

# Report of the Independent Inquiry into the Misuse of Drugs Act 1971

## Summary of Recommendations

Recommendation Number	The Present Situation	Chapter Two: Paragraph
1	The information and research base should be given renewed attention. In particular: i) routine statistics should be improved to ensure that gaps in our understanding of the scale, nature and extent of drug use are reduced; and ii) enforcement and treatment policies should be evaluated thoroughly.	77
	<b>Classes and Schedules</b>	<b>Chapter Three: Paragraph</b>
2	The present classification of drugs in the MDA should be reviewed to take account of modern developments in medical, sociological and scientific knowledge.	7
3	The main classification criterion should continue to be that of dangerousness.	7
4	The chronic health risks from each drug should be kept under continuous review.	11
5	The model of three classes offered by the MDA should be retained.	26
6	There should be clear criteria for the future to govern additions to, and transfers between, the classes.	27 & 38
7	Ecstasy and related compounds should be transferred from Class A to Class B.	30 & 36 i)
8	LSD should be transferred from Class A to Class B.	36 ii)
9	Cannabinols such as d-9 THC should be transferred from Class A to Class C.	31 & 36 iii)
10	The Government should encourage the development and manufacture of benzodiazepines in combination with an antagonist, such as flumazenil, that would block the 'high' when used intravenously but would not affect the therapeutic response when used orally.	32

<b>Recommendation</b>	<b>Classes and Schedules</b>	<b>Chapter Three: Paragraph</b>
11	Doctors should be encouraged to prescribe the less abused benzodiazepines and non-benzodiazepine alternatives.	32
12	Buprenorphine (except when in combination with naloxone) should be transferred from Class C to Class B.	33 & 36 iv)
13	Herbal cannabis and cannabis resin should be transferred from Class B to Class C.	36 v)
14	The Advisory Council for the Misuse of Drugs should continue to be the body that has the statutory responsibility for considering and making recommendations to Ministers on the classification of new drugs and for keeping the existing classes under review.	46
15	Future reports from the Council should clearly state its methods and findings on such matters.	46
16	The Government should study the United States and the Netherlands systems with a view to establishing an effective early warning system in this country.	49
	<b>Trafficking Offences</b>	<b>Chapter Four: Paragraph</b>
17	The Government should set up a detailed and in-depth examination of the relationship between the Misuse of Drugs Act 1971 and the Customs and Excise Management Act 1979.	15
18	There should be a separate offence of dealing, the main ingredient of which would be the pattern of activity of illicitly transacting business in drugs. It should be capable of being charged as a continuing offence.	27
19	The new offence of dealing should be designated a trafficking offence for the purposes of the Drug Trafficking Act 1994.	28
20	It should be a defence for a person accused of supply or possession with intent to supply to prove that he was a member of a small social group who supplied or intended to supply a controlled drug (other than a drug of Class A) to another member or other members of that group believing that he was acting, or had acted, on behalf of the group, which shared a common intention to use the drug for personal consumption. This defence would only	30 & 35

Recommendation Number	Trafficking Offences	Chapter Four: Paragraph
<i>20 continued</i>	apply where the court was satisfied that the amount or value of the controlled drug was consistent with personal use within the group concerned.	
21	Maximum penalties for trafficking offences under the MDA and CEMA should be amended as shown in Table 4.3 on page 67.	39
22	The penalties for other trafficking offences, such as money laundering and illicit traffic in precursor chemicals, should be separately considered and, if necessary in order to achieve consistency, brought into line.	39
23	Drugs offences should be designated as a relevant category of offence for the purposes of sections 80 and 81 of the Crime and Disorder Act 1998 and guidelines proposed by the Sentencing Advisory Panel for consideration by the Court of Appeal.	41
24	The factors set out in Chapter Four, paragraph 43, should be taken account of in such guidelines.	43
25	Before further consideration is given to confiscation of assets under civil law, steps should be taken to strengthen and make maximum use of the existing criminal law procedures.	51 and 52
26	The responsibility for enforcement of confiscation orders should lie with the crown court not with the magistrates' courts.	53
27	The time limit set for payment of the amount named in a confiscation order should be that which seems reasonable to the court having looked into the circumstances and heard and tested the arguments of prosecution and defence.	54
28	The recommendations in the Home Office consultation paper for improving the effectiveness of the present criminal law system of confiscation should be followed up except where they are overtaken by our recommendations, particularly number 26.	55
29	The new national confiscation agency proposed by the Home Office should be set up with the overriding remit of ensuring that the present criminal confiscation machinery, reformed as we propose, achieves full efficiency.	56

<b>Recommendation Number</b>	<b>Trafficking Offences</b>	<b>Chapter Four: Paragraph</b>
30	A considerable investment in recruitment and training of people with the requisite skills should be made in most branches of the criminal justice system, in particular the police, prosecution, and courts (including the judges).	57
31	It should be possible for the courts to order the forfeiture of property other than land seized by the police which was clearly about to be used in the commission of a further offence.	59
	<b>Non-Trafficking Offences</b>	<b>Chapter Five: Paragraph</b>
32	The law should take full advantage of the leeway left by the United Nations conventions to deal with the less serious situations in a non-punitive way.	11
33	A maximum penalty of imprisonment albeit on a lower scale should be retained for Class A drugs.	13
34	In the case of Class B and Class C drugs, the present custodial penalties should be removed and the courts should develop further the non-custodial responses already available to them.	14
35	As soon as legislative opportunity permits, the progressive repeal of the ability of the courts to attach treatment conditions to probation orders in drugs cases should be reversed.	18
36	The maximum penalties for possession offences should be as set out in Table 5.2 on page 79.	19
37	Arrestability under section 24 of PACE should be retained for possession offences involving Class A and Class B drugs.	32
38	Possession of Class C drugs is not an arrestable offence at present. This situation would not change when cannabis is transferred to Class C.	32
39	In Scotland the present powers of detention should be retained for possession of Class A and Class B drugs but should not be extended to Class C drugs when cannabis is transferred there.	33
40	The police should develop procedures for properly recording and documenting drug seizures that take place on the streets.	34

Recommendation Number	Non-Trafficking Offences	Chapter Five: Paragraph
41	Paragraphs (a) and (b) of section 8 (knowingly permitting or suffering supply and production) should be retained subject to redrafting designed to make it clear that the main aim is to deter those who wilfully allow others to produce or supply controlled drugs.	41 and 42
42	'Wilfully' should be defined as meaning 'not caring whether the unlawful production or supply takes place or not'.	41
43	A person should not be regarded as acting wilfully merely by reason of his failure to disclose confidential records or material in respect of the persons in his care.	41
44	Section 8 should be extended to include the new offence of dealing recommended at 18 above.	42
45	The maximum custodial penalty on indictment for premises offences involving Class B drugs should be reduced from 14 years to 7.	42
46	Paragraphs (c) and (d) of section 8 (knowingly permitting or suffering premises to be used for preparing opium or for smoking cannabis or opium) should be repealed.	44
47	It should be a condition of their licences that owners and managers of places of entertainment take measures for the safety of drug-takers.	45
48	Educational material about the main drugs and their risks, including the risks of driving, should be widely available at entertainment venues.	45
49	Section 9 of the MDA (offences relating to opium) should be repealed.	48
50	Section 9A of the MDA (paraphernalia) should be repealed.	53
51	The exemption for hypodermic syringes currently contained in section 9A should for the avoidance of doubt be inserted into section 19. It should be extended to other products.	53

Recommendation Number	Enforcement	Chapter Six: Paragraph
52	We welcome the recent amendments to Code A on strip searches.	8
53	The main need is for quality control and close monitoring of the outcomes of stop and search. The aim should be to have fewer stops and searches but a higher proportion of them with successful outcomes.	13
54	We support the Government's proposal that cautions, reprimands and warnings should become spent immediately, with the result that there would be no rehabilitation period for the purposes of the Rehabilitation of Offenders Act 1974.	20 and 24
55	Cautioning should become a statutory sanction, with guidelines laid down in regulations.	31
56	The fiscal fine system should be introduced in England and Wales for operation by the Crown Prosecution Service.	34
57	Out-of-court fines should only be used for cases that would otherwise be prosecuted and should not replace the caution in the kind of case for which cautions are used now. That might be ensured under statutory cautioning guidelines.	35
58	It should be made clear in legislation that cautions, reprimands, warnings, compounds and out-of-court fines should not be capable of being cited in court as evidence of the character either of the defendant or of a witness. Section 66(5) of the Crime and Disorder Act would need to be amended accordingly. A similar change is needed to CE(M)A's provisions on compounding.	36
59	Records of cautions, reprimands and warnings for drug possession offences should continue to be kept on the Police National Computer.	37
60	The Secretary of State should include information on drugs cautions, reprimands or warnings in criminal record certificates only in the most exceptional cases.	38

Recommendation Number	Cannabis	Chapter Seven: Paragraph
61	Cannabis should be transferred from Class B to Class C of Schedule 2 of the MDA and cannabidiol and its derivatives should be transferred from Class A to Class C.	77 i)
62	The possession of cannabis should not be an imprisonable offence. As a consequence, it will no longer be an arrestable offence in England and Wales under section 24 of PACE, and arrests will only be possible under section 25 of PACE where there are identification or preventative grounds.	77 ii)
63	Prosecution of offences of cannabis possession should be the exception and only then should an offence, if it results in a conviction, incur a criminal record. An informal warning, a formal caution, a reprimand or warning in the case of those aged 17 or under, or a fixed out-of-court fine should be the normal range of sanctions.	77 iii)
64	The cultivation of small numbers of cannabis plants for personal use should be a separate offence from production and should be treated in the same way as possession of cannabis, being neither arrestable nor imprisonable and attracting the same range of sanctions. Cultivation of cannabis for personal use under section 6 and production under section 4 should be mutually exclusive offences.	41 and 77 iv)
65	The maximum penalty for trafficking offences for Class C drugs, including cannabis, should be 7 years imprisonment and/or an unlimited fine. Cannabis trafficking offences would, like all such offences, continue to attract the confiscation powers of the Drug Trafficking Act.	77 v)
66	Permitting or suffering people to smoke cannabis on premises which one owns or manages should no longer be an offence under section 8 of the MDA.	77 vi)
67	Statutory sentencing guidelines should include vicinity to schools, psychiatric services and prisons as aggravating factors for the purposes of sentencing for trafficking offences.	77 vii)
68	Cannabis and cannabis resin should be moved from Schedule 1 to Schedule 2 of the MDA Regulations thereby permitting supply and possession for medical purposes. If there is to be any delay in	79 viii)

Recommendation Number	Cannabis	Chapter Seven: Paragraph
<i>68 continued</i>	adopting this recommendation pending the development of a plant with consistent dosage, we recommend a defence of duress of circumstances on medical grounds for those accused of the possession, cultivation or supply of cannabis.	
	<b>Treatment and the Law</b>	<b>Chapter Eight: Paragraph</b>
69	We welcome the emphasis on treatment in the national strategy and accept the rationale for using the criminal justice system to channel drug misusing offenders into treatment.	8
70	There should be a very substantial reallocation of resources and particularly an increase in the provision of services for adolescents, women, people from minority ethnic communities and people with mental health problems.	11
71	Where a response is sought to problem drug use, as opposed to the crime related to it, treatment in prison should always be considered a second-best option, and sentencers should not be attracted to it as a solution.	13
72	More far-reaching research is needed to provide a better understanding of the precise dynamics and causal links in the drugs-crime relationship and better evidence about the factors that influence treatment effects. There is a particular need to evaluate the cost-effectiveness of different interventions, in order to inform future decisions on distribution of overall drugs expenditure.	14
73	A statutory framework and guidelines governing the conditions that may be attached to a caution should be part of the legislation that would put cautioning of those over 17 on a statutory basis. In particular: (i) the police should be given statutory powers to attach conditions to a caution, including the power to charge the offender with the original offence if the conditions are not met; (ii) the power to attach conditions should be supported by statutory guidelines making it clear what sort of conditions are permissible and how compliance should be assessed;	19  21 iii)  21 iv)

Recommendation Number	Treatment and the Law	Chapter Eight: Paragraph
<i>73 continued</i>	(iii) the police should be given powers to release offenders on police bail while arrangements for treatment are made; if such arrangements are not made the offender would be charged for the offence.	21 v)
74	It should be made clear (by amending PACE if necessary) that further questioning to establish willingness to undergo treatment is permissible after the evidence to support a charge has been obtained but that it should take place only with the suspect's agreement.	21 i)
75	The relevant PACE Code should be redrafted so as to draw a clear distinction between questions designed to establish guilt and questions designed to establish an offender's willingness to undergo treatment. The Code could then go on to lay down at which point each type of questioning could take place.	21 iii)
76	Urgent consideration should be given to extending the licensing system under the MDA so that doctors in private practice and NHS doctors who prescribe privately have to be licensed if they wish to prescribe any Class A drug to an addict. Such licences should be based on criteria which include the doctor's training and links to specialist support.	36
77	A national register of private prescriptions should be set up and arrangements made to scrutinise and monitor them.	36
78	The existing tribunal system should be abolished.	36
79	The licensing system and rights of appeal should be under the control of Directors of Public Health.	36
80	We support the recommendation by the British Medical Association in 1997 for 'a national comprehensive, confidential information system... to provide up-to-date prescribing information on individuals, accessible to general practitioners and other prescribers, available out-of-hours, including weekends.'	37
81	We urge the government to give urgent and sympathetic consideration to the report of the Royal Pharmaceutical Society on services to drug misusers and in particular to the recommendations listed in paragraph 39 of chapter eight.	38