



How to Regulate **Cannabis** A Practical Guide

Transform Drug Policy Foundation

Getting drugs under control

Transform Drug Policy Foundation is an international, charitable think tank with staff in the UK and Mexico. We are working to get drugs under control by advocating for strict regulation of all aspects of the drug trade. We aim to equip policy makers and reform advocates with the tools they need to fundamentally change our current approach to drugs and create a healthier, safer world.

Transform emerged in response to the increasingly apparent failings of current national and international drug policy. We draw attention to the fact that drug prohibition itself is the major cause of drug-related harm to individuals, communities and nations, and should be replaced by effective, just and humane government control and regulation. We provide evidence-based critiques of the war on drugs, new thinking on alternatives to the current enforcement-oriented regime of prohibition, and expertise on how to argue for reform. In addition to working with a broad range of media, civil society and professional groups globally, we advise national governments and multilateral organisations, including the Organization of American States, and we hold ECOSOC special consultative status at the UN.

Our vision

An end to the war on drugs, and the establishment of effective and humane systems of drug regulation.

Our mission

We will play a key role in supporting countries forming a coalition calling for drug law reform on the international stage.

Introduction

We have reached a significant moment in history. The legalisation and regulation of cannabis for non-medical (or *'recreational'*) use has moved not only from the margins to the mainstream of political debate, but also from theory to reality. This book arrives in a world where multiple jurisdictions are already debating, developing or actually implementing models of legal cannabis regulation. So the question has shifted decisively from *'Should we maintain cannabis prohibition?'* to *'How will legal regulation work in practice?'*

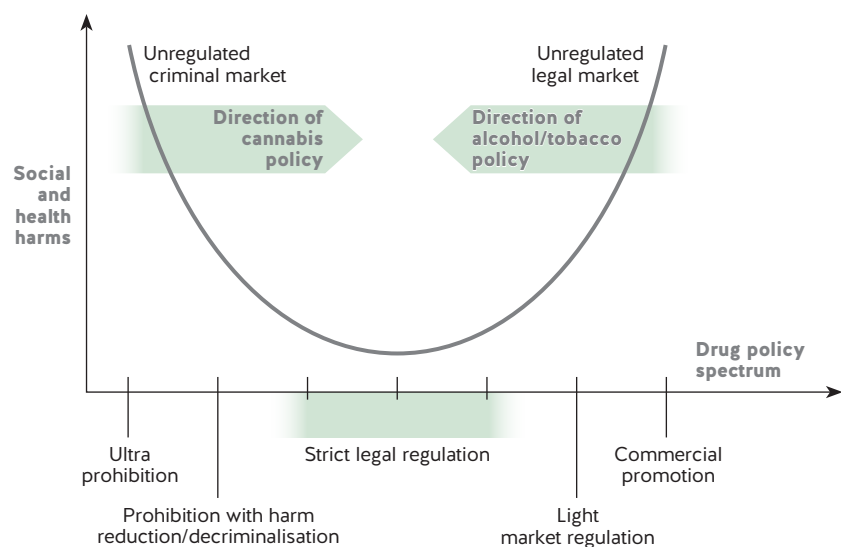
This book guides policy makers and reform advocates through the key practical challenges in developing and implementing effective systems of legal regulation. It explores what the aims of cannabis policy should be, and which models of legal regulation are most likely to deliver them.

Aims and policy options

Rather than the vague ideological or political goals of prohibition, we have identified the following aims of an effective cannabis policy:

- Protecting and improving public health
- Reducing drug-related crime
- Improving security and development
- Protecting the young and vulnerable
- Protecting human rights
- Providing good value for money

The various policy options for regulating cannabis are part of a spectrum that includes prohibition (which may be either more or less harshly enforced), various regulatory models that involve differing levels of government intervention, and essentially unregulated free markets. The regulatory models which occupy the middle ground on the drug policy spectrum, between the extremes of absolute prohibition and unregulated free markets, are best placed to deliver the above aims.



The options at either end of the spectrum – which both entail unregulated markets controlled by either criminals or legal entrepreneurs – involve governments essentially forfeiting the ability to intervene in the cannabis trade and ensure these aims are met. By contrast, under systems of legal regulation, government intervention can take many forms.

This guide is organised in sections that explore each area of regulation and the potential regulatory tools at our disposal. This analysis is informed by evidence from related policy areas – in particular, alcohol, tobacco, pharmaceutical drugs, and existing models of medical and nonmedical

cannabis regulation. There are then chapters discussing the key concerns and challenges around cannabis policy reform, and a table comparing existing models of non-medical cannabis regulation from around the world.

Key themes

The key themes to emerge from this guide are:

- **Mitigating against the risks of over-commercialisation** – The history of alcohol and tobacco control is littered with examples of commercial interests trumping public health priorities. Regulators should learn from this experience and ensure that the legal cannabis trade is not susceptible to similar industry manipulation
- **Erring on the side of caution** – Cannabis regulation should be more, rather than less, restrictive, at least at the outset. Again, as experience with alcohol and tobacco demonstrates, attempts to ‘reverse-engineer’ well-established and culturally embedded regulatory frameworks in order to make them more restrictive at a later date are likely to be problematic due to industry resistance
- **Placing science back at the heart of the policy making process** – Rather than being dictated by ideological commitments or political concerns, cannabis policy should be built on evidence of what will minimise the potential harms and maximise the potential benefits associated with the use of the drug

The practical detail of regulation

a Production

- The regulation of production should have two main aims: Guaranteeing product safety and quality through appropriate testing, evaluation and oversight of production processes, and ensuring the security of production systems in order to prevent diversion to unregulated illicit markets
- Legal cannabis production can be conducted in many ways – on a smaller scale, via home growing or so-called ‘*cannabis social clubs*’, or on a larger scale, via private companies subject to varying levels of government oversight. Each model has its own challenges, but examples of most are already in operation, without any serious problems, in different places around the world

b Price

- Price controls are an important and flexible tool for influencing the dynamics of a legal cannabis market, but should be employed cautiously, in order to reduce the risk of their having unpredictable or negative impacts on the nature of the market

- Price controls will have to balance often conflicting priorities – e.g. the desire to dissuade use (by keeping prices higher) vs. the desire to reduce the size of illicit markets (keeping prices lower)
- Careful evaluation will be critical in the development of pricing policy, with responses shaped by lessons learnt, changes in patterns of use, and local priorities

c Tax

- There are a range of ways in which tax revenue can be generated within a legal cannabis market, but they must all function in a way that supports, rather than undermines, the wider policy aims explored above
- The total amount of revenue generated will depend on the tax model adopted, and the size of the taxable market. Potential variations in both over time makes predictions difficult
- A system based on taxation of both production and sales fl with THC content by weight being the taxable unit fl is a sensible starting point for discussion, but models will need to fit within the needs of local political environments and existing tax frameworks
- While ringfencing cannabis taxes for social programmes may be politically attractive, it may be problematic in practice

d Preparation and method of consumption

- Given that cannabis comes in many different preparations and can be consumed in a variety of ways, regulatory models will need to be designed with local patterns of use in mind
- The risks of cannabis use are shaped by preparation, dosage, potency and method of consumption. Regulation can reduce these risks by: promoting the use of safer products, in particular those that are less potent; encouraging safer methods of consumption, especially those that

do not involve smoking, such as the use of vaporisers; and by providing safer environments in which to consume cannabis

e Strength/potency

- The concept of cannabis potency is somewhat different to the equivalent concept for alcoholic drinks. This is because cannabis has more than one active ingredient and can be consumed in many different ways
- Potency-related risks can be reduced through testing and monitoring of products, clear and accurate labelling, responsible retailing, and education about strength and responsible use
- This combination of interventions is likely to be more effective and less problematic than attempts to enforce arbitrary potency limits

f Packaging

- A primary aim of packaging should be to ensure it is child resistant, in order to minimise the risks of accidental ingestion
- Packaging should also be tamper-proof, display an appropriate level of product and safety information, preserve the freshness of the product, and not encourage use
- Regulation of cannabis product packaging should take into account lessons from alcohol and tobacco packaging, both of which have historically been designed to encourage or initiate use, in particular among young people
- Established packaging technology for food and pharmaceutical drugs can be easily and cheaply adapted to meet the needs of cannabis packaging

g Vendors

- As gatekeepers of access to cannabis, it is important that vendors are subject to regulation that ensures the drug is made available in as safe and responsible a manner as possible
- Vendor licences should therefore be awarded or withdrawn on the basis of whether access controls (in particular age-access controls) are properly enforced, and whether sufficient safety information or other advice is provided to purchasers
- Commercial priorities may tend to undermine responsible retailing practice, so any licensing framework will need to be vigorously enforced if it is to be effective

h Purchasers/users

- Possible controls on purchasers/users include: age-access controls, controls on bulk purchasing (i.e. sales rationing), and controls on when and where cannabis can be consumed
- Where to set the age-access threshold for cannabis will be determined by local needs and priorities, but 18 is a reasonable suggestion and is in keeping with age restrictions on alcohol and tobacco in many places. Wherever the age-access threshold is set, it will need to be strongly enforced in order to be effective, and should also be supported by evidence-based prevention and education interventions

i Outlets

- Controls on outlets – in terms of their location, hours of opening, appearance and geographical density – should establish a level of availability that meets adult demand and reduces illicit-market supply, while at the same time preventing over-availability and subsequent potential increases in use

- The appearance of retail-only outlets should be functional rather than promotional, with pharmacies potentially providing a useful model. Controls on venues that permit on-site consumption – which must obviously offer a comfortable, welcoming environment – should focus on external signage and internal product displays

j Marketing

- Experiences with alcohol and tobacco show how marketing can be used to initiate and promote consumption and encourage risky using behaviours, but also clearly demonstrate that strict controls can effectively mitigate against such effects
- A comprehensive ban on all marketing activity (as outlined in the World Health Organization’s Framework Convention on Tobacco Control) should be enforced by default. Partial marketing bans are likely to be far less effective, given that tobacco companies, when subject to such bans, have maintained their level of promotional spending, simply diverting more money to those marketing activities that are still permitted

Key challenges

a Cannabis-impaired driving

- The increased risks associated with driving while impaired by cannabis – to the driver, passengers and other road users – mean it should be an offence in all jurisdictions, one that is subject to a hierarchy of punitive legal sanctions for offenders
- Nevertheless, enforcement is problematic since determining an unacceptable level of cannabis-induced impairment is more difficult than with alcohol. This is because blood levels of THC, the key active

ingredient in cannabis, do not correlate with impairment as closely as blood alcohol levels do

- Given this problem, we recommend a policy centred around effect-based standards. This means a field sobriety test that has been validated for cannabis, followed by a blood test, should be used to provide evidence of recent consumption. The blood THC threshold beyond which prosecutors can reasonably assume a driver has recently used cannabis should be determined by the best currently available evidence. At present, the scientific literature suggests approximately 7-10 nanograms of THC per millilitre of blood would be a reasonable point at which to set this threshold
- The combined use of alcohol and cannabis presents a far greater safety risk and should be addressed through the use of lower thresholds limits for both
- Zero tolerance or per se blood THC limits, which automatically trigger the application of sanctions, should be avoided as they risk leading to prosecutions of drivers who are not impaired. This is because THC and cannabis metabolites can be detected long after any impairing effect has passed

b The interaction of regulatory systems for medical and non-medical uses of cannabis

- It is important to make a clear distinction between the political and regulatory challenges relating to medical and non-medical cannabis products, so that the parallel and overlapping research and policy development processes support rather than hinder each other
- The two issues have often been conflated, and while this has arguably been useful in political terms, this approach carries risks. Unless there is a specific reason to explore the cross-over, we suggest separating the issues as far as possible

c Synthetic cannabinoids

- Synthetic cannabinoids that mimic the effects of cannabis form a key part of the growing market for novel psychoactive substances (NPS – sometimes called ‘*legal highs*’)
- Relatively little is known about the growing number of synthetic cannabinoids and the unregulated products that contain them, but they are often highly potent and thought to be more risky than ‘*natural*’ cannabis.
- No novel psychoactive substances should be made legally available without an appropriate level of safety testing and regulation. Until this happens, a default ban on their sale should be established. The New Zealand system for regulating NPS provides a useful example of how such a system could function
- The synthetic cannabinoid market is fuelled by cannabis prohibition, and will largely disappear when it ends as most users report a preference for ‘*real*’ cannabis over synthetic alternatives

d Cannabis tourism

- The potential for legally available cannabis to lead to increases in destination tourism or cross-border transit between legal and prohibitionist jurisdictions is a real, albeit widely overstated, problem
- The experience of the Netherlands suggests cannabis-related tourism is little different to any other form of tourism, and brings economic benefits with few problems
- Localised cross-border transit is more of a problem, but one that needs to be managed pragmatically rather than with heavy-handed and likely counterproductive border enforcement
- The obvious long-term solution is legally regulated markets on both sides of a border

e Cannabis and the UN conventions

- The outdated, inflexible and counterproductive global drug control system – in the form of the three UN drug conventions and related UN agencies – is more than 50 years old and is long overdue reform to make it ‘*fit for purpose*’
- In its current form, regulated cannabis markets for non-medical use are forbidden, but the desire of growing numbers of states to explore such markets is now forcing the debate
- Mechanisms for reforming the UN drug treaties – such as modification, amendment, or replacement – are already in place, but can be vetoed by prohibitionist member states
- Unilateral action, or action co-ordinated between groups of like-minded reform states, is likely to be needed to force the issue of wider structural reforms – and options do exist for states to withdraw from one or more treaties, to withdraw and re-accede with reservations on specific articles, or to breach any treaties while exploring multilateral options
- This is essentially uncharted territory: all of these options present complex legal and diplomatic challenges and come with significant (if diminishing) political costs. However, despite diplomatic and institutional inertia, it is clear that the failings of cannabis prohibition are now tipping the balance in favour of reform at both state and multilateral level

“With this new guide, Transform continues to be at the cutting edge of drug policy reform. This work sets ideology aside, focusing instead on the essential practical task of developing a workable regulatory framework for cannabis as an alternative to the failed prohibition model.”

Representative **Roger Goodman**, Washington State Legislature
Chair, House Public Safety Committee (responsible for cannabis regulation)

How to Regulate **Cannabis**: A Practical Guide

This is a guide to regulating legal markets for the non-medical use of cannabis. It is for policy makers, drug policy reform advocates and affected communities all over the world, who are witnessing the question change from, ‘*Should we maintain cannabis prohibition?*’ to ‘*How will legal regulation work in practice?*’

Just a few years ago, this book would have been largely theoretical. Now, however, the cannabis regulation debate has moved decisively into the political mainstream, and multiple cities, states and countries are considering, developing or implementing a range of regulated market models for the non-medical use of cannabis. So this book draws on evidence not only from decades of experience regulating alcohol, tobacco, and medicines, but also from Spain’s non-profit ‘*cannabis social clubs*’, commercial cannabis enterprises in the US and the Netherlands, and Uruguay’s government-controlled system of cannabis regulation.

This book will help guide all those interested in cannabis policy through the key practical challenges to developing and implementing an effective regulation approach aimed at achieving the safer, healthier world we all wish to see.

“The traditional approach hasn’t worked.
Someone has to be the first [to legally regulate non-medical cannabis].”

José Mujica, President of Uruguay, 2013

“This guide is essential reading for policy makers around the globe who know that cannabis prohibition has failed. In comprehensive detail, it explores pragmatic, evidence-based approaches to regulating the world’s most widely used illicit drug.”

Professor **David Nutt**

Chair of the Independent Scientific Committee on Drugs

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