

The domestic cultivation of cannabis

Significant changes are soon to be made to the laws on cannabis, but debate – and policy – have ignored issues relating to its cultivation. This study by South Bank University's Criminal Policy Research Unit and the National Addiction Centre at King's College, London, examined the cultivation of cannabis in England and Wales. The study found that:

-  Historically, most cannabis has been smuggled into the country, but domestic cultivation has been on the increase and as much as half of the cannabis consumed in England and Wales may now be grown here.
-  Some cultivation is on a commercial basis, but much is on a small scale, for personal use or for use by friends.
-  Although the cultivation of cannabis is illegal, there is a thriving legal business in cannabis seed and specialist growing equipment, much of which can be bought legally on the Internet.
-  The police and the courts vary widely in how they deal with offences of cannabis cultivation. In cases that are broadly similar, offenders are sometimes charged with production (a trafficking offence), and sometimes with the lesser charge of cultivation.
-  United Nations conventions on illicit drugs require signatory countries to prohibit cultivation of cannabis under criminal law, but permit cultivation for personal use to be dealt with by means other than punishment – for example treatment, counselling, education, and simply through warnings.
-  Several developed countries have decriminalised, or plan to decriminalise, cannabis possession for personal use, and some of these treat small-scale cultivation on a par with possession.

Cannabis use and cultivation in England and Wales

Cannabis use is widespread in England and Wales. At least three million people used it in 2001, including around a quarter of young adults (aged 16 to 29). Levels of domestic cultivation have increased steeply over the past decade. Cannabis cultivated in England and Wales may now account for half of consumption. Much of this domestically cultivated cannabis is home-grown for personal use.

Cannabis seeds can be purchased from UK-based seed companies. Growing equipment is legally available from gardening outlets and 'hydroponic growshops'. Cultivators contacted during the research used a variety of growing techniques, which tended to reflect differences in experience, knowledge and technical expertise, and got highly variable yields from their crops. Many grew cannabis to ensure quality of product, save money, or as a way to avoid contact with drug sellers. They fell into five groups:

- sole-use growers cultivating cannabis as a money-saving hobby, for personal use and use with friends;
- medical growers motivated mainly by the perceived therapeutic values of cannabis for medical conditions;
- social growers cultivating cannabis to ensure a good quality supply for themselves and friends;
- social/commercial growers cultivating for themselves and friends, at least in part to provide an income;
- commercial growers cultivating cannabis to make money, selling to any potential customer.

Enforcement

Police forces differ in how they deal with cannabis cultivators. Some offenders are cautioned; some are charged under Section 4 (production) of the Misuse of Drugs Act 1971 (MDA), in line with guidance from the Association of Chief Police Officers (ACPO). Production offences are defined as trafficking, and offenders are liable to asset confiscation, and, on the third conviction, to a mandatory seven-year prison sentence. Some police forces charge offenders with the lesser offence of cannabis cultivation, under Section 6 of the Misuse of Drugs Act.

Home Office statistics do not distinguish between production and cultivation offences, recording all as production. There were 1,960 cannabis production offences in the UK in 2000. Of these offenders, just under a quarter (458) received a police caution. The remainder (1,502) were dealt with in court; just under a fifth (243) received a custodial sentence.

United Nations conventions

The UN 1961 Single Convention on Narcotics and the UN 1988 Vienna Convention Against Illicit Traffic in

Narcotic Drugs impose various requirements on signatory countries in relation to home cultivation. They require that both possession and cultivation of cannabis are criminal offences, provided that this is consistent with the country's constitutional arrangements. Although possession and cultivation must be criminal offences, the conventions do not actually require that offenders be dealt with under criminal law. The 1988 Convention permits the use of administrative penalties for minor offences of cultivation for personal use. It also allows cultivation for personal use to be dealt with by means other than conviction or punishment, including interventions such as 'treatment, counselling, education'.

Approaches in other countries

Several – mainly European – developed countries have introduced various approaches to decriminalisation of cannabis possession and cultivation:

- some have decriminalised, or plan to decriminalise, cultivation for personal use;
- some treat cultivation for personal use on a par with possession;
- some impose administrative penalties (by imposing fixed-penalty fines or giving offenders tickets), while others offer warnings, counselling or treatment;
- the treatment of social and social/commercial growers varies widely;
- Switzerland is actively considering a form of governmental regulation of cultivation that verges on legalisation.

Dealing with cultivation

The Home Secretary has announced a proposal to reclassify cannabis as a Class C drug, treating its possession as a less serious offence than hitherto. Originally, it was thought that this would automatically make cannabis possession a non-arrestable offence. However, at the time of writing, the Criminal Justice Bill passing through Parliament included provision to make possession of any Class C drugs an arrestable offence. It is not envisaged that these arrest powers will be used routinely. Rather, the Home Office and ACPO will issue guidance to ensure that the police give on-the-spot warnings in all but the most serious of cases. On the other hand, tougher action against cannabis dealers has been promised. Nothing has been said about the non-commercial cultivation of cannabis, for personal use and use by friends. It is unclear whether this will be treated as dealing or as possession. Different policy objectives imply different approaches.

Some countries, notably the Netherlands and Switzerland, have designed drug policies to maximise the separation of cannabis markets from those for heroin and crack. While the 'gateway' or 'stepping

stone' theory that cannabis use leads on to riskier forms of drug-taking is largely unproven, it seems likely that cannabis sellers may well pressure their customers to buy other sorts of drugs where cannabis markets and Class A drug markets are closely intertwined. This possibility has pressing implications for any policy decision about how to handle cultivation for personal use.

If small-scale cultivation for personal use were treated in the same way as possession, there would seem to be two important consequences. More users would grow their own cannabis, in preference to buying from criminal entrepreneurs, and the low cost of home growing might destabilise the criminalised cannabis market. With a reduced return on investment in cannabis, criminal entrepreneurs might abandon this market.

But how might such a system operate in practice? There are four sets of circumstances to consider.

Cultivation for personal use

One issue is the seeming anomaly of distinguishing between cultivation of a cannabis plant for personal use and the possession of cannabis from the same plant once it has been harvested. Simply to achieve coherence and consistency in the law there are persuasive grounds for treating cultivation for personal use on a par with possession. Home cultivation also insulates users from criminal suppliers, which gives a further reason for treating cultivation for personal use as a form of possession.

In practice, this would mean that when cannabis is reclassified as a Class C drug, the police should no longer arrest the majority of those found cultivating cannabis for personal use, but would instead warn them on the spot and confiscate the plants. If legislation is enacted to retain police powers of arrest for possession offences, all that would be required would be to issue guidance to the police about cultivation, in parallel with that relating to possession. Parliament may yet decide to make possession of cannabis completely non-arrestable. If this were so, there would be a strong case for creating a new offence of cultivation for personal use. This offence would mirror that of possession by having a maximum sentence of two years, and thus be non-arrestable.

Either way, law or practice would require some criterion for defining cultivation for personal use. It would probably make more sense to specify an objective threshold, in terms of weight or number of plants, than to leave the decision to police and prosecutorial discretion.

If cultivation for personal use were treated akin to possession, there would be resulting implications for handling 'premises' offences under Section 8 of the MDA. If on-the-spot warnings for small-scale home growing were to become the norm, it would be inconsistent to treat anyone who had allowed their

premises to be used for the offence to be punished with more severity.

Non-commercial social cultivation

Those who cultivate cannabis for their own and their friends' use on a non-commercial basis are a significant and important group for drug policy. A more careful distinction in law between social and commercial cultivation could serve to drive a wedge between a significant proportion of users and the criminally sophisticated suppliers who might otherwise sell them cannabis and other drugs.

One policy option is to create offences of social supply and of social cultivation of cannabis – defined in terms of the non-commercial distribution of cannabis to non-strangers. Another is to leave the legislation unchanged, but to issue criminal justice agencies and courts with guidance on appropriate charges and sentences for social or not-for-profit cultivation offences. As with cultivation for personal use, it would seem to make sense to set a threshold in terms of weight or number of plants for distinguishing between commercial and non-commercial cultivation. Sanctions for the latter might range from a small fine for an offence falling just above the threshold for personal use, to a much larger fine for an offence falling just below the threshold for commercial cultivation.

Commercial cultivation

The Government's proposals in relation to cannabis possession do not carry implications for commercial cultivation in the direct way that they do for personal and social cultivation. Indeed, with clause 248 of the Criminal Justice Bill it is proposed to raise the maximum penalty for Class C trafficking offences to 14 years – the same as for Class B. The intention is clearly that a commercial cultivator charged with production will be treated no differently after reclassification.

While a tough stance towards cannabis dealing could be seen as the political price for the policy of on-the-spot warnings for possession, it may also have unwanted consequences. Cracking down on dealers, of whom an increasing number will be commercial or semi-commercial cultivators, will drive out the risk-averse, leaving the distribution system to the more criminal and risk-tolerant operators. This may bring about a greater convergence of Class A and cannabis markets. By contrast, a pragmatic policy would be to treat cannabis dealers and commercial growers less like suppliers of Class A drugs, not more like them, and would leave the maximum sentences for trafficking in Class C drugs unchanged.

Medical cultivation

Cannabis-based drugs are currently undergoing clinical trials. In the intervening period, and probably thereafter, significant numbers of people will continue to cultivate cannabis to relieve their own or others'

medical symptoms. These cultivators run the same risks of arrest and prosecution as non-medical cultivators. There is much to be said for the current Canadian system for medical cultivation and use of cannabis. Individuals can obtain 'authorisation to possess' cannabis for medical purposes, and can possess a maximum quantity equal to a 30-day treatment supply specified by a medical practitioner. They or their representative can apply for a licence to grow a specified amount of cannabis.

Beyond reclassification: reassessing the UN conventions

The aim of this study was to examine the implications of the planned change to the laws on cannabis for offences of cultivation. Were the Government to accept the case for treating cultivation for personal use in a similar way to possession, this would readily be accommodated within the limits imposed by the UN drug conventions. So too would a system of administrative fines (or ticketing) for the non-commercial cultivation of cannabis for use by others.

Such changes would put Britain back into line with practice in many other developed countries, where a more pragmatic approach to the control of cannabis use has been adopted. Some countries are now moving beyond the UN conventions – Portugal in removing possession offences from criminal law, for example, and Switzerland in proposing virtual legalisation and regulation. This study has not examined these more radical moves as policy options for Britain, simply because it is unlikely that the Government will be prepared to challenge the UN conventions.

If any political will to move further away from prohibition develops, findings from this study suggest that there are three ways of handling the constraints of the UN conventions. One is to 'denounce' or withdraw from the conventions. This is a legal possibility, but not practical politics for Britain. This country has a long track record of encouraging compliance with a wide range of UN conventions, and a volte-face on drug issues would be politically unacceptable.

A second option would be to exploit the 'opt-out clauses', which allow a country to deviate from the requirements of the conventions if these conflict with its constitutional principles. While this strategy may be practical politics for some countries, critics would ask why it has taken almost half a century to discover that the conventions conflict with their constitutions. The opt-out argument is also particularly difficult to use with countries like Britain, where constitutional principles are not formalised or codified to any significant degree.

The final option would be to encourage a review of the UN conventions. They were originally

developed at a time when illicit drug use remained at low levels, and when the full human and social costs of drug misuse and the prohibition of drug misuse had yet to emerge. As increasing numbers of countries develop approaches which are at odds with the spirit of the UN conventions, a review would seem timely and necessary.

About the project

The researchers recruited a small sample of 37 cannabis cultivators primarily using the Internet. Growers filled in and returned semi-structured self-completion questionnaires. To collect information on current enforcement practice the researchers contacted each of the 43 police forces in England and Wales and asked them to complete a short questionnaire. They received 16 completed questionnaires. Given the size of the samples and the ways in which they were assembled, the researchers regard the findings as indicative rather than definitive. Finally, they collected information about law, policy and practice in other countries through library and Internet searches, as well as contacting local experts.

How to get further information

Further details of the Criminal Policy Research Unit are available at www.sbu.ac.uk/cpru.

The full report, **A growing market: The domestic cultivation of cannabis** by Mike Hough, Hamish Warburton, Bradley Few, Tiggey May, Lan-Ho Man, John Witton and Paul J Turnbull, is published by the Joseph Rowntree Foundation (ISBN 1 85935 084 4, price £13.95) as part of the Drugs and Alcohol series.