

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

## Overview

1. It is nearly 30 years since the main legislation controlling the misuse of drugs in the United Kingdom was enacted. Our task has been to consider the changes which have taken place in our society in that time and to assess whether the law as it currently stands needs to be revised in order to make it both more effective and more responsive to those changes. It has also been our duty to examine the implications of our proposals.
2. In the course of our Inquiry it has become inescapably clear to us that the eradication of drug use is not achievable and is not therefore either a realistic or a sensible goal of public policy. The main aim of the law must be to control and limit the demand for and the supply of illicit drugs in order to minimise the serious individual and social harms caused by their use. At the same time, the law must enable the United Kingdom to fulfil its international obligations.
3. The law should be based on the following principles and purposes:
  - (i) as a means of reducing demand, the law is only one aspect of a broader agenda of health, prevention and education. It should not undermine other elements of that agenda – indeed, it should be able to support them;
  - (ii) it should reflect the latest scientific understanding and the social and cultural attitudes of modern British society;
  - (iii) it should be realistically enforceable;
  - (iv) it should infringe personal freedom only to the degree necessary to restrain serious levels of harm to users or others;
  - (v) it should target the drugs that cause the most harm;
  - (vi) it should reflect the relative harmfulness of activities connected with each illicit drug or category of drugs, and provide for sanctions proportionate to that harm;
  - (vii) in its operation, the law should be accepted by the public as fair, consistent, enforceable, flexible and just. The proper exercise of discretion may be an important means of achieving this.
4. Throughout our Inquiry we have been forcibly struck by the lack of research and the weakness of the information base about drug use in the United Kingdom, including the lack of any ‘early warning systems’ to identify and monitor significant changes in drug use such as have been developed in the USA and the Netherlands. Equally striking is the anomaly that the largest part of the drugs budget is spent on enforcement without the necessary resources being applied to the proper evaluation of its success or failure. We welcome the new research programme of the latest national plan, but until it begins to

yield significant results and embraces some of the issues raised in this Report, discussion of the policy options will continue to be hampered by the need for more research and better evaluations than we have at present. Nevertheless, whatever its deficiencies, such evidence as we have assembled about the current situation and the changes that have taken place in the last 30 years all point to the conclusion that the deterrent effect of the law has been very limited. We have sought to assess effectiveness by the standard indicators of prevalence, public attitudes, and by trends in the availability, price and purity of controlled drugs.

5. In this report we use the terms 'problem' and 'casual' drug use in their now commonly accepted senses. By 'problem drug use' we mean use whose features include dependence, regular excessive use and serious health and other social consequences; it will typically involve the use of opiates, particularly heroin, cocaine or other stimulants, often as part of a pattern of polydrug use. We use 'casual' in its dictionary definition of 'not regular or permanent or calculable, varying with circumstances'. In distinguishing between problem and casual drug use, we do not imply that the latter is problem free or does not involve a variety of risks. We only consider that objective terminology is required to distinguish between those with serious drug problems and others who use drugs.

6. Taking the standard indicators in turn, the evidence shows that there has been a significant increase in the prevalence of both problem and casual drug use in the United Kingdom over the past 30 years. Although the data is poor, the trend of a substantial and steady increase in problem drug use is clear, producing estimates of up to 200,000 problem drug users of whom the majority are heroin users, often injectors. The largest increase in problem drug use over the last 5 years has been among those under 21. There is a high correlation with social deprivation and urban residence, but more recently there has been a wider social and geographical dispersal together with significant local variations. There has also been a large increase in this period in the numbers of casual drug users, especially of those who use cannabis. One of the features of casual drug use in the last decade has been the very substantial increase in the numbers of young people using a wide combination of drugs, particularly stimulants, in leisure settings.

7. We would emphasise that, although prevalence is often taken as the prime indicator of the drugs problem and the measure of success in controlling it, prevalence studies are largely estimating the number of occasional users, particularly of cannabis, who cause little harm either to themselves or to others; a much smaller number of heroin users inflict much greater harm on themselves and on others. The consequences of drug use are more important than the numbers of users.

8. The evidence that we have collected on public attitudes shows that the public sees the health-related dangers of drugs as much more of a deterrent to use than their illegality, the fear of being caught and punished, availability, or price. There are also significant differences in public attitudes to cannabis compared to other drugs.

9. Despite large increases in the number and quantity of seizures of all drugs, there is no strong evidence that drugs have become harder to obtain or more expensive. Nor has there been any decrease in purity. There has also been a growth in the range of synthetic drugs available.

10. All the evidence suggests to us that the law plays a minor part in deterring demand. It is of prime importance, therefore, that the law should accurately reflect relative harm in terms of current knowledge and experience. Only then can it support a public health agenda of education and prevention.

11. The law is and must remain the principal means through which supply is curtailed. But we see no evidence that severe custodial penalties are deterring traffickers, or that enforcement, however vigorous, is having a significant effect on supply. The Misuse of Drugs Act 1971 was framed at a time before drugs had become the chief commodity of organised crime. We have come to the conclusion that the law and, more particularly, its implementation, need strengthening to make it more difficult both to derive huge profits from drug trafficking and to reinvest those profits in the drug trade and other criminal enterprises for further gain.

12. In considering possible changes to the law in the light of this evidence, we have been very conscious that the Misuse of Drugs Act 1971 reflects a long historical process of international agreements on drug control in which the United Kingdom has been a major participant. As such, one of its objectives is to implement this country's obligations under the three current international conventions. We have found a widespread belief that these obligations rule out the possibility of changes to the law. In fact, although they rule out the legalisation of any prohibited drug other than for medical, scientific or limited industrial purposes, the conventions allow more room for manoeuvre than is generally understood. All our recommendations fall within the requirements of this country's international commitments.

13. It is in the area of drug use, possession and related acts that the scope left by the international conventions for different approaches is widest. We have found that it is not well understood that for such offences there is express provision for imposing measures such as treatment, education, rehabilitation or social reintegration. These measures may be imposed either in addition or, more importantly, as an alternative to conviction or punishment.

14. The study conducted for us of other European countries' drug laws shows that use can be, and is being, made of this room for manoeuvre. It shows that while there is close harmonisation in response to trafficking offences, there is considerable divergence of approach towards drug use and possession and towards acts of minor supply. We have concluded that there are some useful European lessons for the United Kingdom.

15. We have found that the United Kingdom has a more severe regime of control over possession offences than most of the other European countries which we have studied. Although direct comparisons are difficult because of incompatibilities as well as deficiencies in both the quality and quantity of the data, we have seen no evidence which would warrant the conclusion that the

United Kingdom has benefited from the more punitive provisions of its law on possession.

16. The United Kingdom is unique in Europe in having a three-tier classification system by which the law ranks drugs according to their relative harmfulness and attaches penalties to the class in which a drug is placed. We have concluded that this classification is useful and should be retained. It enables the relative risks of different drugs to be more accurately distinguished in terms of current scientific and sociological knowledge. It also allows sanctions to be applied which are proportionate to the harms of the drugs and the activities related to them.

17. However, the criteria by which drugs are classified have never been clearly described. We believe that they should be. We have undertaken this exercise as best we could within the time, resources, and expertise available to us, and we hope it will be built upon. It has led us to conclude that some drugs should be reclassified so that the classes provide a more accurate hierarchy of harm and commensurate sanctions. We recommend the following transfers between classes:

- (i) cannabis from B to C (a recommendation first made in 1979 by the Advisory Council on the Misuse of Drugs);
- (ii) cannabidiol and its derivatives from A to C;
- (iii) ecstasy from A to B (a recommendation made to us by the Association of Chief Police Officers among others);
- (iv) LSD from A to B;
- (v) buprenorphine from C to B.

18. We recognise that some of these changes may be thought to risk conveying potentially dangerous messages to drug users and prospective users. We believe, on the contrary, that the changes will enable the law to reflect more accurately the risks attached to different drugs. This will enhance the law's credibility and the support it can offer to education and prevention. We have concluded that the most dangerous message of all is the message that all drugs are equally dangerous. When young people know from their own experience that part of the message is either exaggerated or untrue, there is a serious risk that they will discount all of the rest. Recent evidence indicates that there is a pressing need to refocus education and attention on the pre-eminent harm of heroin and cocaine.

19. We next considered the offences stipulated and defined by the law. We see the need to strengthen the law's armoury against supply by creating a new offence of dealing which would allow the courts to sentence for a course of conduct rather than only for an isolated act of supply. We also found a need for change in the offences relating to premises, paraphernalia, the cultivation of cannabis and the regulations relating to the therapeutic use of cannabis. In each case our aim has been to enhance the law's capacity to reduce harm where those who use drugs are concerned, and to concentrate in line with the national strategy on those who produce, process, distribute and sell them.

20. With regard to all trafficking offences, we believe that much would be gained by statutory sentencing guidelines and we hope that the new Sentencing Advisory Panel will so advise the Court of Appeal. Such guidelines should incorporate the aggravating factors to which we believe the

courts should have consistent regard in their sentencing. Key aggravating factors which should be included are: the involvement of an organised criminal group; the use of violence or firearms; the use of children or young persons in trafficking activities; supply to minors; the commission of the offence in the vicinity of schools, psychiatric facilities or prisons; and public nuisance elements in the offence.

21. We have concluded that the most serious deficiency in the law against drug trafficking is a pragmatic rather than a legislative one. It lies in the current ineffectiveness of the procedures by which the assets of drug traffickers are confiscated under the Drug Trafficking Offences Act 1994. The facts speak for themselves: in 1997, the total amount ordered to be confiscated was £5.6 million, a fifth of the amount confiscated in 1994, while the average order of £3,800 was the lowest ever. We see a need to transfer responsibility for enforcing confiscation orders from the magistrates to the crown court; also for the establishment of a National Confiscation Agency, as recently proposed by the Home Office, tasked with ensuring that the confiscation process achieves full efficiency. We stress, however, that if this is to be achieved, considerable investment is needed in recruiting and training people with the requisite skills. These will be needed in most branches of the criminal justice system, in particular the police, prosecution and courts (including the judges). We believe that a radical shift to civil confiscation should not be considered before the ability of the current criminal system to function more effectively has been fully developed with the aid of these proposals.

22. Possession offences dominate the operation of the law against drugs. They constitute around 90% of the total of MDA offences and they take up a very large amount of the time and resources of the criminal justice system. After careful consideration of the evidence presented to us on the operation of the law, here and elsewhere, we have concluded that imprisonment is neither a proportionate response to the vast majority of possession offences nor an effective response where the offence is related to problem drug use. A prison sentence should be abolished as a penalty for most possession offences.

23. There is one, and only one, respect in which we believe that the power to impose a custodial penalty should be retained. We have in mind those cases of possession of a Class A drug where the harm represented by the offence is such that the courts must have available to them powers currently dependent on a liability to imprisonment. These include the powers to impose certain community sentences with a full range of sanctions for breach. We have accordingly recommended that there should be no custodial penalty for the possession of Class B and C drugs, but that a shorter maximum prison sentence than at present should continue to be available for the possession of a Class A drug.

24. Our recommendation is already accepted, at least tacitly, by the courts. Although the maximum prison sentences for possession under United Kingdom law, from 2 to 7 years, are among the severest in Europe, they are not, in fact, imposed. Current sentences for possession are very much shorter at an average of less than 4 months and the evidence suggests that it is unlikely that many of the 4,852 people given custodial sentences for possession offences in 1997 were in prison for the offence of possession

alone. Under our recommendations, we would expect prison sentences for possession to be rare, and imposed only where community and treatment sentences had failed or been rejected.

25. The law's viability where possession offences are involved has depended on the massive increase in the use of cautioning by the police. It is now used in over half of all such cases. We think the police have been right in their approach, but we consider that discretion needs a proper framework within which to operate. Like the Royal Commission on Criminal Justice in England and Wales, we think that cautioning should become a statutory sanction, with guidelines set down in regulations. This would bring with it the important option for conditions attached to a caution to be enforced, which is not possible at present. Recently the Government has published proposals to bring cautions, along with reprimands and warnings, within the ambit of the Rehabilitation of Offenders Act 1974 and to make them immediately spent for the purposes of the duty of disclosure by the offender in most cases. We welcome this proposal. We would go further and we recommend that a caution, like a fiscal fine in Scotland, should not bring with it a criminal record. Regulations should spell out where and how a caution is to be recorded and disclosed to answer the needs of the police and of the courts. Either way, it has clearly become necessary for cautioning itself to become a statutory procedure.

26. We fully support the national strategy's aim to protect communities from drug-related crime: the violence of turf wars; the degradation of neighbourhoods from drug markets; and the crimes linked to problem drug use. We recognize that the courts need to have available a wide range of powers to tackle the link between drugs and crime. In the case of drug users, our view that prison sentences should be abolished for most possession offences will not interfere with those powers. Those offenders for whom such powers are appropriate will almost invariably be charged with acquisitive offences whether or not they are also before the courts for possession offences. It is important to remember that even though their cost to society is great due to the scale of their offending, it is a minority of problem drug users who commit crime and they are not usually involved in serious or violent crime but rather in small scale acquisitive crime, particularly shoplifting.

27. We are aware that a practical consequence of our recommendations would be to deprive the police of their power of arrest for a possession offence which comes to light following a stop and search. Currently Class A or B possession offences are arrestable offences by virtue of the fact that they attract a prison sentence of 5 years or more. We agree with the police that the objectives of the law as we have defined them would be undermined if this power was abolished. We wish to see the power of arrest continue to apply, as at present, to the possession of Class A and B but not Class C drugs.

28. The major change which would follow, therefore, from our recommendation that cannabis should be reclassified as a Class C drug is that the power of arrest would no longer apply to offences of possession of cannabis, except in certain prescribed circumstances such as when an offender's identity is in doubt. Cannabis possession offences are by far the largest category of all drugs offences – 78,000 out of a total of 113,000 in

1997. The police have argued to us that this could reduce their operational effectiveness against the drug problem across a broader front. Their fear is that they would be hampered in their ability to disrupt local markets and to obtain intelligence about suppliers. They also point out that they would be deprived of the consequential PACE power to search the premises of those arrested, which may bring to light Class A drugs and weapons. The evidence we have seen does not, however, persuade us that more would be lost than gained by the removal of the police power of arrest for cannabis possession. We think that the power to stop and search for drugs which we accept must be retained, together with arrest powers for Class A and B drugs, will be enough to ensure that intelligence-led and street-level policing is not undermined.

29. It will be apparent that our recommendations about cannabis are those that would bring about the greatest change. That is our intention. While we have encountered no sense that the legislation on drugs overall needs radical change, we have encountered much unease and scepticism about the law and its operation in relation to cannabis. Cannabis is not a harmless drug: there are physical and psychological risks to the individual from regular, long-term cannabis use, and there are dangers to others from the impairment to motor and cognitive functioning from intoxication. But by any of the main criteria of harm – mortality, morbidity, toxicity, addictiveness, and relationship with crime – it is less harmful to the individual and society than any of the other major illicit drugs, or than alcohol and tobacco.

30. Our conclusion is that the present law on cannabis produces more harm than it prevents. It is very expensive of the time and resources of the criminal justice system and especially of the police. It inevitably bears more heavily on young people in the streets of inner cities, who are also more likely to be from minority ethnic communities, and as such is inimical to police-community relations. It criminalises large numbers of otherwise law-abiding, mainly young, people to the detriment of their futures. It has become a proxy for the control of public order; and it inhibits accurate education about the relative risks of different drugs including the risks of cannabis itself. Weighing these costs against the harms of cannabis, we are convinced that a better balance is needed and would be achieved if our recommendations were implemented.

31. Under our proposals, the normal sanctions for offences of cannabis possession and cultivation for personal use would be out-of-court disposals, including informal warnings, statutory cautions or a fixed fine on the model of the Scottish fiscal fine. Prosecution would be the exception, and only then would a conviction result in a criminal record. We recognise that if the sanctions for cannabis possession and cultivation, both in the law and its enforcement, were to be substantially reduced there would be a risk that more people would use it. But the international evidence does not suggest that this is inevitable or even likely. Given the current widespread availability and use of cannabis, we judge that more would be gained in terms of credibility, respect for the law and the police, and accurate education messages than would be lost in potential damage to public and individual health by the control regime which we recommend. We also believe that our proposed regime would promote the targeting of enforcement on those drugs and activities which cause the greatest harm, in line with the objectives of the national

strategy. It would also accord with public perceptions of where policing priorities should lie.

32. In our consideration of cannabis, we have looked carefully at the Dutch experience and taken evidence from both proponents and opponents of their present policy. The Dutch are widely and wrongly believed to have legalised cannabis. While cannabis remains explicitly illegal, Dutch policy has, in effect, created a regulated market for the small-scale supply of cannabis to adults through coffee shops. This approach has not been without its problems or contradictions. Nevertheless, we have been impressed by its results. These indicate: a similar level of cannabis use to other countries; a lower prevalence than in the United Kingdom, especially among young people aged 16 – 19; a stable population of problem drug users, with a rising average age, and a high proportion of them in touch with treatment services; virtually no volatile substance misuse, and a ratio of drug-related deaths which is the lowest in Europe. We think that there are two important lessons for the United Kingdom. The first is the potential benefit of treating demand problems as primarily health problems, with the result that the social exclusion of young people through drug offending is kept to a minimum. The second is the potential benefit of separating the market for cannabis from that for heroin in particular.

33. We believe that there is much that is instructive in the approach of other European countries besides Holland, and that we should be constantly alive to the lessons of their experience. We have been interested, for example, in the administrative and civil sanctions of Italy and Spain, the distinction between private and public offences in several countries, the different definitions and approaches to acts of group supply, and policies of non-prosecution which, in some German Länder for instance, currently operate in 80 - 90% of offences of personal possession of cannabis.

34. Nor should we forget the lessons of our own experience. There is one respect in which the United Kingdom has scored a significant success in the interests of public and individual health. The strategy to curb the spread of HIV among injecting drug users involved abandoning moral absolutes in favour of harm reduction together with a huge effort to expand services and to attract problem drug users to them. The overall result has been a steady decline in HIV prevalence among drug injectors throughout the 1990s including significant decreases in areas of high prevalence in Scotland. Today prevalence in the United Kingdom is lower than in any other Western European country of similar size. That strategy needs to be maintained and reinforced, and the law and its implementation used to support it, as in the development of needle exchanges.

35. Our overall conclusion is that demand will only be significantly reduced by education and treatment, not by the deterrent effect of the law. What is needed is a less punitive approach to possession offences at the same time as a more effectively punitive approach to supply. We see no inconsistency in this. If the harm caused by drugs is to be significantly reduced, long custodial sentences for supply are clearly not a sufficient deterrent. It must be made much more difficult for traffickers to profit from supplying drugs and for those who have profited to escape confiscation and forfeiture. But harm will not be reduced by disproportionate penalties and criminal records for many, mainly

young, people whose largely occasional drug use could more effectively be tackled by earlier and more credible education about the nature and degree of risk, especially long-term risk. Nor will harm be reduced by imprisoning those whose problematic drug use could more effectively be helped by treatment and rehabilitation in a setting where all the other problems almost always associated with such drug use can be tackled too. It is clear to us that tackling problem drug use must always also involve tackling social deprivation.

36. We have also considered the issue of the therapeutic use of cannabis. We are in no doubt that the therapeutic benefits of cannabis use by people with certain serious illnesses outweigh any potential harm to themselves or others. We have nothing to add to the detail of the Report of the House of Lords Select Committee on Science and Technology. We are particularly surprised that one of the grounds for the Government's summary rejection of its recommendations should be anxiety about the capacity of GPs to withstand pressure for the prescription of cannabis when they have always been able to prescribe heroin for pain without any apparent problem. We do not consider that the relevant International Convention prevents the transfer of cannabis and cannabis resin from Schedule 1 to 2 of the Regulations, thereby allowing its prescription. We recognise that until the current research programme produces a cannabis plant with a standard dose of THC, the main psychoactive ingredient, rules will need to be devised to govern what is to be provided under prescription, and by whom. We do not see that as an insurmountable problem. In the interim, we have recommended a specific defence in the law in the event that a person is charged with possessing, cultivating or supplying cannabis for the relief of certain medical conditions.

37. Over the last two decades there has been growing evidence from research showing that treatment is effective in reducing drug use and the criminal activity related to it and that it is cost effective. The Government's 10-Year Strategy places a strong emphasis on the role of the criminal justice system in directing problem drug users into treatment. We accept the rationale for using the criminal justice system in general, and the law in particular, as a route to treatment. At the same time, however, all our evidence points to a serious shortage of treatment services in the United Kingdom. There needs to be a substantial reallocation of resources from enforcement, which currently takes up 62% of the total drugs budget, to treatment services, which receive 13%. There also needs to be much greater investment in evaluating treatment approaches.

38. The national strategy recognises the shortfall between treatment capacity and demand and has plans to tackle it. But in the short to medium term we believe that the shortage will continue and the ability of the criminal justice system to act as a conduit to treatment will therefore be limited, haphazard, and potentially unjust. It is important that treatment via the criminal justice system should be carefully targeted, should not distort the use of services and the allocation of resources and should not be used to replace other routes to help. The fact that research on arrest referral schemes shows that a large proportion of those arrested were not in touch with services is an argument for more services not for more arrests.

39. It is not widely understood that the Misuse of Drugs Act 1971 is also the instrument whereby the provision and use of controlled drugs for legitimate

medical purposes is regulated. The evidence presented to us suggests that more effective monitoring and control of excesses in the system is required. There has been an increase in deaths from overdose, particularly of methadone, together with continuing leakage of prescribed controlled drugs onto the illicit market. There is evidence that private prescribing tends to be for larger quantities, particularly of injectable drugs, at higher doses, and for longer periods. We think there is a case for the licensing of private prescribing of Class A drugs to problem drug users based on training, experience and links to specialist services. The prescribing regulations need to be amended to enable all controlled drugs to be prescribed in instalments in England and Wales as is the case in Scotland. At the same time, there are several small but significant changes which should be made to the regulations to aid pharmacists who face many difficulties in their important role in relation to problem drug users.

40. Drug laws in all countries reflect the tension between cultural history and changing attitudes and practice. They also reflect the tension between the rights and freedoms of the individual and a public desire to use state action to limit harms to individuals and communities. Our aim in reforming the present law has been twofold: to reduce the harm that drugs can do to individuals and to reduce the harm to which we believe the present law is leading. We believe that our changes would advance both these aims. They would produce a law which is less intrusive, less detrimental to the individual and more enforceable. They would also produce a law that is more effective in targeting the most dangerous drugs and related activities.

41. Any law must win the consent of the majority in a democracy. A change in the law can move only as far as that consent is maintained. Attitudes to drugs, across all age groups, have shifted and will continue to shift. We believe we are moving with the grain of that consent, especially with regard to cannabis. Our proposed changes are legally sound, and reflect priorities already observed by those most closely involved in the implementation of our drug legislation. They also bring the law into line with public opinion and its most loyal ally, common sense.