Alcohol Harm Reduction Strategy), and try changing the word 'alcohol' for 'drugs':

*“Millions of us enjoy drinking alcohol with few, if any, ill effects. Indeed moderate drinking can bring some health benefits.”*

*“Ultimately, however, it is vital that individuals can make informed and responsible decisions about their own levels of alcohol consumption. Everyone needs to be able to balance their right to enjoy a drink with the potential risks to their own – and others' – health and wellbeing.”*

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<sup>17</sup> <http://www.mapinc.org/drugnews/v07/n366/a01.html>

*Tony Blair (from the forward to the 2003 Alcohol Harm Reduction Strategy)*

**5. Translating generalisations about harms/risks to an entire population into penalties for individuals is both unscientific and unjust.**

Even if one accepts that consenting adult use of certain drugs should be a criminal act it remains unethical and unscientific to base penalties for an entire using population - including the majority of non-problematic users - on the small proportion of drug users who experience difficulties or health problems. This is akin to punishing responsible drivers for the actions of reckless joy riders.