



TRANSFORM
Drug Policy Foundation



How to Regulate **Cannabis** A Practical Guide

EXECUTIVE SUMMARY

THIRD EDITION
UPDATED & EXPANDED

Transform Drug Policy Foundation

Getting drugs under control

Transform is a UK-based independent charity with a vision of a world where drug policy promotes health, protects the vulnerable and puts safety first.

To achieve this, we educate the public and policymakers on effective drug policy; we develop and promote viable alternatives to prohibition; we provide a voice for those directly affected by drug policy failures; and we support policymakers and practitioners in achieving positive change.

Our current system of drug prohibition fails everybody. That is why we believe currently illegal drugs should be legally regulated through a system of risk-based licensing.

In addition to our long-term goal, we work actively to support pragmatic changes to drug policy that can save lives today. These include decriminalisation and police diversion schemes, overdose prevention centres and drug safety checking.

Drug policy harms impact people across society. Through our Anyone's Child campaign, we provide opportunities for people with personal experiences of drug policy failures to be heard.

Transform Drug Policy Foundation is a UK-registered charity (#1100518) and limited company (#4862177)

Introduction

This is the third edition of our guide to regulating legal markets for the non-medical use of cannabis. It is for policy makers, reform advocates and affected communities all over the world who are seeing the legal regulation of cannabis move from the margins decisively into the political mainstream. The question is no longer just 'Should we maintain cannabis prohibition?' or 'How will legal regulation work in practice?', but also 'What can we learn from legalisation efforts so far?'

Transform first published *How to Regulate Cannabis: A Practical Guide* in 2013, shortly after Colorado and Washington passed state-level initiatives to legalise cannabis, and shortly before licensed sales of cannabis began. Since then, the cannabis policy landscape has changed dramatically. As well as an ever-increasing number of state-level initiatives to legalise cannabis in the US, now well into the double figures, we have seen moves at a national level in Uruguay, Canada, Mexico and Malta, as well other states in the process of doing so, including Luxembourg, Switzerland, Germany, Israel, South Africa, and jurisdictions across the Caribbean. Transform has been there from the beginning, working, alongside its partner organisation México Unido Contra la Delincuencia, as consultant to the Government of Uruguay on its proposed cannabis regulation model, and has since been approached by other jurisdictions to provide our expertise in developing new cannabis policy frameworks.

Reform is accelerating. We are fast approaching half a billion people living in legal cannabis jurisdictions. Emerging lessons from these new legal markets have been incorporated throughout this updated and expanded third edition, including detailed new sections on social equity programmes, expungement of past criminal records, and mitigating the risks of corporate capture.

Transform, working with international colleagues, has produced this guide to help those engaged in cannabis policy through the key practical challenges involved in developing and implementing an effective regulation approach to achieve a world where drug policy promotes health, protects the vulnerable and puts safety first.

- **Section 1** provides the **conceptual foundations** for a responsible regulatory approach.
- **Section 2** tackles the **details of how to regulate** the various aspects of a cannabis market, including key challenges and broad recommendations for best practice.
- **Section 3** focuses on **specific cannabis-related issues** that run parallel to wider market regulation questions, nationally and internationally.

The debate around the legalisation and regulation of cannabis has rumbled on ever since the drug was first prohibited. But it is finally nearing its end point. Support for a punitive prohibitionist approach is waning rapidly, while globally, support for pragmatic reform has passed a tipping point in mainstream political and public opinion.

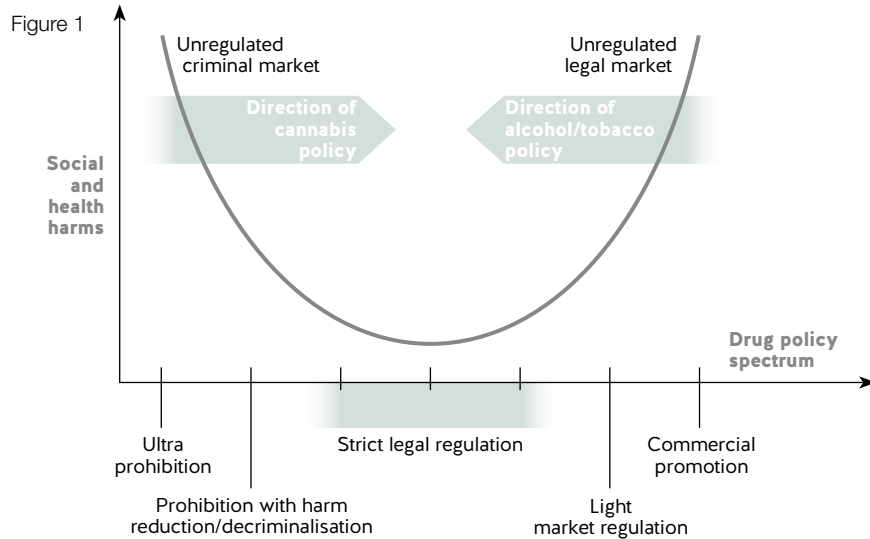
A key lesson from legalisation efforts so far has been the importance of acting early. If regulatory frameworks are not sufficiently designed to prevent corporate capture and promote

equitable market access from the outset, then regulators are likely to face an uphill battle going forward. For this reason, we urge regulating jurisdictions to heed the messages in this guide and think carefully about how to build the kind of cannabis policy that meets the promises made in support of reform. We hope the detailed discussion in this guide provides some assistance in ensuring that cannabis legalisation works for everyone.

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:

- Respect, protect and promote human rights
- Protect and promote public health
- Promote social equity, improve development opportunities and ensure communities most impacted by prohibition are included in policy development
- Reduce crime, corruption and violence associated with drug supply
- Protect against excessive corporate influence on policy making
- Limit the incentives for profit-making driven by problematic use
- Protect the young and vulnerable from potential harms
- Incorporate clear outcome indicators, measures of success and evaluation processes



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 involve essentially unregulated markets, controlled by either criminal or legal entrepreneurs, in which governments forfeit the ability to intervene and ensure these aims are met. By contrast, under systems of legal regulation, government intervention can take many forms.

How to Regulate Cannabis: A Practical Guide is organised into chapters 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, pharmaceutical drugs, and existing models of medical and non-medical cannabis regulation. The guide discusses key concerns and challenges around cannabis policy reform from production, tax and potency, to past criminal records, corporate capture and social equity.

The key themes to emerge from this guide are:

- **Mitigating the risks of over-commercialisation** - The history of legal drugs markets 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.
- **Centring social justice in policy design and implementation** - Not only should policy ensure that the benefits of reforms are shared fairly, and the inequities of the past not reproduced, but also that the toxic legacy of the war on drugs is addressed through expungement of criminal records, and the participation of, and investment in disproportionately impacted communities.
- **Placing science 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 cannabis production and use.
- **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 are likely to be problematic due to industry resistance.

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 take different forms - on a smaller scale, via home growing or so-called 'cannabis social clubs', or on a larger scale, via commercial entities subject to varying levels of government oversight. Each model has its own challenges, but functioning examples of most - demonstrating both good and bad practice in terms of social equity and sustainability - are already in operation in different places around the world.
- As market models move beyond domestic production into international trade it is important that regulation should be considered through the lens of sustainable development; the development impacts of cannabis reforms for traditional producer regions should not be forgotten.

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 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 illegal 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 discussed 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 make predictions difficult.
- Maximising tax revenue should not be a key driver of policy; tax revenue should be seen more as a welcome additional benefit.
- A system based on taxation of both production and sales - with THC (the psychoactive substance in cannabis) content by weight being the taxable unit - is a sensible starting point for discussion, but models will need to fit within the needs and practicalities of local political environments and existing tax frameworks.
- While ring-fencing 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 nature of cannabis potency differs from the potency of alcoholic drinks because cannabis includes more than one psychoactive compound (the ratios of which can impact subjective experience and risk), and can be consumed in different ways (which impact speed of onset, duration of effect, and total exposure).
- Potency-related risks can be reduced through testing and monitoring of products, clear and accurate labelling, responsible retailing, and education about potency related risks and responsible use.
- This combination of interventions is likely to be more effective and less problematic than attempts to enforce arbitrary potency limits - particularly if set too low.

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 content and safety information, and preserve the freshness of the product.
- Regulation of cannabis product packaging should take into account lessons from policy mistakes with 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 adapted to meet the needs of cannabis packaging.
- Environmental sustainability requirements should be mandated.

g Vendors

- As gatekeepers to access of 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.
- Vendors should therefore be licensed, with licences awarded (or withdrawn) on the basis of whether access controls (in particular age-access controls) are properly enforced, and whether sufficient product and safety information, or other advice is provided to purchasers.
- Commercial priorities may undermine responsible retailing practice, so any licensing framework will need to be vigorously enforced, and vendor training requirements mandated, if it is to be effective.

- Social equity aims should be hardwired into initial legislation, with licensing policies promoting market access for disproportionately impacted communities and smaller businesses - supported by training, technical and financial assistance - to prevent corporate capture and ensure a diverse market space.

h Purchasers/users

- 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, but 18 is in keeping with age restrictions on alcohol and tobacco in many places. Age-access thresholds will need to be strongly enforced in order to be effective, and should also be supported by evidence-based prevention and education interventions.
- Controls over permitted locations for cannabis smoking/vaping should mirror those that currently exist for public tobacco smoking/vaping.

i Outlets

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

- The appearance of retail-only outlets should be functional rather than promotional.
- Controls on venues that permit on-site consumption - which must offer a comfortable, welcoming environment - should focus on external signage and internal product displays.
- Online outlets will require dedicated regulatory oversight and licensing arrangements - but operate within the same regulatory principles which apply to vendors, marketing etc.

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 demonstrates that strict controls can effectively mitigate 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 Past criminal records

- Criminal records provide a lasting stigma, reducing employment and life opportunities.
- Expungement of criminal records for offences that are now legal is a vital part of addressing the toxic legacy of prohibition, acknowledging past injustices, and repairing the disproportionate burden of harm carried by marginalised communities.
- A process for automatic and total expungement of criminal records should be mandated in legislation at the outset of any reform process, and should be the responsibility of the relevant authority, not affected individuals.

b Corporate capture

- Corporate capture of the policy process, and the emergence of corporate monopolies, undermine development of effective public health legislation and realisation of social justice and environmental sustainability goals.
- The risks of corporate capture can be mitigated by: building equitable licensing policies into legislation from the outset; restricting the number of retail or production licenses available to a given corporate entity; restricting participation of alcohol and tobacco industry actors in emerging cannabis markets; establishing mechanisms to monitor corporate lobbying;

securing international coordination to ensure the emerging legal cannabis trade supports sustainable development goals.

c Cannabis-impaired driving

- The risks associated with driving while impaired, to the driver, passengers and other road users, justify its designation as a specific offence and a hierarchy of legal sanctions for offenders - with resources directed to educating the public about both the risks and legal consequences.
- Field-testing precise THC blood levels is difficult, and the relationship between blood THC levels and impairment is less clear than the equivalent relationship for alcohol, making enforcement of legal standards difficult.
- Given this problem, we recommend a policy centred around effect-based standards. Any body fluid testing should only be carried out to establish recent use following a recorded driving infraction or once evidence of impairment has been derived from a standardised field sobriety test that has been validated for cannabis-induced behaviour.
- 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 threshold 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.

d The interaction of regulator 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 some political contexts, this approach also carries practical and political risks. Unless there is a specific reason to explore the cross-over, we suggest separating the issues as far as possible.

e Synthetic cannabinoids

- Comparatively little is known about the growing number (100+ identified) of synthetic cannabinoids (novel psychoactive substances that mimic some effects of cannabis), and the unregulated products that contain them, but they are often highly potent and more risky than cannabis.
- Under a system of legal cannabis regulation, the default position should be that synthetic cannabinoids would not be made legally available for non-medical use - however possession should not be subject to sanction, and appropriate tailored harm reduction and treatment responses should be available.
- The emergence of the synthetic cannabinoid market is fuelled by cannabis prohibition, and will be significantly undermined when cannabis prohibition ends.

f ‘Cannabis tourism’

- The potential for legally available cannabis to lead to increases in tourism or cross-border transit between legal and prohibitionist jurisdictions is a real, albeit widely overstated, problem.
- Destination tourism related to cannabis is relatively non-problematic and can bring economic benefits for the destination.
- Localised cross-border transit is more of a problem - particularly in federalised regions with open borders between jurisdictions with different legal models (most obviously the US and EU), but one that needs to be managed pragmatically rather than with heavy-handed restrictions to market access, or expensive and likely counterproductive border enforcement.
- This is likely to remain a marginal and localised problem that will diminish over time as more jurisdictions move to regulate cannabis.

g 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 a 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; withdraw and re-accede with reservations on specific

articles; explore inter se treaty reform options among a group of like-minded states; or temporarily move to ‘respectful’ non-compliant status while exploring multilateral reform options.

- All available options for reforming member states present complex legal and diplomatic challenges and come with real (albeit 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.

This book is available to buy in print, or as a free download from www.transformdrugs.org

“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 DrugScience

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This is the third edition of our guide to regulating legal markets for the non-medical use of cannabis. It is for policy makers, reform advocates and affected communities all over the world who are seeing the legal regulation of cannabis move from the margins deviously into the political mainstream. The question is no longer just ‘Should we maintain cannabis prohibition?’ or ‘How will legal regulation work in practice?’, but also ‘What can we learn from legalisation efforts so far?’

Since this book was first published in 2013, the cannabis policy landscape has changed dramatically, with multiple jurisdictions having developed or implemented regulated market models for the non-medical use of cannabis. Over the last decade, Transform has been approached by jurisdictions to provide its expertise as consultants to support the establishment of their new policy frameworks.

This updated and expanded new edition draws on Transform’s experience in the field, and emerging evidence from these new legal cannabis markets. It includes detailed new sections on social equity programmes, expungement of past criminal records, and mitigating the risks of corporate capture. This book will help guide those interested in cannabis policy through the key practical challenges to developing and implementing an effective regulation approach aimed at achieving a world where drug policy promotes health, protects the vulnerable and puts safety first.