



DRUGS POLICY

a radical look ahead?



This paper has been prepared for the North Wales Police Authority to consider as a response to the HM Government Consultation Paper, 'Drugs: our community, your say', and the forthcoming Welsh Assembly Government Consultation on the All Wales Substance Misuse Strategy.

Drugs Policy – a radical look ahead?

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1.1 UK drug policy for the last several decades has been based upon prohibition, with a list of banned substances placed into three classes – the ABC system – and draconian criminal penalties for the possession or supply of controlled drugs.

1.2 This system has not worked well. Illegal drugs are now in plentiful supply, and have become consistently cheaper in real terms over the years. The number of users has increased dramatically. Drug related crime has soared

“Is there not an increasing case to be made for decriminalising at least some drugs and for treating drug users medically rather than through the criminal justice system?”

**Lord Richard, Labour,
Chair of the Richard Commission**
16.01.07

equally dramatically as a direct consequence of the illegality of some drugs, and the huge profits from illegal trading have supported a massive rise in organised criminality.

1.3 Historically, drug policy has been surrounded by harsh and unforgiving moralistic political rhetoric, but its actual implementation has recently been much more thoughtful, with significant, relatively successful and welcome developments in harm reduction and health improvement.

1.4 In 1999 the independent Police Foundation published the results of a major inquiry. Their main conclusion was that *“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.”*¹ Their view has been endorsed by others, interestingly including the Prime Minister’s own Strategy Unit.²⁻⁵

1.5 In 2002 the House of Commons Home Affairs Select Committee concluded that *“If there is any single lesson from the experience of the last 30 years, it is that policies based wholly or mainly on enforcement are destined to fail.”*⁶

1.6 The House of Commons Select Committee on Science and Technology, considering the ABC system in 2006, found *“... a regrettable lack of consistency in the rationale used to make classification decisions”* and criticised the government for *“... failing to meet its commitments to evidence based policy making in this area.”* The Committee urged the then Home Secretary *“... to honour his predecessor’s commitment to review the current system [of drug classification], and to do so without further delay”*.⁷

1.7 The trend continues; in March of this year the Royal Society for the encouragement of Arts, Manufactures and Commerce Commission on Illegal Drugs, Communities and Public Policy (RSA Commission) produced a comprehensive report *“Drugs – facing facts”*⁸ which concluded that *“The law as it stands is not fit for purpose”*.⁹ The report argues strongly and convincingly for the replacement of the current Misuse of Drugs Act with a Misuse of Substances Act, based upon a new system of assessing substances of abuse in relation to the relative harm they cause.¹⁰

“Prohibition doesn’t work, as the US found out many years ago.”

**John Reid MP Labour,
later Home Secretary**

Source: Jeremy Vine programme, BBC
Radio 2, 11.11.04

1.8 The current ABC classification used in the UK is clearly now indefensible, described by the RSA Commission as *“crude, ineffective, riddled*

with anomalies and open to political manipulation".¹¹ Most importantly the current ABC system illogically excludes both alcohol and tobacco.

1.9 A new classification scheme, a 'hierarchy of harm' encompassing all substances of abuse and based upon identified social harms should, in my opinion and theirs, be at the centre of a new substance misuse regime – one based upon evidence, not moralistic dogma.

“I spent much of my police career fighting the drugs war and there was no one keener than me to fight it. But latterly I have become more and more convinced that it was never a war we could win.

We can never as a nation be drug-free. No nation can, so we must accept that. So the message has to be more sophisticated than 'just say no' because that simple message doesn't work.

For young people who have already said 'yes', who live in families and communities where everybody says 'yes', we have to recognise that the battle is long lost.

Tom Wood, Scotland's Drug Tsar and a former Deputy Chief Constable

Source: The Scotsman, 18.06.06

1.10 An opportunity to improve this situation now presents itself. Both the UK¹² and Welsh Drugs Strategies are under formal review. The new Home Secretary has said that she wants a radical review, with an evidence based strategy.¹³

1.11 However, strategy has to be based upon aims and beliefs. I prefer Mill's view of liberty,¹⁴ rather than the quasi-religious and paternalistic regime based upon the countering of evil hitherto prevalent. I base my stance firmly upon two core beliefs which I share with the RSA's Commissioners:

- ◆ firstly, that drugs and psychotropic substances are simply not going to go away as if by magic, and
- ◆ secondly, that if drugs cannot be eradicated (and the evidence that they cannot is now overwhelming), then the principal object of public policy should be to reduce as far as possible the great harms that they can and do cause.¹⁵

1.12 If policy on drugs is in future to be pragmatic not moralistic, driven by ethics not dogma, then the current prohibitionist stance will have to be swept away as both unworkable and immoral, to be replaced with an evidence based unified system (specifically including tobacco and alcohol) aimed at minimisation of harms to society. Such a strategy leads inevitably to the legalisation and regulation of all drugs.

2.1 That the Authority submits a response to the current Home Office consultation on drugs strategy.

2.2 That the Authority submits a response to the forthcoming Welsh Assembly Government consultation on the all Wales substance misuse strategy.

2.3 That the Authority urges the repeal of the Misuse of Drugs Act 1971 and its replacement with a Misuse of Substances Act, based upon a new 'hierarchy of harm' that includes alcohol and nicotine.

2.4 That the Authority seeks affiliation to Transform Drug Policy Foundation* which campaigns for the repeal for prohibition and its replacement with a legal system of regulation and control.

* Transform Drug Policy Foundation exists to reduce harm and promote sustainable health and wellbeing by bringing about a just, effective and humane system to regulate and control drugs at local, national and international levels.

3.1 In 1998 the UK government produced its first 10 year drug strategy “Tackling Drugs to Build a Better Britain - The Government’s Ten-Year Strategy for Tackling Drugs”,¹⁶ amended to the “Updated Drug Strategy”¹⁷ in 2002. It is now due for review, and the Home Office is currently consulting on the strategy for the next few years. The consultation period expires on 19 October 2007.¹⁸ The latest Home Secretary (who took up office on 28.06.07), in her personal Foreword to the consultation document, states that she wants “... a radical look ahead.”, with “... a balanced strategy focused on outcomes, based on evidence and delivered through partnership.”¹⁹ This is welcome news.

“The real social danger comes from their [drugs] prohibition which gives them to criminals and forces addicts to turn to crime to pay for them.”

Polly Toynbee, The Guardian

Source: *As long as drugs are illegal the problem won't go away*, The Guardian, 04.12.02

3.2 Since 1998 devolution has occurred in Wales; many aspects of public life, but not the criminal justice system, are now within the purview of the National Assembly for Wales (NAW). In 2000 the NAW produced its eight year strategy “Tackling Substance Misuse in Wales”;²⁰ the intention clearly being to match review cycles with the rest of the UK. Consultation on drug strategy review in Wales is due to start before the end of 2007.

3.3 The UK strategy, as amended in 2002, has four major elements which it seeks to balance:

- ◆ preventing today’s young people from becoming tomorrow’s problematic drug users

- ◆ reducing the supply of illegal drugs
- ◆ reducing drug-related crime and its impact on communities
- ◆ reducing drug use and drug-related offending through treatment and support, and reducing drug-related death through harm minimisation.

3.4 There is a welcome determination to reduce the harm and misery caused by drug misuse, and much to celebrate in the detail – but the underlying aim, “...to prevent drugs entering the country...”,²¹ is no more than wishful thinking which fatally undermines the entire edifice built upon it.

3.5 The Welsh strategy is similar but broader, deliberately including alcohol (but not tobacco). The NAW is now responsible for all aspects of the strategy relating to health, education and social care while responsibility for policing and the criminal justice system is retained by the Home Office. This boundary is already blurred and awkward; it is likely to become more so as the newly empowered NAW spreads its wings.

“Never have so many dangerous drugs been seized by police and Customs. But never have so many drugs been taken nor has so much crime been caused by them. However much is done to stop the threat, the drugs industry – and it is an industry – is several jumps ahead. It is obvious that something new needs to be tried.”

The Mirror

Source: The Daily Mirror, editorial, 25.06.03

3.6 Following submission of a paper by me as Chief Constable,²² North Wales Police Authority decided in 2001²³ to call for a Royal Commission to look into the future of drugs policy in the UK, and campaigned on the point for a while. A significant stir was created but, unsurprisingly perhaps, no Royal Commission.

3.7 The current formal reviews of the UK and Welsh Government Drug Strategies present a new opportunity for the Police Authority, some years on, to reassess the situation and to decide whether and how it wishes to influence future developments.

“ If people are addicted to heroin, give them heroin. I’m not suggesting you sell it at newsagents, but if you were to offer it to addicts in a medically controlled setting, there would be no criminal market. ”

**Lord McCluskey,
former judge of
the Scottish High Court**

Source: *Heroin must be legalised, says former Judge* The Scotsman 13.09.05

4.1 Current drugs strategy is effectively global, arising from three UN Conventions dating from the 1960s to the 1980s.²⁴⁻²⁶ It can still best be described as a global, American-led, 'war on drugs', based upon proscription and enforcement. At a press conference given at the White House on 17 June 1971, US President Nixon declared drug abuse as "... *public enemy number one in the United States ...*" and stated that "... *in order to fight and defeat this enemy, it is necessary to wage a new, all out offensive.*"²⁷

“ ... we can prohibit, regulate or leave it to the market. Prohibition does not work – it drives the activity underground ... ”

Tessa Jowell MP, Labour, Minister for the Olympics and London
Observer 21.11.04

4.2 The UN Conventions are borne from post-war thinking (the 1961 Convention includes sections written in the late 1940s²⁸). A continuous thread of Prohibitionist thought can be traced back to the early years of the twentieth century in the USA where it is found to be rooted in social and religious attitudes that are abhorrent in modern Britain.

4.3 Drugs were and are seen as a peculiarly moral issue; they and their users have been demonised to a quite extraordinary degree. The conviction is widespread that seeking to alter consciousness through drug use is morally wrong – evil, in a religious sense despite that fact that people have been using substances in this way for thousands of years, and despite the fact that using both alcohol and tobacco in this way is seen as perfectly normal in modern Europe.

4.4 The Preamble to the 1961 UN Convention describes drug addiction as "... *a serious evil for*

the individual ... fraught with social and economic danger to mankind ...".²⁹

4.5 This level of demonisation has continued to the present day, with sections of the media repeatedly employing the image of young girls at the mercy of drug crazed predators to sell papers by deliberately conveying the dual message that drugs are evil and of a society in crisis.

4.6 The demonisation of drugs appears to the RSA Commissioners and to me to have had a seriously detrimental effect on the quality of policy discussion around illegal drugs.³⁰ Cool deliberation and informed objective dialogue becomes difficult or impossible with much of the debate, especially in Parliament and the press "*positively medieval, with drug users demonised as though at the beginning of the 21st century we were still in the business of casting out demons and burning witches*".³¹

4.7 Prohibition of alcohol lasted from 1920 to 1933 in the USA, where it spawned modern organised crime while utterly failing in all its objectives.³² The evidence confirms economic theory, which predicts that prohibition of mutually beneficial exchanges is doomed to failure. It is a matter of some wonder that such a bankrupt policy survived to be applied to other drugs only a few decades later – with, it now seems, strikingly similar and entirely predictable consequences. The 1961 UN Single Convention ("*the most prohibition-oriented transnational narcotic control that had ever been created ... crucial to the story of the creation of an international prohibitive norm*".³³) was driven forward by the US, and by the US representative to the UN Narcotics Commission Harry J. Anslinger in particular, called a "moral entrepreneur" by one commentator.³⁴ Anslinger, a committed alcohol prohibitionist, became the first head of the US Federal Bureau of Narcotics. He is credited³⁵ with having almost

single-handedly pushed through the prohibitionist Marijuana Tax Act in the United States in 1937. Anslinger's extraordinary career³⁶ and apparently strong influence on the drugs debate over several decades, despite his attitude, is a matter of some wonder.

4.8 It remains unclear upon what grounds some drugs were chosen to be banned by the UN, while others were ignored. Heroin was demonised, despite clear medical evidence available at the time,³⁷⁻³⁸ while other drugs were ignored – most notably alcohol.

4.9 The difference between substances regarded by the UN as illegal and legal is couched in language seemingly objective and scientific, but in fact subjective and ideological.

Drugs are defined in the Convention not by their objective qualities, but by their classification into a subjective category.³⁹ Given the global consequences this is a rather shocking finding.

4.10 In 1954 the WHO Expert Committee stated that alcohol dependence was in an intermediate position between habituation and addiction⁴⁰ but by 1965 the WHO classification 'alcohol-type' dependence was described as far more severe than the 'cannabis-type'. Despite this, alcohol has never been mentioned by the UN Single Convention.⁴¹

4.11 The only conclusion that it is possible to draw from this is that alcohol is not on the list of prohibited substances simply because it is not –

“The government's drugs policy is not working, and nor is any other government's. Governments have declared a war on drugs. Politicians love to declare wars: on terrorism, crime, litter, teenage pregnancy, street begging, hooliganism—just about anything generally agreed to be bad. Wars allow politicians to inflate their importance and to strike dramatic, decisive poses; dissenters may be dismissed from public debate as traitors who undermine the war effort or even as enemy agents. But these wars are rarely won. The war on drugs has been a Waterloo for almost every government on the planet. The victims, as always, are not the politicians themselves but the poor.”

“The argument for legalisation of drugs is not about their safety but about the best ways of controlling their dangers. The wars against them have failed utterly. Drugs are more widely available and more widely used than ever. The various classifications should determine not a hierarchy of criminal penalties but different forms of supply: prescription only, say, or wide availability on specifically licensed premises. The argument should be about degrees of regulation, not about degrees of criminality. The penalties should be reserved for antisocial behaviour – driving cars or beating people up under the influence of drugs – not for the use of the drugs themselves. The restrictions should be on sales to children, not to consenting adults. The deterrents that we emphasise should be health risks, not spells in our already overcrowded prisons.”

The New Statesman

Source: New Statesman, leader: *Drugs: legalise, regulate and tax*, 27.05.02

an uncomfortable modern echo of this position will be found in the quoted comments of Professor Rawlins in 2006 (see para 5.10).

4.12 UK domestic legislation is found mainly in the Misuse of Drugs Act 1971, which creates an updated list of proscribed drugs in three classifications: A, B, and C, with those in Class A attracting the harshest penalties. Offences of possession, possession with intent to supply, and supplying controlled drugs are created. The maximum penalty for merely possessing a Class A drug is currently a draconian 14 years imprisonment, while supplying such a substance carries imprisonment for life.

4.13 The current classification of controlled drugs has no sound underpinning logic. In fact it is so weakly justified, despite being the foundation of our entire national drug strategy, that it has recently been described in 'The Lancet' as "*arbitrary*"⁴² – a quite damning word from a scientific perspective. Given the very significant criminal penalties attached to the possession of Class A drugs this is an extraordinary situation, to which I shall return in more detail in Section 5.

4.14 It is clear that we now know a lot more about the consequences to society of the misuse of drugs than we did forty-plus years ago. We have a much clearer picture of what works and what does not, often now based upon sound evidence, than was then available.

It is a matter of some concern, then, that so little has yet changed in policy terms.

4.15 The current global consensus is based, as I have demonstrated, on proscription and enforcement enshrined in the UN Conventions. Politicians often cite these Conventions as insuperable barriers to unilateral change in domestic policy. What is less often recognised is that the UN Conventions actually address themselves to trading in drugs, not to their personal use.

4.16 There is therefore much more room for manoeuvre in the existing international regime than has until recently been generally accepted, as the Report of the Independent Inquiry into the Misuse of Drugs Act 1971 has shown.⁴³ Some countries (eg Portugal, the Netherlands, Switzerland, Italy, Australia and New Zealand)⁴⁴ have realised this and have substantially changed their domestic approach as a result.

4.17 The House of Commons Select Committee on Science and Technology concluded in 2006 "*... that the UN drug control treaties do not pose a major barrier to reform of the UK system of drug classification.*"⁴⁵

4.18 The "*radical look ahead*" requested by the Home Secretary⁴⁶ is therefore a real possibility for the UK, without the associated difficulty of changing the UN Conventions.

5.1 Right at the heart of the current UK drug strategy, and underpinning the whole approach, is the ABC system of classifying drugs embedded in the criminal law by the Misuse of Drugs Act 1971 - recently and convincingly described as "... not fit for purpose."⁴⁷

5.2 The three tier classification purports to make it possible to control particular drugs according to their comparative harmfulness either to individuals or to society at large.⁴⁸ The Home Secretary of the day, Jim Callaghan, said when introducing the legislation to Parliament in 1970:

"The object here is to make, as far as possible, a more sensible differentiation between drugs. It will divide them according to their accepted dangers and harmfulness in the light of current knowledge and it will provide for changes to be made in the classification in the light of new scientific knowledge".⁴⁹

5.3 The Advisory Council on the Misuse of Drugs (ACMD) was established under the Misuse of Drugs Act 1971. Its remit is lengthy, but is in part "... to keep under review the situation in the United Kingdom with respect to drugs which are being ... misused."⁵⁰

“... with nearly one in five Britons aged 20 to 24 now using cannabis regularly, it's clear that the current law is useless as a deterrent and serves only to criminalise otherwise law-abiding people while eating up vast amounts of police time.”

New Scientist

Source: Cannabis Nation *If Britain can wise up, so can the rest of the world*, New Scientist, 23.03.02

5.4 In addition, the Home Secretary is obliged to consult the ACMD prior to amending Regulations made under the Act. As the House of Commons Select Committee on Science and Technology has said *"The government's total reliance on the ACMD for provision of scientific advice on drugs policy gives the Council a critical role to play in ensuring that policy in this area is evidence based."*⁵¹

5.5 So, harm was always intended to be at the centre of the ABC system, a system which was planned to be scientifically based, and flexible. It seems however not to have turned out like that – in the words of Oxford Professor of Physiology Colin Blakemore (Chief Executive of the Medical Research Council) the current classification system *"... is antiquated and reflects the prejudice and misconceptions of an era in which drugs were placed in arbitrary categories with notable, often illogical, consequences"*.⁵²

5.6 The Chairman of the ACMD and the Home Secretary have publicly expressed diametrically opposed positions about the remit of the Council, which has been politely described as *"perturbing"*.⁵³

5.7 The House of Commons Select Committee on Science and Technology was scathing about the behaviour of the ACMD on several separate matters, accusing them amongst other things of dereliction of their duty in their failure to alert the Home Secretary to serious doubts about the ABC classification system.⁵⁴ Strong language indeed, but on the evidence presented, entirely justified.

5.8 Two examples will serve to illustrate the lack of fitness for purpose of the present law: 'magic mushrooms' and tobacco.

5.9 The so-called 'magic mushrooms' contain psilocin and psilocybin, both naturally occurring hallucinogenic compounds designated as

Class A drugs under the 1971 Act. Psilocin is also listed on Schedule I (the highest level of prohibition) of the 1971 UN Convention on Psychotropic Substances.

5.10 Sir Michael Rawlins, Chairman of the ACMD, told the House of Commons Select Committee on Science and Technology on 1 March 2006 that he had "... *no idea what was going through the minds of the group who put it [psilocin] in Class A in 1970 and 1971... It is there because it is there.*"⁵⁵

5.11 This incredible statement is made even worse, if that were possible, by the failure of the ACMD to challenge the improper Ministerial use of the Drugs Act 2005 to close a loophole previously allowing possession of 'unprepared' (i.e. fresh) magic mushrooms.⁵⁶ In the opinion of Professor Rawlins "*There are bigger, more important issues to worry about than whether fresh mushrooms join the rest of the other things in class A. It is not a big issue.*"⁵⁷ I must disagree

in the strongest possible terms, and I share the opinion of the Select Committee that Sir Michael's comments damage the reputation of the Council.⁵⁸

5.12 The upshot of this is that UK criminal law now allows a citizen to go to prison **for life** for possessing magic mushrooms with intent to supply, for no reason at all other than "*It is there because it is there.*" This is just not an acceptable state of affairs in a civilised society. The law in this regard is a disgrace, and as a professional police officer I am ashamed of it.

5.13 My second example is that of tobacco. On any rational assessment of the harmfulness of drugs tobacco comes out near the top, killing many more people in the UK every year than all other drugs (legal and illegal) put together. For instance in Scotland in 2004 tobacco killed about 13,000 people, alcohol 2,052 and all other illegal drugs put together, 356⁵⁹ [see Figure 1].

Deaths Related to Use

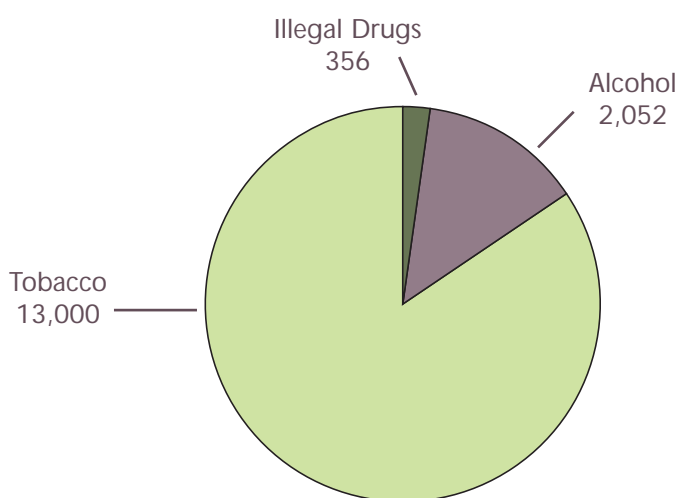


Figure 1:

Source: Health in Scotland 2004, *The Chief Medical Officer's Annual Report* p9; Scottish Health Statistics, *Alcohol-Related Health & Mortality Statistics*, 2004; General Register Office for Scotland, *Drug-related Deaths in Scotland in 2004* cited in Royal Society for the encouragement of Arts, Manufactures and Commerce Commission (RSA Commission), *Drugs – facing facts – The report of the RSA Commission on Illegal Drugs, Communities and Public Policy*, March 2007 p109

5.14 In addition to the harm caused by deaths shown in Figure 1, alcohol and tobacco cost the NHS in England in 2004 about £1.6bn each annually, while the total cost of all illegal drugs to the NHS amounts to about £0.8bn.⁶⁰ The same picture holds good in the rest of the UK, albeit with larger numbers.⁶¹

5.15 According to the Report of the Independent Inquiry into the Misuse of Drugs Act 1971, using the existing ABC criteria, "... alcohol would be classed as B bordering on A, while cigarettes would probably be on the borderline between B and C."⁶² Yet both are legal and regulated, rather than proscribed. This situation defies logic; it is irrational to the point of hypocrisy.

“What I do know, as does every other citizen of this country from the prime minister down, is that the present approach is not working.”

**John Humphrys,
The Sunday Times**

Source: *Our politicians don't dare debate the law on drugs*, Sunday Time 21.11.99

5.16 A classification system of some sort has merit, and is a concept widely used across the globe - it is axiomatic that not all drugs are equally harmful, whatever criteria one uses. However execution of the idea in the UK is currently badly flawed. The key problem is the total illogicality of the current list of controlled drugs, and their classification within the list; this problem is so great as to render the list scientifically 'arbitrary'⁶³ and therefore impossible to defend on other than political grounds - not good if one truly desires an evidence based strategy.

5.17 A viable classification system will require consideration of its true purpose. Personally, I believe that harm reduction or avoidance is key,

but other rationales are possible. Recently Nutt, King, Saulsbury and Blakemore⁶⁴ have suggested three categories of harm:

- the physical harm to the individual user caused by the drug,
- the tendency of the drug to induce dependence, and
- the effect of drug use on families, communities, and society.

5.18 I submit that it matters not what criteria are used, provided that a wide ranging debate across society results in a consensual view of purpose. Upon what grounds are drugs to be classified, and what purposes are thereby served? This is fundamental to policy making.

5.19 No such meaningful debate has taken place in recent times; it is therefore very interesting that the current Home Secretary is requesting one (though the contents of the current consultation document do not support the view that the Home Office really want such an open debate).

5.20 The debate nearly took off when Charles Clarke, the then Home Secretary, announced in January 2006 that he was so concerned by the limitations of the current arrangements (his concern largely arising from the furore over the reclassification of cannabis) that he would "... in the next few weeks..." be consulting on a review of the classification system.⁶⁵ However, he left office shortly afterwards and his successor John Reid announced in October 2006 that "... the Government had decided not to pursue a review of the classification system at this time."⁶⁶

5.21 Home Office Minister Vernon Coaker said at the time that he had spent several months meeting frontline police officers and others involved in the criminal justice system, and that

“None of them have raised the classification system as a concern that affects them...”⁶⁷ Well, now I am.

5.22 The Report of the Independent Inquiry into the Misuse of Drugs Act 1971 called for a fundamental review of the classification system, based upon dangerousness, with clear criteria.⁶⁸ Nutt *et al* have now demonstrated that it is possible to construct a workable model to deal intellectually with the societal harm caused by drugs, and that such a model produces real outcomes which could be used to derive practical policy. The Commons Science and Technology Select Committee have endorsed this approach, calling for a more scientifically based ‘scale of harm’.⁶⁹

5.23 However, in order to avoid continuation of the (valid) charge of hypocrisy any such classification system needs to be inclusive, and should seek to be holistic. The current regime under the Misuse of Drugs Act 1971 fails to meet this standard, with the key omissions being alcohol and tobacco. It is of great interest that the ACMD have recently proposed⁷⁰ that their remit be extended to include alcohol and tobacco, *“As their harmfulness to individuals and society is no less than that of other psychoactive drugs...”*.

“ I think all drugs should be decriminalised and addicts could register with their GP for them so organised crime could be driven out of drugs. ”

Ken Livingstone Mayor of London, former MP

Source: IRC on VirginNet, 12.11.97

5.24 Including all substances of misuse allows the construction of a comprehensive ‘hierarchy of harm’, as a continuum. The hierarchy of Nutt

et al [see Figure 2] is only one possible model, but all similar methodologies produce the same stark conclusion: alcohol and tobacco, if classified under the current regime for the Misuse of Drugs Act 1971 must logically be dealt with as controlled drugs – exactly as the Report of the Independent Inquiry into the Misuse of Drugs Act 1971 pointed out in 2000. As Nutt *et al* say, their exclusion is entirely arbitrary from a scientific perspective.

5.25 Nutt *et al*'s three categories of harm (physical, dependence and social) were assessed using a matrix taking account of nine parameters of risk using delphic principles (a new approach, widely used to optimise knowledge in areas where issues and effects are not amenable to precise measurements or experimental testing).

5.26 The results are fascinating. If a three category classification is to be retained, alcohol will be towards the top end, with tobacco and cannabis in the middle and ecstasy towards the bottom.

5.27 The system used is rigorous and transparent, with a formal and quantitative assessment of harm. It is not yet in itself ‘fit for purpose’, as the authors readily acknowledge, but it has major advantages over the current ABC system – most importantly it is rational instead of arbitrary, and because transparent much less liable to political manipulation. The hypocrisy of the current regime could be abolished – but only if the hierarchy is decoupled from criminal punishment (as was recommended by the House of Commons Science and Technology Select Committee).⁷¹

5.28 All such hierarchies of harm demonstrate the abject failure of the existing classification regime adequately to deal with the hard evidence. If the Home Office truly wants an evidence based regime, then it is going to be

A Hierarchy of Harm

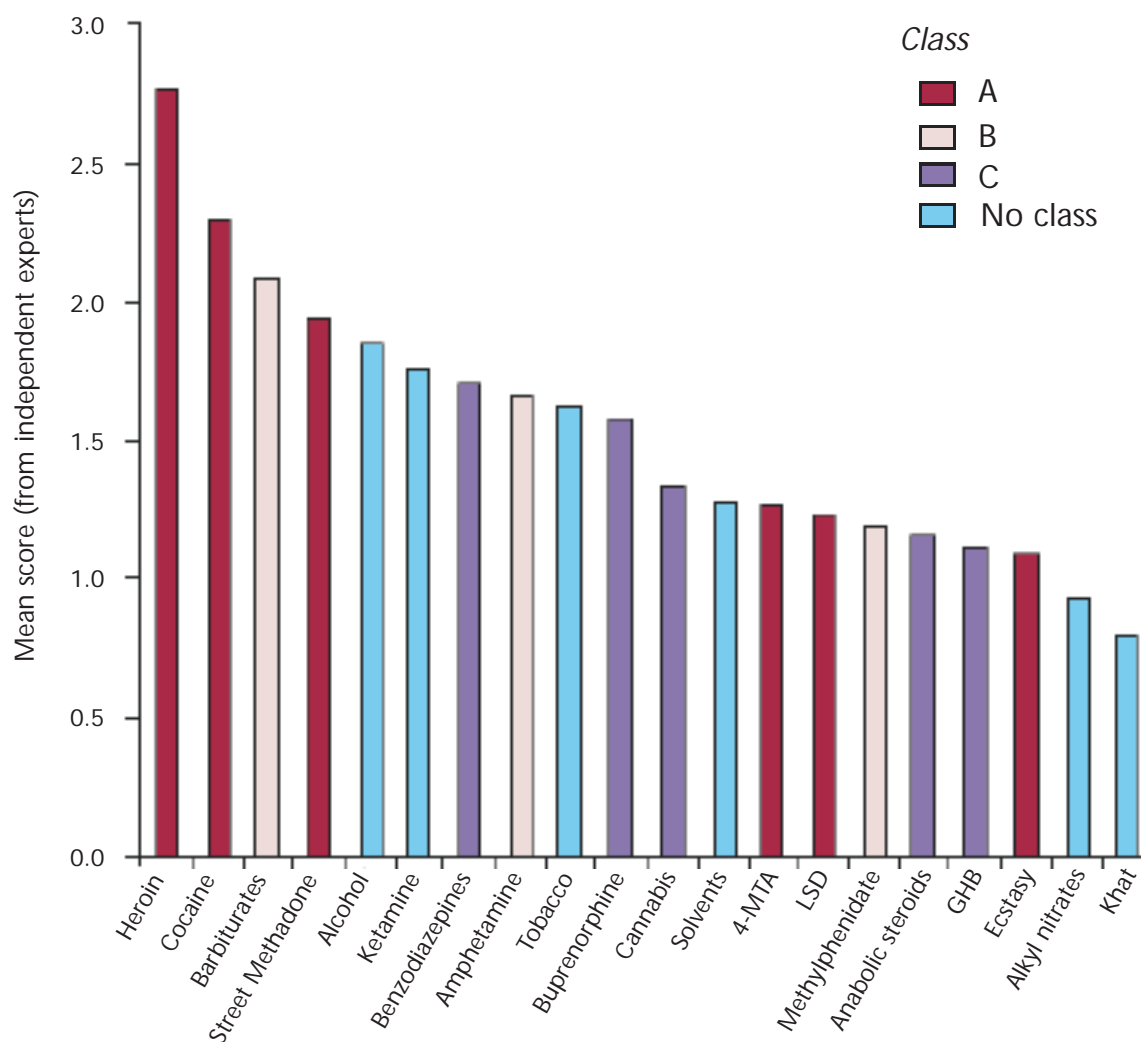


Figure 2: Mean harm scores for 20 substances

Classification under the Misuse of Drugs Act, where appropriate, is shown by the colour of each bar

Source: The Lancet, *Development of a rational scale to assess the harm of drugs of potential misuse*, Nutt D, King L A, Saulsbury, Blakemore C, Vol 369, 24 March 2007, p1050

very different from the present one. This is intellectually very simple, but hitherto has proved very hard politically because of the prohibitionist legacy attached to the current policy.

5.29 No-one is seriously proposing that alcohol and tobacco become banned substances; for

these very harmful drugs our society has already settled upon a regime of control and regulation, rather than proscription, albeit with rather mixed results to date. The big question is therefore this: if that is our preferred option for these drugs then why do we treat other, demonstrably less harmful, substances so differently?

5.30 To date, I have not heard from any politician a convincing public answer to this question – although many eminent politicians (and others) have clearly arrived at the same conclusion, as quotes presented throughout this paper show.

5.31 The current ‘hierarchy of harm’ models all include, because they are assessing the presently pertaining legal situation, the evidence of harm caused by drug-related criminality – harmful crimes caused merely because of the illegality of drugs, **not** because of the effects of the drugs themselves. This has

the effect of pushing heroin and cocaine in particular higher up the hierarchy than would otherwise be the case.

5.32 It is clear therefore that if the criminality currently associated with opiates can be reduced, (and the evidence available tends to show that this can indeed be achieved – see Section 7) then they will fall further down the hierarchy, thus exposing even more starkly the gross inadequacy of the current ABC classification system. It is clear that the law is indeed **not** fit for purpose – and it should therefore be changed.

6.1 It is important to distinguish between harms that result from drug misuse, and those harms that arise from policy – specifically in this instance from prohibition and enforcement. There are six generally accepted⁷² key harms arising from prohibition:

- the creation of five types of crime
- the creation of crisis in the criminal justice system
- the economic costs
- the undermining of public health
- the destabilisation of producer countries
- the undermining of human rights

6.2 The creation of five types of crime:

By one ten year old estimate, **organised international criminal gangs** control an international trade worth over \$100bn per year and a market turnover approaching \$300bn a year,⁷³ and by the UN Office on Drugs and Crime (UNODC) at \$94bn wholesale in 2003 and \$322bn retail per annum.⁷⁴ Subsequent annual reports have not updated this figure. The UNODC concluded in 2006 that the overall market is growing.⁷⁵ The figures are no more than guesstimates of course,⁷⁶ because of the illicit nature of the trade – but as ‘The Economist’ magazine pointed out in 2001⁷⁷ this equates to something like the global revenue of Coca-Cola, or possibly even the whole petroleum industry. Organised criminal drug networks exist purely because of the mark-up caused by prohibition – according to the Prime Minister’s Strategy Unit in 2003, the profit margin to the trafficker per kilo of Afghani opium is between 26% and 58%, whereas the producer probably gets only 1% of the final retail price. Only luxury goods like champagne, perfume and designer handbags show similar margins.⁷⁸ Extreme violence is unsurprisingly associated with potential profits of this size.

6.3 **Domestic organised criminal gangs** deal with the retail end of the business. The UK Threat Assessment concludes that the economic and social costs of serious organised crime, including the cost of combating it, at upwards of £20bn a year as a broad estimate. The threat to the UK from serious organised crime is high.⁷⁹ The profits for the middle level dealers are probably significant, but detailed evidence on profits lower down the chain is missing. It seems very likely that they do not reach the street dealers.⁸⁰⁻⁸¹ However, the evidence of the violent turf wars arising from competition between these local gangs is there for all to see.

6.4 **Acquisitive crime:** low income problematic drug users. These users, usually of crack cocaine and heroin frequently turn to stealing in order to fund their addiction because of the hugely inflated price of illegal street drugs. The evidence is now very clear – the need to fundraise dramatically increases the intensity and volume of offences. Prohibition has created the situation where a relatively small number of problematic users (variously estimated at about 360,000 to 500,000 in the UK)⁸²⁻⁸⁴ are now responsible for the majority of shoplifting, burglary, theft of and from motor vehicles, robbery and fraud.⁸⁵ Despite prohibition, the UK seems to have the highest proportion of opiate users in the world.⁸⁶

6.5 **Street sex workers:** low income female problematic users. The Home Office⁸⁷ estimates that 95% of those involved in street prostitution are problematic users. This is the most visible and dangerous level of sex work, but for the

“ We need at least to consider and examine forms of controlled legalisation of drugs. ”

George P Schultz, US Secretary of State, 1982-1989

Source: Associated Press, 6.11.89

female problematic user with no other source of income prostitution often becomes the most viable method of fundraising.

6.6 Prohibition crimes. Prohibition criminalises by definition all those who use or supply proscribed drugs. The most recent Home Office figures⁸⁸ suggest that about 11m people have used illicit drugs – about 35% of people between the ages of 16 and 59. About a third of these have used Class A drugs. About 1 million people in England and Wales used Class A drugs in the year of 2005, and about 500,000 people in England and Wales said that they had used Class A drugs within the last month (approximately 1% of the total population). In total, about 10% of the 16-59 age group use cannabis – but this figure rises to 21.4% of young men according to the British Crime Survey.⁸⁹ All of these people are criminals by definition, and for those convicted the associated criminal record has serious lifelong consequences, regardless of any actual harm that they might or might not be causing.

6.7 The creation of crisis in the criminal justice system

Although UK enforcement activity has had at best a local and marginal effect on illegal drug

supply, it has had an effect on the criminal justice system, as did alcohol Prohibition in the USA last century. Prohibition related offending has caused an exponential rise in the number of imprisoned drug offenders (increasing three-fold for men and five-fold for women between 1992 and 2002). Today nearly half of all women prisoners are in prison for drug offences, and nearly three quarters have a drug problem themselves.⁹⁰ The UK now has the highest per capita incarceration rate in the EU.⁹¹

6.8 In the UK black drug offenders receive harsher treatment at every stage in the criminal justice process.⁹² As a result they are over-represented in prison statistics despite black drug users apparently having a lower per-capita level than that of white drug users.

6.9 The economic costs

According to the Home Office, the economic and social costs of Class A drug use in England and Wales in 2000 was between £11bn and £17bn. Of this total 99% was due to problematic users, and 88% was the costs of crime committed by these problematic users.⁹³ The authors of this research have recently updated it, and now provide an overall cost of about £15.5bn.⁹⁴ Estimates of the cost of drug

“ The idea that the drugs market can be stamped out is fantasy. A kilo of cocaine is worth £1,000 in Colombia, but, because of the massive inflationary effects of prohibition, it is worth £30,000 by the time it reaches the streets of London. Wherever there is a 3,000 per cent profit margin, people will be prepared to take extraordinary risks. This market will not die.

Legalising the supply and distribution networks of drugs, however, would put the huge sums of money generated by this industry into the hands of legitimate businesses and – most importantly – through taxation into the hands of governments that urgently need more money for the provision of basic health and education.

Johan Hari Columnist for the Independent

Source: *This fantasy world of drug prohibition*, The Independent, 20.02.03

related crime put the total cost of drug misuse in the UK at £24bn,⁹⁵ while the 2005 Foresight report⁹⁶ projected that the total costs may have risen by 2025 to £35bn.

6.10 Projected government expenditure on drugs is shown in Figure 3 below.

2004/5	£ million
Drug treatment	512
Protecting young people	155
Safeguarding communities	297
Reducing supply	380
	1,344
2005/6	£ million
Drug treatment	573
Protecting young people	163
Safeguarding communities	367
Reducing supply	380
	1,483

Figure 3:

Source: Home Office, *Government Direct Annual Expenditure on the Drug Strategy 2005/06*

6.11 About two thirds was to go directly on enforcement, out of a total of £1.483bn. These figures do not take account of the wider expenditure throughout the criminal justice process. There has been no thorough cost-benefit analysis of these figures, which should be a priority for government.⁹⁷ Failure to do this makes it impossible for policy makers to consider alternative policies.⁹⁸

6.12 By one estimate, the UK drug market is now conservatively thought to be worth around £6.6bn annually in untaxed criminal profits.⁹⁹ A more recent (2004) estimate puts the possible annual net revenue gain to the Exchequer of between £3.4bn and £6.4bn¹⁰⁰ It is abundantly clear that a very significant tax revenue potential is being lost, purely because the trade is illegal. In context, the tax collected by HM Revenue & Customs in 2005/6 amounted to £8bn each for tobacco and alcohol¹⁰¹ – a huge gain to the Exchequer, and figures which make the proscription of these drugs unlikely on economic grounds alone, even if in defiance of logic.

6.13 The undermining of public health

All drugs should be regarded as potentially harmful to a greater or lesser degree, and hence the very great care taken to regulate the pharmaceutical industry. However illegal drugs are not necessarily very dangerous, and certainly not merely because of their proscription as I have already shown in Section 5. Even heroin can be regarded as ‘safe’ (although usually highly addictive) if used appropriately.¹⁰² Cohen goes so far as to claim that regular use of cocaine “... is far less of a danger to people than social exclusion.”¹⁰³

6.14 But Prohibition abdicates control of drug production and supply, handing it over to criminals. Compare the care given by the government to, for instance, the manufacture and sale of aspirin, to that for heroin. Illegal drugs are bought on street corners, of uncertain manufacture with unknown contaminants and with no health and safety information. The UK has the second highest level of drug related death in Europe,¹⁰⁴ and some studies suggest that under-recording could double the official figures.¹⁰⁵

6.15 Risks associated with injecting drug use are particularly acute, with over a third of

injectors in England and Wales being infected with Hepatitis C.¹⁰⁶ Over 60 injecting drug users in Scotland died or were hospitalised with a severe illness from bacterial infection in 2000.¹⁰⁷ Despite this, HIV/AIDS infection rates in the UK are amongst the lowest in Europe,¹⁰⁸ probably because of the very effective needle exchange system running here.¹⁰⁹

6.16 The destabilisation of producer countries

It is estimated that Colombian drug cartels spend more than \$100m each year on bribes to officials.¹¹⁰ Illegal drug markets now form a significant part of the economy in key producer and transit economies such as Afghanistan, Jamaica and Colombia, undermining their social economic and political stability.

6.17 Opium poppy cultivation increased by 17% in Afghanistan in 2007, with a yield of 8200 tonnes, an increase of 34% on 2006. Opium poppy cultivation is closely linked to the insurgency and to the Taliban. Farm gate value amounted to \$1bn in 2007, a staggering 13% of GDP (compared with 11% in 2006).¹¹¹ According to the UN the situation is grim but not yet hopeless.

6.18 Generally the annual UN report¹¹² continues to paint a depressing picture despite relentless optimism. The lack of accurate financial information (not published for the last several years) renders the optimism less than convincing.

6.19 The undermining of human rights

Until only a few decades ago, the law of the UK treated problematic drugs users for what they

“ The gains from legalisation would be overwhelming, especially as regards the crime statistics. Moreover, there is no coherent philosophical basis for keeping drugs illegal.

... my ultimate argument is not libertarianism, but defeatism. That may strike some as ignoble, and I am not particularly proud of it. But I would maintain that when we are losing a war which is not worth fighting, defeatism is the only rational response.

”

**Bruce Anderson, Political Columnist,
The Independent**

Source: The Independent, 29.12.03

largely were – vulnerable people in need of help. Prohibition now turns those without substantial means into social outcasts. Large numbers of people, otherwise law abiding, are being criminalised in a way that has already been demonstrated to be ‘arbitrary’, and it seems to me in conflict with the principles underlying the European Charter of Human Rights.

6.20 Elsewhere the situation is worse. There is widespread use of the death penalty for drug offences, in violation of the UN Charter of Human Rights.¹¹³⁻¹¹⁴ An estimated two million people are imprisoned globally for drugs offences, one quarter of the total prison populations.¹¹⁵

7.1 The Public Sector Agreement targets for England arising from the 2004 Spending Review include reducing the harm caused by drugs, measured using an annual Drug Harm Index (DHI) - not to be confused with the proposed 'Hierarchy of Harm' - which was published in a detailed technical paper in March 2005¹¹⁶ commencing in April that year. In March 2006, an update was published,¹¹⁷ and it is now expected that this will be revised on an annual basis. The next iteration is due later this year.

7.2 The DHI (similar to the Deprivation Index¹¹⁸) captures 19 harms caused by illegal drugs in three main categories - crime, community problems and health issues, using available robust national data. It is the most complete measure currently available.

7.3 The most recent iteration of the Index itself is shown below (see Figure 4). The DHI is currently well below its projected trajectory.

“ Nobody, be they tough or tender, is going to stop Londoners using drugs. All that can be reduced is the harm that they caused. There are just two options. We grit out teeth and bring this whole free market under some sort of control, as other countries are now struggling to do. Or we shrug and accept London’s anarchic reputation as the drugs capital of Europe. ”

Simon Jenkins, The Times and Evening Standards

Source: *Labour has lost the plot on drugs*, The Evening Standard, 15.01.04

7.4 Before 2002 most of the harms were rising, but a number have since started to fall. In 2002-3 the overall harm began to decline, due to reductions in drug-related deaths and drug-related hepatitis C, falling community

Drug Harm Index



Figure 4:

Source: *Measuring the harm from illegal drugs using the Drug Harm Index - an update*, MacDonald Z, Collingwood J, Gordon L, Home Office Online Report 08/06

perceptions of drugs as a problem and reductions in drug-related crimes.

7.5 In 2003-4 the Index continued to fall, but for slightly different reasons. Drug-related crimes fell sharply, with only small reductions in health related harms. Between 2003 and 2004 the DHI fell by 16% overall, compared with a 9% reduction between 2002 and 2003.

7.6 Most of the positive change in the DHI has been caused by crime reduction, and there seems little doubt that the government's switch towards harm reduction measures, specifically including the National Treatment Agency (with a remit in England only), is having a major impact on offending. Treatment has been convincingly shown, as a generalisation, to be a worthwhile and effective tactic.¹¹⁹

7.7 The number of drug users in treatment has expanded from 85,000 to 180,000 in a year, while waiting times have dropped.¹²⁰ The community based National Treatment Outcomes Research Study (NTORS) study has indicated that retention in treatment for at least 12 weeks does substantially reduce reoffending, and that these reductions are sustained over time, with both acquisitive and drug-selling crimes reduced to about one quarter of intake levels after 5 years.¹²¹ Benefits to society are immediate and quantifiable, with every pound spent on treatment providing a saving of £9.50.¹²²

7.8 Overall drug-related acquisitive crime in England and Wales has fallen by about 20% since the introduction of the Drug Intervention Programme, although this has slowed recently with a drop of only 3% in the twelve months to November 2006.¹²³

7.9 The Home Office DHI has been criticised academically¹²⁴ but it is the best available model – and it is already generating worthwhile and

usable returns. It should be developed further as a method of monitoring more closely the impact of policy. Intellectually it complements very well the 'Hierarchy of Harm' that I and others propose, allowing a much more sophisticated style of policymaking for the future.

7.10 The introduction of alcohol and tobacco to the hierarchy of harm should be reflected in the DHI, and will of course dramatically change the DHI picture. It should be a relatively simple consensual task to align the identified harms in developments of both models so that unified policy making and assessment becomes possible.

“Lord Ramsbotham told the BBC that “... exposure to what the drug culture has done to the people I am seeing in prison, their families and the community from which they come” had convinced him of the need for drastic action.

“I think there is merit in legalising and prescribing so people do not have to go and find an illegal way of doing it.”

“The more I think about it and the more I look at what is happening, the more I can see the logic of legalising drugs, because the misery that is caused by the people who are making criminal profit is so appalling and the sums are so great that are being made illegally.”

Lord Ramsbotham, Chief Inspector of Prison (at the time of quote, since retired)

Source: BBC News, 09.07.01

8.1 Current UK drugs policy is based upon an unwinnable 'war on drugs' enshrined in a flawed understanding of the underlying UN Conventions, and arising from a wholly outdated and thoroughly repugnant moralistic stance based upon rhetoric and dogma rather than a rational (and more ethical) philosophy.

“ If government-controlled drugs were cheaply available, might it not cut through this hideous vicious circle?

Users wouldn't need to fund their habit by making our lives hell. Dealers, meanwhile, would find nobody to buy their overpriced, adulterated wares.

We could spend every penny saved from enforcement and imprisonment and drug-related crime on treatment, prevention and educating people not to take the stupid things in the first place. ”

Tony Partington, the Sun

Source: *Why NOT legalise drugs ... it worked fine the last time*, The Sun, 12.11.05

8.2 It is of interest and concern that the Prime Minister's Strategy Unit recognised the unwinnable nature of the war on drugs as long ago as 2003, yet nothing has been done to introduce the "... radical long-term strategic vision..." then recommended.¹²⁵

8.3 The resultant policy of proscription and enforcement has created (from nothing) and is sustaining a global criminal market estimated at \$400bn per annum,¹²⁶ according to the UN comparable to the global trade in petroleum. The size of this trade has destabilised whole

countries, and continues so to do. Its malign contribution in Afghanistan is but one example.

8.4 Many drugs of abuse (both legal and illegal) are harmful to the user but as 'The Guardian' has axiomatically observed some years ago, "There is no drug known to man which becomes safer when its production and distribution are handed over to criminals"¹²⁷ – yet this is the direct effect of current UK government policy.

8.5 Central to existing UK drugs policy is the ABC classification system. It is now indefensible, both legally and ethically. It is arbitrary, and subject to politically motivated manipulation. It is a disgrace.

8.6 The ABC system should be replaced with a new scientifically based 'Hierarchy of Harm', similar in concept to that in development by Nutt et al. Any such new hierarchy **must** include tobacco and alcohol if it is to have any credibility, or utility. It should be decoupled from criminal penalties.

8.7 This logical, rational and consistent approach will inexorably and inevitably lead to the legalisation and regulation of all harmful drugs, in place of the current policy of proscription and enforcement for some drugs and the legal regulation of others, selected subjectively.

8.8 Such an approach will dramatically reduce drug-related criminality and will enable significant funds to be transferred from law enforcement to harm reduction and treatment procedures that are known to work.

8.9 Harm reduction measures which treat drug abusers as victims and patients, and not just as criminals are demonstrably effective, delivering very good value for public money – and significantly reducing the harmful effects of drug misuse on society as a whole. The existing

UK Drug Harm Index, suitably extended to cater for alcohol and tobacco as well as currently illegal drugs, will provide a viable way of assessing progress.

8.10 In summary, if the UK really wants a radical, evidence based strategy then the current 'war on drugs' policy, which as the RSA Commission notes wastes huge amounts of money "... on education that does not educate, on efforts at interdiction that fail to interdict, on police work that moves problems on rather than solving them ...",¹²⁸ should be replaced, and the Misuse of Drugs Act 1971 should be repealed and replaced by a new 'Substance Misuse Act' based upon the legalisation and careful regulation of all substances of abuse in one consistent manner. This new Act will have at its core a philosophy of objectively assessed harm assessment and reduction.

“The role of government should be to prevent the most chaotic drug users from harming others – by robbing or by driving while drugged, for instance – and to regulate drug markets to ensure minimum quality and safe distribution. The first task is hard if law enforcers are preoccupied with stopping all drug use; the second, impossible as long as drugs are illegal.”

The Economist

Source: The Economist, editorial. From issue entitled *Time to legalise all drugs*, 28.06.01

“Our MP's role in the national debate on drugs policy has been a disgrace. For 40 years they have said nothing, heard nothing, noticed nothing, acknowledged nothing, understood nothing, done nothing. Those who have departed from the herd have been trampled by the herd. Something stale in the air at Westminster has stupefied not only dissent but even inquiry.”

Matthew Parris, former MP

Source: *Just a whiff of mind altering substances*,
The Times, 07.07.01

8.11 The law is the law, however, and the Misuse of Drugs Act remains on the statute book unless and until Parliament chooses to repeal it. In the meantime, as a police officer, I will continue to enforce it to the best of my ability despite my misgivings about its moral and practical worth.

8.12 But a new Act along the lines argued for in this paper is now very clearly in the public interest. I intend to campaign hard for it, and I invite the Police Authority to join me in doing so.

R. Brunstrom
QPM, B.Sc. (Hons.), M.Sc.
Chief Constable
North Wales Police

9 October 2007

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