

Probation and After-Care Service

1 Lemprière Street, St. Helier, Jersey JE2 3XB
Telephone (01534) 441900
Email: probation@gov.je Website: www.gov.je/probation



Deputy T Binet
19-21 Broad Street
St Helier
JE2 3RR

18 June 2024

Dear Minister

Advice from the Advisory Council on the Misuse of Drugs in relation to the decriminalisation of cannabis proposition.

I am writing to you in my capacity as the Chair of the Advisory Council which has a remit that includes advising the Minister of Health about drugs issues on the Island.

The Council met on the 13th June. Attendees included senior officials from the Law Officers department, the Chief Pharmacist, Head of Customs, Accident and Emergency Consultant, Alcohol and Drugs Service representative, Interim Official Analyst and a senior Public Health policy officer.

The decriminalisation of cannabis was an agenda item that was discussed by the Council. In summary, the Council did not have a strong opinion at the moment about the merits or otherwise of decriminalisation but was of the view that any agreement to decriminalise has potentially far reaching consequences that need to be considered more carefully. There was caution urged before any decision to decriminalise was made and I will summarise the discussion to provide context.

1. Decriminalising possession of cannabis represents a significant change to our criminal law which has a number of foreseeable consequences and may have others we have not yet thought of. It is not something to be done without careful prior consideration of those consequences and how they might best be managed. The consequences are both legal in terms of the criminal law and potentially constitutional in terms of our relationship with the UK.

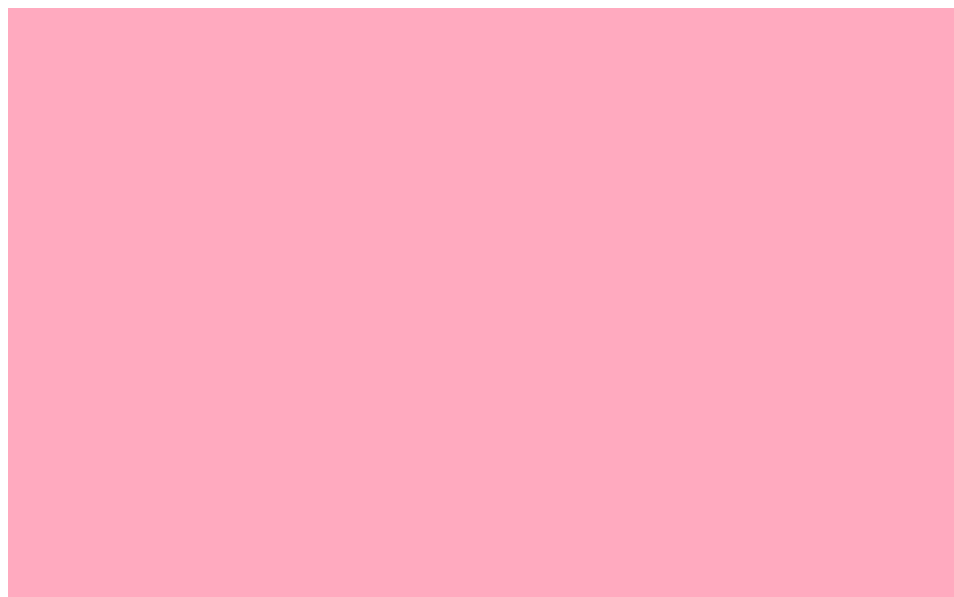
2. The domestic and near-neighbour criminal law issues, which require very careful prior thought, are these:

- (a) If we decriminalise simple possession we will create in all likelihood a growing demand for cannabis which will need to be met through supply. [REDACTED]
 - (b) If we do not decriminalise cultivation and trafficking then the decriminalisation of simple possession would see the States legislating in a way which is likely to encourage and expand criminal activity in the realm of cultivation and supply – in other words by decriminalising one aspect of the equation there is the obvious risk that we increase criminality in other aspects. There is also a risk that some may regard the decriminalisation of possession as also decriminalising importation and supply. This type of confusion is likely to be counterproductive.
 - (c) Even if we decriminalise simple possession, if we do not decriminalise supply itself then a person who buys cannabis from another will commit the offence of procuring an act of supply – thus the act of possessing would not be criminal but the act of obtaining from the dealer would continue to be criminal.
 - (d) Enabling an expanding, lawful cannabis consumption market in Jersey is likely to encourage criminality in neighbouring jurisdictions where criminals will wish to take advantage of Jersey’s supply needs and where, in those jurisdictions, exporting cannabis is a criminal offence – under English and Guernsey law, (as under Jersey law), exporting cannabis is a criminal offence. It may also be under French law too. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED] It would be important that Jersey first engages in consultation with our neighbours.

3. The risks to our constitutional relationship are:

- (a) The UK is a signatory to the UN Convention on Narcotic Drugs 1961 – which has been extended to Jersey. [REDACTED]
 - (b) The customs arrangement that Jersey has with the UK requires Jersey to align our customs legislation and practices in a number of respects with the UK. While it ensures tariff free access for Jersey’s goods to the UK market, the UK is entitled to maintain import and export licensing controls, and prohibitions and restrictions on imports from Jersey to the extent these could be justified under the WTO’s General Agreement on Tariffs and Trade. [REDACTED]
- [REDACTED]
- Decisions need to be taken in the context of the wider trading and customs relationship with the UK where a close working relationship with the UK is essential.

4. The Proposition is somewhat uncertain in terms of its scope. If passed, it would request COM to bring forward legislation that would “*decriminalise*”, for persons aged 18 and over, “*personal possession*” (and “*recreational use*”) of “*cannabis*”. There are uncertainties in the scope of some of these concepts, for example *decriminalisation* can mean a range of things, and different forms of *cannabis* are treated differently under current legislation. It is unclear what is meant by decriminalising *recreational use*, as *use* per se is not an offence under the current law. The Proposition also sets out areas that should be covered by the new legislation, but without specifying how they should be dealt with. When these various uncertainties are combined, they allow for a wide range of possible outcomes. For example:



5. De-criminalisation of possession would require careful consideration of what consequential changes might be appropriate. For example, decriminalisation of possession could still leave it unlawful to smoke cannabis in many circumstances – see eg. Art. 11(c) [Misuse of Drugs \(Jersey\) Law 1978](#) (offence for occupier of premises to knowingly permit smoking of cannabis etc), the [Restriction on Smoking \(Jersey\) Law 1973](#), which defines “smoking” widely, and its subordinate legislation such as the [Restriction on Smoking \(Workplaces\) \(Jersey\) Regulations 2006](#) (as well as the prohibition on smoking that applies to medicinal products related to cannabis at Art. 20A [Misuse of Drugs \(General Provisions\) \(Jersey\) Order 2009](#)).
6. The Proposition has the objective of decriminalising behaviour by adults whilst maintaining the position that children could be prosecuted for the same behaviour. There are likely to be human rights challenges in relation to this.
7. The council is also aware that the introduction of medicinal cannabis has brought about some concern about how this has been implemented and regulated. It would be unfortunate if further drugs legislation resulted in unintended consequences that compromised the Drugs Strategy’s intention to reduce harm.

For these reasons the Council would advise that further discussion and exploration of the issues raised by the proposition takes place before it is agreed.

The Council would be happy to continue to advise.

Yours sincerely



Chair of the Advisory Council Misuse of Drugs

Chief Probation Officer