

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

29th June, 2022

Proposition No. P.2022/41

Policy & Resources Committee

Government Work Plan 2022

AMENDMENT

Proposed by: Deputy A W Taylor
Seconded by: Deputy D J Mahoney

1. In proposition 14, to delete:
 - a. "EITHER"; and
 - b. Proposition 14B in its entirety.

Rule 4(1) Information

- a) The proposition contributes to the States' objectives and policy plans by focusing resources on identified priorities to maintain a safe, inclusive and equal community.
- b) In preparing the proposition, consultation has been undertaken with the Committee *for* Home Affairs and Policy & Resources Committee.
- c) The proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- d) There are no financial implications to the States of carrying the proposal into effect.

Explanatory Note

In its original form, Proposition 14 gives the States of Deliberation an "either/or"

decision between two totally unrelated workstreams addressing different areas of policy.

Proposition 14B directs the Committee *for* Health & Social Care to scope the 'legal status of cannabis' it does not recognise the breadth of this work or the potential impact that scoping will have on other Committees and has the potential to divert resources away from work already prioritised by the Assembly and contained in the Government Work Plan.

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REPORT on AMENDMENT

SCOPING THE LEGALISATION OF CANNABIS – prepared on behalf of the Committee for Home Affairs (“CfHA”)

Proposition 14B directs the Committee *for* Health & Social Care (“CfHSC”) to develop the schedule of work and resource requirements necessary to review of the legal status of cannabis.

This report sets out justification for not pursuing Proposition 14B.

Proposition 14B makes reference to Resolution 3(iii) is part of Billet d’État XV 2020 (CfHSC and CfHA - Justice Review Report), Resolution 3, as rescinded and replaced in the Government Work Plan, which provided the impetus for the Government Work Plan’s (“GWP”) ‘Non-punitive Approaches’ (“NPA”) action.

In full, it reads:

‘The Committee *for* Health & Social Care and the Committee *for* Home Affairs shall report back to the States with options for alternative and non-punitive approaches to the possession and use of small quantities of illegal drugs (including, but not limited, to cannabis), as soon as resources are available as established by the Government Work Plan, which take into account:

- (i) the need to promote the health, wellbeing and safety of people who use drugs, and of the wider community;
- (ii) any evidence collected, including the commissioned Independent Report on the Review of the Interaction of Health and Justice System in relation to the Possession of Drugs for Personal Use;
- (iii) the potential for moving from a regime governed by the criminal law towards a partly or wholly regulatory approach to all aspects of personal drug use; and
- (iv) the results of consultation with the community and key stakeholders in respect of such alternative options.’

The NPA Project Board was established late 2021 and included representatives from the CfHA and the CfHSC. At the start of its work the NPA Project Board considered the

Resolution in detail alongside the NPA timeline and the overall context. It was agreed that decriminalisation and/or legalisation of illegal drugs would not be under consideration as part of this work. Not only was the NPA timeline too short, the two-Committee constitution for NPA was not sufficiently broad, for reasons that are detailed below.

Considerations in regard to a Review of the Legal Status of Cannabis

The considerations that weigh against approving a review of the legal status of cannabis are many. These are detailed below and are set out within four key areas:

- Cannabis use presents significant health risks
- The ‘problems’ that Resolution 3 seeks to solve barely exist
- Exploring a change to the legal status of cannabis would be complicated, risky and resource-intensive
- Jurisdictions that have liberalised cannabis law are seeing adverse impacts

Cannabis use presents significant health risks

The health risks associated with substance use, and cannabis specifically, have been well-documented. These include risks to the physical and mental health of adults, children and young persons. Furthermore, there are health risks associated with some of the delivery methods used in cannabis consumption, in particular vaping.

Overall health risks

The NHS website ([NHS Go - Confidential health advice](#)) cites the following hazards:

- 10% of regular cannabis users become dependent on it.
- As with other addictive drugs such as cocaine and heroin, you can develop a tolerance to cannabis. This means you need more to get the same effect.
- If you stop using it, you may get withdrawal symptoms, such as cravings, [difficulty sleeping](#), mood swings, irritability and restlessness.
- Regular cannabis use increases your risk of developing a psychotic illness, such as schizophrenia.
- People who smoke cannabis regularly are more likely to have [bronchitis](#).
- If you drive while under the influence of cannabis, you're more likely to be involved in an accident.
- Research has indicated that cannabis can interfere with sperm production in males and ovulation in females.
- Using cannabis regularly during pregnancy could affect your baby's brain development.

Familial risks

It is well-documented that the effects of an individual's substance use disorder can be felt by the whole family, and indeed by any person who is connected to the drug user. Each close contact is uniquely affected by the individual using substances, which can result in problems that include instability, impaired attachment, neglect, emotional distress, unemployment, economic hardship and legal proceedings. For children there is also an increased risk of developing a substance use disorder themselves.

Familial substance abuse is among the ten factors that, when experienced during childhood, negatively impact health and development and contribute to Adverse Childhood Experiences. The [Joint Strategic Needs Assessment - Substance Use](#) ("JSNA") by Public Health Services reported that 'Parental substance use is itself identified as one factor that increases the vulnerability of a child to abuse and neglect. This is seen locally where data tells us that the majority of children on the Child Protection Register are so due to parental substance use. In 2008, 83% of children on the Child Protection Register were there for this reason, although this figure has reduced to a low of 55% in 2018.'

Local data on cannabis use

The extent of illegal (as opposed to medicinal) cannabis use in the Bailiwick has not been measured since 2018. The JSNA cited the following statistics from the Wellbeing Survey 2018:

- Around 11% of people used cannabis in the last 12 months, compared to 5% in 2013.
- 24% of people using cannabis reported using other illegal drugs.
- The reported use of cannabis was higher among people who have a longstanding mental or emotional health condition, or have low mental wellbeing.

More recently, the report by Professor Harry Sumnall titled [Review of the Interaction of Health and Justice System in relation to the Possession of Drugs for Personal Use](#) found that:

'In 2019, just over one third (35%) of secondary school pupils (Years 8 and 10) were 'fairly sure' or 'certain' that they knew someone personally who used controlled drugs. This was 34% in 2016, 21% in 2013, and 34% in 2010. Eighteen percent of pupils (21% boys; 15% girls) had been offered cannabis; this was a slight increase from 17% in 2016, but only 9% of pupils reported being offered cannabis in 2013, and 10% in 2010. Eleven percent of respondents reported that they had ever taken a drug in their lifetime, an increase from 11% in 2016, 6% in 2013, and 11% in 2010. The drug most commonly reported was cannabis (9%).'

Risks of smoking and vaping

Smoking and vaping are two ways in which substance users consume cannabis. Vaping is often used in the administration of medicinal cannabis prescriptions.

The JSNA cites the following case study: 'In the second quarter of 2019, headlines around the world reported on an outbreak of serious lung disease across the United States of America, which was reported to be associated with vaping. By the 22nd October 2019, 1,604 cases had been reported to the Center for Disease Control (CDC) from 49 US states. There were 34 deaths. The group affected by this lung disease is very specific. The outbreak appears to be largely amongst young men (70% of cases), with an average age of 24 years. Almost half of the affected patients (46%) were under 21 years of age. In most cases THC-containing products had been used by patients experiencing lung injury. Tetrahydrocannabinol (THC) is one of at least 113 cannabinoids identified in cannabis.'

Changing the legal status of cannabis could be at odds with the States' own health directives

The [Combined Substance Use Strategy for Guernsey and Alderney 2021-2026](#) ("CSUS") was published in July 2021. It contains three Key Performance Indicator pillars, one of which is 'Promote and Protect Health and Wellbeing.' Within this pillar is the strategic outcome 'an increased focus on prevention' (page 14).

The CSUS (page 15) also says that 'preventing or delaying substance use among younger islanders will support children and young people achieve better physical, mental and social health.'

An initiative toward decriminalisation or legalisation of cannabis would seem to contradict these CSUS aspects aimed at preventing and delaying substance use.

The 'problems' that the 2020 Resolution 3 seeks to solve barely exist

The Resolution was well-intentioned in that it sought to reduce the harms to substance users who possess small amounts of illegal drugs, and their families, that can be caused by punitive approaches such as imprisonment and long-standing criminal records. But it is suggested that it was based on the premise that people whose only crime was possessing a small amount of illegal drugs are imprisoned for that offence, that they subsequently incur criminal records that limit future opportunities, and that alternative or non-punitive pathways are not available to them. This is not the case.

Imprisonment

People whose only offence is possession of a small amount of an illegal drug are not routinely sent to prison. Statistics collated by the Prison show that between 2019 to 8th

June 2021 there were no individuals awarded custodial sentences for possession of cannabis as a standalone offence. Custodial sentences can occur, however, when someone is found to be in possession of small amounts together with committing another crime with a harsher penalty such as importation or supply of drugs, or for non-payment of fines.

There are misperceptions in the community in relation to these outcomes, there is clearly a need for a public awareness-raising campaign to clarify these aspects.

Alternative and non-punitive approaches already exist

Non-punitive approaches are already available in the Bailiwick, specifically 'diversion' and 'depenalisation.'

Diversion is defined as 'steering substance users into programmes involving support, treatment or rehabilitation.' Both young people and adults have the opportunity currently to access a diversion pathway that can provide an assessment and support by a health professional. It is understood that a diversion path toward a health-oriented assessment by In-dependence (and in conjunction with Action for Children for young people) exists now for all ages. These form part of the standard risk assessment process for all those detained in custody.

Depenalisation is defined as 'reduction of the use of existing criminal sanctions.' While the Bailiwick's drugs law is non-specific as to penalties for the possession of specific 'small amounts,'

When someone is found to be in possession of a small quantity of illegal drugs, it is known that the pathway adopted by Bailiwick Law Enforcement is sometimes No Further Action (NFA) or is can be dealt with by way of a caution. This decision, and indeed any decision by a police officer as to which outcome to pursue, is tied to the evidential and public interest tests that must be applied in considering prosecution.

While these alternative and non-punitive options do exist in the Bailiwick, it is recognised that there may be a need to achieve greater clarity and understanding throughout the service provision chain for substance users.

Criminal records

If people whose only crime is possession of a small quantity of cannabis are not being given prison sentences, they also are not incurring long-standing criminal records that can inhibit future opportunities for employment, housing and travel.

Guernsey's Rehabilitation of Offenders Law 2002 provides details as to how offence disposals become 'spent' convictions following a set rehabilitation period. Whether convictions are spent or unspent determines whether they appear on basic background

checks in the future. In cases where a caution is received for possession of a small quantity, the offence drops off and is considered 'spent' after six months for both adults and non-adults.

The commonly-used Basic DBS (Disclosure and Barring Service) Check, used in the Bailiwick and the UK, does not show convictions or cautions that have become spent. (However, the more intensive Standard and Enhanced checks, which may be used by employers seeking employees to work with children or vulnerable adults, do show both spent and unspent convictions and cautions.)

Exploring a change to the legal status of cannabis would be complicated, risky and resource-intensive

Any GWP action to explore decriminalisation or legalisation would need to take into account a wide variety of risks, as well as complex and evolving contextual aspects. These include:

Health risks

It is recognised that the CfHSC has a statutory role in regard to the Schedule listing illegal drugs in the Misuse of Drugs Law (Bailiwick of Guernsey), 1974.

Without a doubt, the potential physical and mental health risks associated with decriminalisation or legalisation of a controlled drug such as cannabis would need to be a primary consideration.

Of particular concern would be the risks to children and young people. Even if legal sales were restricted to adults, the risks of cannabis diversion to children and young persons would increase as availability increases. Having a parent or family member who is a substance user is also well-known as a hazard to children and young people. Liberalisation of cannabis law would also necessitate extra educational measures to counteract the message engendered by liberalisation that cannabis consumption is acceptable.

Potential increases in cannabis diversion and drug-driving

Bailiwick Law Enforcement (BLE) has confirmed that BLE stats/intelligence show that cannabis is the most prevalent illicit drug locally and is regularly available on the black market locally.

Now that medicinal cannabis is available by prescription, it is understood that 6% of the population have already sought a prescription (which can be written by UK or local prescribers).

Prescription medication of all kinds are regularly diverted for sale locally. Medicinal cannabis is no different – intelligence suggests that diversion is taking place to all age groups.

It is suggested that the rapidly increasing availability of medicinal cannabis prescriptions is worsening this problem. While the extent to which diversion of medicinal cannabis is happening is not known, there is an awareness of a local Facebook group with more than 3,500 members in which medicinal cannabis is offered for sale.

There are concerns that the further widening of the availability of cannabis on-island through decriminalisation or legalisation would increase the risk that cannabis becomes more available to acquisition by children and young people. Even if the subsequent legal changes specify a minimum age limit, as is commonly done in jurisdictions that liberalise their drugs laws, diversion will still occur and will likely increase as cannabis availability increases.

Alongside the risk of increased diversion caused by greater availability of cannabis is the risk that driving under the influence of cannabis will increase.

The illegal drugs market and associated criminality could increase

Legalising the recreational use of drugs, including cannabis, will not mean that the illegal drugs market will disappear or reduce. Those making money from illegal drugs are not going to become legitimate tradespeople overnight, paying taxes and complying with regulations. It is suggested that legalising the recreational use of cannabis will enlarge the drugs market, opening up this activity to a wider audience.

Those currently in this trade will simply evolve and promote other substances or higher strengths, undercutting legal sales. It is unlikely they will be concerned with the age of customers, identification, quality of product or the amount consumed.

The risk of an increasing illegal drugs trade has been borne out by evidence in places such as Canada and California, which have liberalised their cannabis laws.

Work at the border for BLE would need to continue if cannabis were to be decriminalised or legalised, as the motivation for those to import drugs would remain, particularly to a jurisdiction that could be perceived to be ‘soft’ in this area.

It is suspected that any form of decriminalisation or legalisation could result in ‘cannabis tourism’ to the Bailiwick. Some of these people will bring the threat of added criminality from smuggling duty-free goods or other acquisitive crime.

The initiative dramatically flies in the face of UK government policy. The much-respected Professor Dame Carol Black’s independent report has underpinned

government policy. It concludes 'Decriminalisation is often suggested as a simple solution to many of the problems caused by illegal drugs. This is not the case. It would leave organised criminals in control while risking an increase in drug use. What is required is the whole system approach recommended by Professor Dame Carol Black and implementing all of the key recommendations of her review, that is what the strategy seeks to do: cutting off the supply of drugs. Preventing and reducing drug use, and world class treatment and recovery support for those battling addiction over the next decade'.

Additional law enforcement resourcing may be needed

It is assumed that taxation might form part of any future regulatory regime for cannabis. This could require Customs & Excise (C&E) to collect tax on import of legal cannabis. Or, if recreational cannabis is to be produced on-island through a regulatory regime, those goods will need regulating. C&E issues excise licences for local manufacturers and associated financial guarantees would also be required. Bonded warehouses that will require restrictions and audits by C&E may be needed. Additionally, there will be the threat of break-ins to cannabis warehouses, requiring security oversight.

No British Police Force or customs authority has had the experience of dealing with a community that has legal access to currently illegal drugs for recreational activity. It is not known what would be needed in terms of additional policing resources, but there may be a need for more police officers if we have an environment in which there is a greater availability of drugs.

Justice Framework

Would decriminalisation or legalisation of cannabis fit within the newly approved Justice Framework and align with its Vision, Principles and Outcomes?

The cannabis industry and its MoU

In July 2021 the States of Guernsey signed an MoU with the UK Home Office in order to strengthen and grow the nascent cannabis cultivation and processing sector in Guernsey. The agreement of the MoU was complex and is based in part on the fact that Guernsey has a consistent and clear position on wider cannabis-related matters. It is essential that as the MoU is implemented, any change in policy with regard to the legal status of cannabis should consider the impact on the relationship with the UK Home Office and the licensing regime that is being put in place which is based on close consultation with the UK on the same matter. Any recommendations in relation to a shifting position in this respect could impact the developing industry and any associated agreements or negotiations.

International relations

In this post-Brexit era, Guernsey's relationship with the UK Government, and indeed with other countries, stands at an important stage. The priority status given to managing the impact of Brexit in the GWP reflects this. Any consideration of changes to long-standing, agreed laws, policies and international agreements could have serious ramifications for these vital external relationships.

Cannabis offences would remain within all other jurisdictions in the British Isles, France and the majority of countries worldwide.

Reputational risks

How would a lengthy public review with a view toward liberalising the legal status of cannabis, or indeed actual decriminalisation or legalisation, affect Guernsey's standing with the global finance sector and other businesses?

How would it impact those considering the Bailiwick as a place of residence or a holiday destination?

These reputational aspects are crucial to any consideration of liberalising drugs law.

Cultural mismatch

There is no comprehensive or recent data on Islanders' own attitudes toward the potential legalisation of cannabis.

At least one active and vocal advocacy group exists on island which regularly promotes liberalisation of our law in regard to cannabis. What is unknown is the degree to which that viewpoint is shared among Islanders in general. It is entirely possible that a majority of Islanders do not share the view that cannabis decriminalisation or legalisation would be an appropriate reflection of the values of our society.

Given that the potential legalisation of cannabis would have implications for Islanders' health and wellbeing as well as the reputational health of the island on which we rely for economic stability, significant consultation would be needed.

Before the Assembly agrees to explore a change to the legal status of cannabis, the following questions need consideration:

- What are the health risks for Islanders?

- In particular, what are the health risks for children and young people? Would we need to strengthen education around the risks of substance use to counteract the message implied by legalisation that cannabis consumption is ok?
- Would criminal activity associated with illegal drugs increase? What are the implications for law enforcement?
- Does decriminalisation or legalisation of a controlled drug align with the Justice Framework?
- What are the interfaces with the cannabis horticulture industry and the existing MoU with the Home Office?
- What are the implications for relationship overall with the UK Government, other nations, and international Conventions and treaties?
- What are the reputational considerations for the States of Guernsey, the finance sector, business in general, tourism, Locate Guernsey and the island as a whole?
- And last but not least, what are Islanders' opinions on decriminalisation and legalisation, and how would they themselves be impacted?

Exploration of legalisation of cannabis would require not only the Committee for Health & Social Care but also the Committee *for* Education, Sport & Culture, the Committee *for* Home Affairs, the Policy & Resources Committee with its international relations remit, the Committee *for* Economic Development in relation to Guernsey's economic reputation as a whole and the cannabis industry in particular, plus direct consultation with clinical professionals, the third sector and Islanders themselves.

As the GWP states, 'the States of Guernsey will be stretched to support this additional area of cross-Committee policy development given the other actions set out in the GWP, especially with respect to managing Brexit and meeting international obligations. Additionally, it has not been identified as a current and pressing matter by any other Committee that would be significantly involved. Furthermore, there are concerns that legalisation will require a regulatory function that will need to be established through legislation, and resourced.'

Jurisdictions that have liberalised cannabis law are seeing adverse impacts

Those jurisdictions that have decriminalised or legalised cannabis in recent years are now experiencing adverse impacts as a result.

Canada

- While Canada's legalisation of cannabis is recent (2018), cannabis consumption has already risen. A 2021 government survey found that 25% of people reported they had used cannabis within the last year compared to 22% in 2017.
- 50% of cannabis sales in Canada now stem from the illegal market which is estimated to be \$4 billion dollars per year.

California

- In California, whilst cannabis is only legal for adults over 21, cannabis use among young persons is rising.
- The National Health and Drug Report 2019 found increased cannabis use amongst California's youth with 8% of young people between 12-17 using cannabis annually, which is above the national average of 6.8%.
- Cannabis use in those aged 12 and over is 19.4% compared to the national average of 16.2%.
- 6.5% of young people between 18-25 had a cannabis use disorder or addiction.
- Although California legalised cannabis in 2016, the illegal market remains the more profitable market. It is reported that buying legal cannabis from a legal dispensary can be up to 3 times the cost of illegal sources.