

TRANSFORM

DRUG POLICY FOUNDATION

Submission to the Sentencing Advisory Council consultation
on drug offences, June 2011:

What we don't know keeps hurting us

About Transform Drug Policy Foundation

- Transform is a think-tank that campaigns for a world in which the War on Drugs is over, and effective and humane systems of drug regulation have been established
- Transform has UN ECOSOC consultative status, is a registered charity (no.1100518) and company limited by guarantee (company no. 4882177). For more information please visit www.tdpf.org.uk or call 0117 325 0295

Introduction

On the specific issues in the consultation document not covered in this response Transform wishes to endorse the detailed submission made by Release (www.release.org).

Summary

"It is unconscionable for this country to continue to carry out a public policy of this magnitude and cost without any way of knowing whether, and to what extent, it is having the desired result. Our committee strongly recommends that a substantial, new, and robust research effort be undertaken to examine the various aspects of drug control, so that decision-making on these issues can be better supported by more factual and realistic evidence."

Informing America's Policy on Illegal Drugs: What We Don't Know Keeps Hurting Us
US National Academies of Science, 2001

"The costs of failing to identify flaws in policy design and implementation and not learning lessons from previous policy initiatives can be substantial."

Modern Policy Making: Ensuring policies deliver value for money.
National Audit Office, November 2001

This submission suggests that whether we are making minor changes to sentencing policy, or major changes to the legislation, we must have a robust system for reviewing legislative outcomes. We call on the Sentencing Council to support wider calls for the Misuse of Drugs Act 1971 (MDA) to be made subject to a regular Impact Assessment, as is the case for all legislation enacted after 2005.

Calls for review of the Misuse of Drugs Act have been made for over 40 years

“There may well be a good deal of argument about some of the penal provisions, but I welcome the attempt to distinguish between drugs and to provide for an effective system of review, because changes are bound to occur.”

**Misuse of Drugs Bill
HC Deb 25 March 1970 vol 798 cc1446-560
Arthur Blenkinsop MP 5.12pm**

“Great hardship, I do not say is frequently caused but can be caused when justices or judges take these penalties as the sort of guide which many noble Lords have taken them as, as a reason for “clobbering” drug offenders. I hope that my words will be taken note of and the whole rationale of penalties reviewed.”

**HL Deb 11 February 1971 vol 315 cc272-321
Lord Gifford**

The following is taken from the Cabinet Office website:

http://interim.cabinetoffice.gov.uk/making-legislation-guide/post-legislative_scrutiny.aspx

“Post-legislative scrutiny: Background

41.1 In March 2008 the Government established a new system for promoting the post-legislative scrutiny of Acts.

41.2 The new system is intended to respond to calls that once an Act has been passed insufficient attention is paid to whether it has been well implemented (or implemented at all) and to its actual effects. It promotes a more systematic approach, with Government working with Parliament in an area Governments have recognised as a relative weakness in the legislative process. It should benefit Government by:

- *Improving the preparation of Bills, by focusing attention on likely implementation difficulties;*
- *Helping to identify problems with the implementation of Acts earlier or more systematically;*
- *Allowing lessons (both about what has worked well and what has not worked well) to be learned and disseminated to the benefit of other legislation, and significant achievements to be identified and highlighted.”*

It is now the case that all legislation enacted after 2005 is subject to Impact Assessment every 3. 5 years. This is because government has recognized that Acts will not always deliver the outcomes that were intended.

The Unintended Consequences of the Misuse of Drugs Act

In 2008 the UN Office on Drugs and Crime published a paper detailing the major unintended consequences of the international drug control system. They are major negative outcomes, all reflected in UK policy:

“Looking back over the last century, we can see that the control system and its application have had several unintended consequences - they may or may not have been unexpected but they were certainly unintended.”

“The first unintended consequence is a huge criminal black market that thrives in order to get prohibited substances from producers to consumers, whether driven by a ‘supply push’ or a ‘demand pull’, the financial incentives to enter this market are enormous. There is no shortage of criminals competing to claw out a share of a market in which hundred fold increases in price from production to retail are not uncommon”.

“The second unintended consequence is what one might call policy displacement. Public health, which is clearly the first principle of drug control...was displaced into the background”.

“The third unintended consequence is geographical displacement. It is often called the balloon effect because squeezing (by tighter controls) one place produces a swelling (namely an increase) in another place...”

"Making drug control 'fit for purpose': Building on the UNGASS decade", 2008
<http://www.unodc.org/documents/commissions/CND-Session51/CND-UNGASS-CRPs/ECN72008CRP17.pdf>

The simple fact is that we still do not know whether the unintended consequences of the current approach outweigh the intended ones. As a result, almost every UK inquiry into this issue has suggested the need for wholesale review and/or reform of UK prohibitionist legislation:

2002 – Home Affairs Select Committee Inquiry into UK Drug Policy

"24. We recommend that the Government initiates a discussion within the Commission on Narcotic Drugs of alternative ways—including the possibility of legalisation and regulation—to tackle the global drugs dilemma (paragraph 267)."

2003 – Prime Minister's Strategy Unit Drugs Report

http://webarchive.nationalarchives.gov.uk/20060715135117/http://strategy.gov.uk/downloads/work_areas/drugs/drugs_report.pdf

- *“The drugs supply market is highly sophisticated, and attempts to intervene have not resulted in sustainable disruption to the market at any level.”(p.104)*
- *“Drug crop eradication alone appears not to limit illicit crops in the long term”(p.61)*
- *“Over the past 10-15 years, despite interventions at every point in the supply chain, cocaine and heroin consumption has been rising, prices falling and drugs have continued to reach users. Government interventions against the drug business are a cost of business, rather than a substantive threat to the industry's viability.” (p.94)*
- *“Over 3 million people in the UK use illegal drugs every year, with more than half a million using the most serious drugs” (p.5)*
- *“Heroin and/or crack users cause harm to the health and social functioning of users and society as a whole, but users also commit substantial amounts of crime to fund their drug use (costing £16bn a year)”. (p.2)*
- *“Drug use is responsible for the great majority of some types of crime, such as shoplifting and burglary ” (inc 85% of shoplifting, 70-80% of burglaries, 54% of robberies) (p.25)*

The report goes on to show that even if supply side interventions were more successful, the result would be increased prices that could force addicts to commit more crime to support their habits.

- *“There is no evidence to suggest that law enforcement can create such droughts” (p.102)*

[but even if they could ..]

- *“price increases may even increase overall harm, as determined users commit more crime to fund their habit and more than offset the reduction in crime from lapsed users”(p.99)*

2006 – Science and Technology Committee - Drug classification: making a hash of it?

<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmsctech/1031/1031.pdf>

Finally, we have concluded that the current classification system is not fit for purpose and should be replaced with a more scientifically based scale of harm, decoupled from penalties for possession and trafficking. In light of the serious failings of the ABC classification system that we have identified, we urge the Home Secretary to honour his predecessor's commitment to review the current system, and to do so without further delay.

2009 – Home Affairs Select Committee Inquiry into the Cocaine Trade

<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmhaff/74/7402.htm>

24. We were very interested to learn that a Government review completed in 2007 – the publication of which the Home Office had fought for three years – concluded that the effectiveness and value for money of the Government's drugs spending could not be evaluated. It is at best careless that the Government nevertheless pressed ahead and published its Drugs Strategy in February 2008 without publishing a proper value for money analysis of where resources would be most effectively targeted. We therefore support calls for a full and independent value for money assessment of the Misuse of Drugs Act 1971 and related legislation and policy. This assessment must also address the concerns about inadequate data collection raised in the 2007 review.

2011 – Proposed amendment to the Police Reform and Social Responsibility Bill

In February 2011 Julian Huppert MP tabled an amendment to the Police Reform and Social Responsibility Bill to amend the Misuse of Drugs Act 1971, to oblige government to conduct a regular Impact Assessment of the Act:

<http://www.publications.parliament.uk/pa/cm201011/cmpublic/policerreform/110217/pm/110217s01.htm>

See New Clause 3, Column 708

Supporters of an Impact Assessment of the Misuse of Drugs Act

Organisations

Impact assessment is supported by the 70-member International Drug Policy Consortium:

The historic nature of the drug policy debate has meant that policy development has often lacked objective scrutiny. By rationally and methodically focusing on the evidence, in terms of costs and benefits of different options, and using established methodologies already embedded in most governments' processes, IA brings drug policy back into the arena of science, avoiding the polarising clashes that have long defined the debate. A call for IA is essentially a call for better evidence, and a structured approach to assessing policy options to inform debate and determine the best way forward. As such it is politically neutral, and a very reasonable request to policy makers.

At the very least, carrying out IAs on key elements of drug policy would for the first time allow taxpayers to judge how well their money was being spent. At best, it would provide an opportunity to move to a genuinely science based drug policy that promotes human development, human security and human rights, and is fit for the challenges of the 21st Century.

http://www.idpc.net/sites/default/files/library/IDPC%20Briefing_Impact%20Assessment_March%202010_0_0.pdf

[International Drug Policy Consortium](#)

It is also supported by a range of other groups including:

[The International Harm Reduction Association](#)

[The Howard League for Penal Reform](#)

[Institute for Criminal Policy Research](#)

[25 Bedford Row Chambers](#)

Politicians

MPs:

- [Bob Ainsworth MP](#), former Labour Home Office drugs minister and secretary of state for defence
- [Peter Lilley MP](#), former Conservative Party deputy leader
- [Tom Brake MP](#), Co-Chair, Liberal Democrat Backbench Committee on Home Affairs, Justice and Equalities
- [Caroline Lucas MP](#), UK Green Party leader
- [Dr Julian Huppert MP](#), Lib Dem, Vice Chair APPG on Drug Policy Reform

Peers

- [Lord Norton](#), Conservative, Professor of Government, the University of Hull
- [Baroness Murphy](#), Crossbench, former Chair of North East London Strategic Health Authority
- [Lord Mancroft](#), Conservative, Chair of the Drug and Alcohol Foundation
- [Lord Taverne](#), former Labour MP and Home Office minister
- [Lord Dholakia](#), deputy leader of the Liberal Democrats in the Lords, former Spokesperson for Home Affairs
- [Lord Layard](#), Labour, Programme Director, Well-Being Programme, Centre for Economic Performance, London School of Economics

Other politicians:

In August 2010 Mexican President Felipe Calderón also called for an evidence-based review, saying that the issue of legalising drugs requires:

"a fundamental debate in which I think...you have to analyse carefully the pros and cons and the key arguments on both sides."

He was supported by President Santos of Colombia who said in 2010:

"We are entering an era of the narco-trafficking business where one must have these type of reflections."

And:

"If we are going to discuss alternatives [to the War on Drugs], let's discuss every alternative... what is the cost, what is the benefit of each alternative?"

The statutory sector

- [Carel Edwards](#), former Head of the European Commission's Anti-Drug Coordinating Unit
- [Professor John R Ashton CBE](#), Chair UK Public Health Association (UKPHA)

Academics

- [Professor Sir Ian Gilmore](#), outgoing President of the Royal College of Physicians

- [Professor Richard Wilkinson](#), Author of 'The Spirit Level: Why More Equal Societies Almost Always Do Better'
- [Professor Neil McKeganey](#), Centre for Drug Misuse Research, University of Glasgow
- [Professor Ben Bowling](#), Professor of Criminology & Criminal Justice, School of Law, King's College London
- [Dr Nick Heather](#), Emeritus Professor of Alcohol and Other Drug Studies at Northumbria University
- [Dr Linda Cusick](#), Reader in Substance Use, University of the West of Scotland (UWS)
- [Professor David Nutt](#), Edmond J. Safra Chair of Neuropsychopharmacology, Imperial College London, and Chair of the Independent Scientific Committee on Drugs

Conclusion

"There may come a time when a policy has...become obsolete or ineffective. It may then be necessary to replace a policy with a new one to reflect different circumstances or it may be more cost effective to terminate the policy altogether."

Modern Policy Making, NAO *ibid*.

Drugs can cause harm, but we still do not know if the policy intended to reduce the harm they cause in fact causes more harm. It is over 40 years since the Misuse of Drugs Act (MDA) became law. Since then, and despite numerous reports demonstrating its counterproductive effect on crime and criminality, it has never been subject to a comprehensive Impact Assessment (IA).

Transform recognises that not all legislation can be subject to regular review. However, given the sensitivity of the MDA to produce negative outcomes, and especially in the face of much higher levels of use and misuse, we believe that the MDA is a special case, and should therefore be subject to the level of scrutiny that is routine for all UK legislation enacted since 2005.

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