

A REGULATED CANNABIS SCHEME FOR BERMUDA

Policy Document – Ministry of Legal Affairs

FOR PUBLIC CONSULTATION

Purpose

1. To provide a regulatory and licensing regime to establish a Cannabis scheme in Bermuda. This is designed to meet Government's stated policy initiative to progressively liberalise Cannabis laws, apace with law reforms in other jurisdictions, and in keeping with public sentiment on the topic. There has been consistent public support and advocacy for full legalisation of Cannabis. The proposed policy sets out the framework of what a regulated Cannabis scheme might look like for Bermuda. It has been principally influenced by existing regulated Cannabis laws in other favourable jurisdictions such as Canada and small island nations in the Caribbean.
2. The proposed law will establish a Cannabis Advisory Authority, in accordance with international obligations, to advise and assist the Minister responsible for drug prevention in the regulation of the retail sale of Cannabis and Cannabis products, commercial cultivation, research, manufacture and transport of Cannabis. The proposed regulated scheme establishes a licensing system for various activities relating to Cannabis; provides for monitoring, inspection and enforcement powers to be given to inspectors; and proposes to give the Minister the power to give directions to the Authority and related matters.
3. Cannabis materials, Cannabis products and cultivation of Cannabis and medicinal Cannabis all fall within the scope of the proposed regulated Cannabis scheme.

Summary

4. Government's policy towards liberalization of Cannabis laws continues to aim to strike the right balance between full (unregulated) legalisation and safe, controlled, regulation of Cannabis. The challenges include: rectifying legacy demonization of the plant and persons who use it, satisfying Bermuda's international obligations; protecting young persons and providing economic opportunities for our citizens.
5. The regulated Cannabis scheme outlined in this policy document is to be read alongside an illustrative draft of the Bill entitled "Cannabis (Licensing and Regulation) Act 2020".
6. Throughout the proposed policy you will notice a de-emphasis on over-regulation and criminalization of personal use whilst maintaining suitable regulation and enforcement of the anticipated Cannabis scheme. Offences and penalties have been revised down and incarceration used economically. Persons with prior Cannabis convictions are not automatically barred from participation in the marketplace.

7. The main work for regulating the scheme will be conducted by the Cannabis Advisory Authority who will advise the Minister on the issuance or refusal of licences and matters relating to the Cannabis and the Cannabis industry. The Minister determines, on the recommendation of the Cannabis Advisory Authority, whether or not to approve licenses; with appeals to the Supreme Court.
8. Eligibility for participation in the regulated Cannabis scheme (for licences and for permitted use of Cannabis and Cannabis products) is set at 21 years of age.
9. The technical details of the scheme are provided in the illustrative draft Bill so that the public and interested parties can digest the specifics of how they might participate or be affected by the new laws. Additional regulatory requirements for each type of licence are scheduled in the illustrative draft Bill along with specific requirements for Cannabis retail shops which are designed to protect the public and young persons. Such provisions are to mirror the requirements within the Liquor Licence Act 1974.

Cannabis policy development in action

10. The 2018 Speech from the Throne stated Government's intent 'to advance a regime to permit licensed medical practitioners to prescribe medicinal Cannabis to aid in treating pain relief and chronic medical conditions; and to establish a licensing regime to regulate domestic production of medical-grade Cannabis products'.
11. Thus, the initial policy direction was to create a regulated local Medicinal Cannabis industry which could allow for commercial importers and local production of Cannabis-derived medicinal products to supply local demand for prescribed Medicinal Cannabis and for export; to expand access to Medicinal Cannabis; and to provide for a legal distinction between Hemp and Cannabis.
12. Public consultation on a draft Bill proposing a Medicinal Cannabis industry and access to Medicinal Cannabis for certain chronic illnesses followed. Largely, public opinions were in support, but questioned the need for such complex regulation, rather than simply legalising the Cannabis plant.
13. Amendments to the law were passed to redefine 'hemp'. Hemp was legally distinguished as Cannabis with THC content of less than 1% by the Misuse of Drugs (Hemp) Amendment Act 2019. This legalized all hemp-based products and products containing other cannabinoids such as CBD for import and sale in Bermuda.
14. Subsequently, the Hon. Premier publicly commented that the PLP's Caucus had voted to advance a policy of a regulated Cannabis scheme. This expanded the policy scope of the previous Medicinal Cannabis scheme, which public views felt did not go far enough.

15. After analysis of prior stakeholder consultation, public consultation and the commitment made by the Premier, this revised policy was approved by Cabinet to create a simplified regulated Cannabis framework allowing for lawful Cannabis use/consumption, retail sale of Cannabis, commercial cultivation of Cannabis and associated activities with accessible economic benefits for individuals.
16. Additional public comments received via the online government forum and questions posed to the Premier during the Covid-19 press conferences have informed the real-time policy development. Public optimism that in the post-Covid-19 recovery, that new economic opportunities and jobs will occur from this policy are well placed.
17. Government is also advancing a policy for the expungement of criminal records for persons with Cannabis convictions for less than 7 grams contemporaneously with this initiative.

Overarching policy considerations

Public attitudes towards Cannabis

18. As a benchmark, published data capturing public perceptions on Cannabis are found in the Bermuda Drug Information Network (BerDIN) 2018 National Survey. Key features include the following statistics:—
 - 58.6% believe Cannabis misuse should result in compulsory education or treatment rather than legal consequences;
 - 55.6% think that Cannabis use should be a non-criminal offence with a penalty of a fine instead;
 - 19% of the public said that Cannabis use should result in no legal or other consequences;
 - Only 26.9% want Cannabis use to remain a criminal offence subject to criminal enforcement, criminal penalty and criminal record; and
 - By comparison, the public was more concerned with drunk driving, with 86.1% in favour of more severe legal penalties.

Public protections

19. Any policy on the liberalisation of Cannabis has to consider the potential impacts upon children and young persons. The proposals and illustrative draft Bill accounts for this by setting an age restriction of 21 for licencees and to use/consume Cannabis. Setting the age at 21 is to protect the developing brain based on strong scientific evidence that when people begin using Cannabis as teenagers, the drug may impair thinking, memory, and learning functions and affect how the brain builds connections between

the areas necessary for these functions, including loss of IQ. The National Institutes of Health (NIH) is undertaking a 10-year scientific study (ABCD Study) on adolescent brain cognitive development and substance use, including Cannabis. The results of this study will give greater certainty about the harmful effects of Cannabis on adolescent brain and cognitive development.

20. Until the medical research is more conclusive, the intention is to take a cautious approach before freely endorsing Cannabis use among adolescents and young adults.
21. The scheme will also include restrictions on promotion and packaging of Cannabis directed at youth.
22. The Cannabis Advisory Authority will work in partnership with the Department of National Drug Control (DNDC) to develop educational programmes for school-age persons with an emphasis on personal responsibility and abstinence. DNDC will continue to monitor and track Cannabis use data among young people and adults and supply reports to the Minister responsible for drug prevention.
23. Cannabis use public awareness campaigns will be focused in the same way as for alcohol.
24. Criminal offences related to providing Cannabis to a person under the age of 21, with penalties is also included in the scheme.

Cannabis Advisory Authority functions

25. The Cannabis Advisory Authority will be statutorily established with the founding mandate to advise the Minister on any matters relating to Cannabis or Medicinal Cannabis, the Cannabis industry in Bermuda. The Authority will be subject to Ministerial direction.

26. Additional functions include:—

- receiving and processing applications for licences;
- making recommendations to the Minister on whether to grant or refuse licences;
- advising the Minister on policy matters, the administration of the Act and regulations and reporting on the statistics relating to the types of licences and the Cannabis industry;
- providing educational materials and training on Cannabis and Cannabis industry (in collaboration with services and resources provided by BEDC); and
- prescribing standards and providing guidance for licensees.

27. The Authority will be constituted of at least five members appointed by the Minister from across disciplines of health, scientific research, business, planning and agriculture. One or two lay members will be appointed to represent the interests and advocate for the greater public interest.
28. Ex-officio members to include the Attorney General, the Collector of Customs and the Director of National Drug Control. It is not recommended to include the Commissioner of Police, because of the overall de-emphasis of excluding persons from entry to the scheme and participation in the same based primarily on criminal history.
29. The Authority is to be staffed by an Executive Director with professional experience in a regulated Cannabis environment who will be responsible for the day to day management of the affairs of the Authority and coordinate functions between the Authority and the Minister. The Executive Director will be assisted by such technical consultants, inspector(s) and administrative support, as needed, with the consent of the Minister. Human resources are to be shared with Ministry of Legal Affairs and/or by temporary reassignments/professional development opportunities from within the existing public service, where appropriate.
30. The Authority will be financed by funds from the Legislature; over time it is envisaged that it should be self-sustaining based on revenue.
31. The Authority is to provide annual audited accounts and an annual report on the operation of its functions to the Minister.

Licensing system

32. Bermudian Status holders over 21 years of age and corporate entities incorporated and registered in Bermuda are eligible for licences.
33. Applicants for licences must meet general licence application requirements such as payment of fees, details of the physical layout and ownership of or permission to use the property, details of all employees, company and registration status. Applicants are to be subject to inspection of the premises prior to a licence being granted and future inspection for security and suitability for the purpose of the licence sought.
34. Types of licences available—
 - a **cultivation** licence, to allow for the growing, harvesting, drying, trimming, curing or packaging of Cannabis or medicinal Cannabis; granted with an import licence for Cannabis or medicinal Cannabis planting material only;

- a **Cannabis retail shop** licence, to allow for the operation of a Cannabis retail shop for the sale of Cannabis or the sale and consumption of Cannabis;
- an **import** licence, to allow, for the Cannabis and medicinal Cannabis planting material for cultivation from any country from which it is lawful to do so;
- an **export** licence, to allow for the export of locally cultivated Cannabis to a country in which it is lawful to do so;
- a **manufacturing** licence, to allow for activities relating to the processing and manufacturing of Cannabis products or Cannabis material, or medicinal Cannabis products or medicinal Cannabis material, including but not limited to, edibles and other derivatives;
- a **research** licence, to allow for the conduct of scientific research relating to the development of Cannabis or medicinal Cannabis; granted with an import and export licence for purposes connected to research and development; and
- a **transport** licence, to allow for the transport of Cannabis or medicinal Cannabis within Bermuda.

35. A provision to allow temporary licences for certain events and tourism-sector activity, much like the special event licences available under the Liquor Licensing Act 1974, is included in the scheme.

36. Licences will be valid for 2 years, with annual fees payable on the anniversary date of the licence and a streamlined licence renewal process will ease the regulatory burden on licensees, as long as the licence does not lapse.

37. Licences cannot be assigned or transferred, but they can be surrendered if the licensee no longer wishes to engage in licensed activity.

38. The Cannabis Advisory Authority will make a recommendation on each application to the Minister and the Minister may decide to grant or refuse a licence, and apply any additional terms and conditions. General terms and conditions of all licences are to be set in legislation.

39. Undergirding the policy objective is an element of restorative justice and fairness. Cannabis licences are intended to first be issued to those negatively impacted by prohibition. This may include persons' whose criminal convictions for 'simple possession' (and similar offences) are expunged under future law reforms.

40. The Minister is to have the power to revoke licences on specific grounds or vary licences on application or on the Minister's own initiative.

Enforcement

41. The Minister will designate inspectors for the purposes of the regulatory enforcement. It is anticipated that designated inspectors may be drawn by deputizing public officers who carry out comparable functions, such as from Department of Planning and Parks Department; designation may be specified for a fixed period.
42. Inspectors' powers to enter premises will be proportionate to the need for the inspection.
43. Inspectors will be allowed to seize items relevant to their investigation, including photographs or video surveillance footage.
44. Wherever possible, inspections should take place during ordinary business hours or within accepted social hours.

Appeals

45. Persons aggrieved by a decision of the Minister will have a right of appeal to the Supreme Court.
46. Access to justice considerations are valid whenever an appeal has to be made to the Supreme Court. Supreme Court filings may be too costly or difficult to navigate without legal representation. However, it is the most appropriate mechanism for appeals in the scheme, because of the direct decision making of the Minister when granting, refusing varying or revoking licences, etc. Other considerations included establishing a Tribunal, however this was not supported because of the intendant costs and additional administrative burden. The Supreme Court has made substantial improvements to its offerings of information and assistance to litigants without legal representation.

Offences

47. Government's policy is to de-emphasize persons' past criminal history as a bar to access to government licences and permits and participation in economic opportunities available. There are examples in other jurisdictions where a percentage of Cannabis business licences are reserved for persons formerly convicted or incarcerated for Cannabis-related offences. Government recognizes that a balancing act has to be done to protect the integrity of regulated activities, protect the public from criminality against the public policy of rehabilitation and undue stigmatization, and exclusion of persons from opportunities for socio-economic empowerment. Thus, over-criminalization in the regulated Cannabis scheme is not advised as it will run counter to this pervasive policy aim.

48. The need for proportionate and pragmatic criminal offences is unavoidable. Offences and penalties stated in the draft Bill are benchmarks to provoke public discussion and input. **[Should Government consider other penalties or what should the appropriate penalties look like?]**

Fees and economic opportunities

49. A unique opportunity (in the post-Covid-19 economic recovery) presents for Cannabis-related business opportunities to contribute to green shoots of economic activity and job creation.

50. Government policy is to open up economic opportunities for underserved and marginalized communities. Thus, fees should not be too high so as to prohibit access generally. For example, transport licence fees and import licence fees should be set comparatively low. Other categories of licence, predicted to be more profitable, to be set higher. Example of what the fee schedule might look like—

Cultivation Licence	\$5,000
Cannabis Retail Shop Licence	\$8,000
Import Licence	\$1,000
Export Licence	\$2,000
Class 1 Manufacturing Licence	\$20,000
Class 2 Manufacturing Licence	\$30,000
Research Licence	\$10,000
Transport Licence	\$1,500

51. Fees are to be paid upfront at the application stage and paid annually on the anniversary date of the licence. No refunds will be given for refused applications or for licences which are surrendered or revoked.

52. Lower renewal fees were initially considered, but because the fees are to be scaled proportionately this was deemed unnecessary. **[Public and stakeholder feedback should reveal market tolerance to the prescribed fees.]**

Additional licensing requirements for each licence category (Schedule 3)

53. Cultivation licences

- Cultivation licences are proposed for indoor or outdoor premises (indoors between 300-800 sq. feet or ½ acre – 3 acres outdoors).
- Cultivation licensees can sell cultivated Cannabis only with the express permission of the Minister. For example, a commercial cultivator may gain permission to sell to a Cannabis retail shop. All

such sales will be strictly controlled and supervised by the Cannabis Advisory Authority, via its inspectors.

- No licences permitted in premises frequenting/housing minors.
- Ownership of the property to be used for cultivation must be clearly established within defined boundaries, with the requisite approvals from the registered owner of the property to be provided in order to cultivate.
- The Minister will set the maximum limits on crop cultivation and possession and control in the terms and conditions of each licence. **[Other surveyed jurisdictions have set limits on the number of plants a commercial grower may keep and cultivate. Public views on whether such limits should be set is welcome.]**
- Cultivation of Cannabis will be strictly controlled. The Minister must be satisfied, via verification by the Cannabis Advisory Authority, that adequate security systems are in existence at any premises licensed for cultivation, including an approved security plan.
- The Cannabis Advisory Authority may set applicable guidelines/standards for licensed cultivators.

54. Manufacturing licences

- Manufacturers of Cannabis products and materials must demonstrate that their facility is suitable for the type(s) of manufacturing purposes proposed, up to a capacity of 1000 sq. feet.
- Ownership of the property to be used for cultivation must be clearly established within defined boundaries, with the requisite approvals from the registered owner of the property.
- Adequate site security, storage and control measures must be demonstrated by applicants, to the satisfaction of the Minister, as verified by the Cannabis Advisory Authority. An approved security plan must be in operation.
- Descriptions of adequate waste disposal procedures is also necessary.
- The Advisory Authority may set applicable guidelines/standards for licensed manufacturers.

55. Import licences

- Import licenses are available as stand-alone licences or as ancillary to Cannabis retail shop licences, commercial cultivation licences and research licences.
- In respect of any Cannabis product to be imported, it must be purchased from a regulated source and its transport must meet all applicable international and local customs laws.
- An importer must supply to the Cannabis Advisory Authority the description of any Cannabis product for import; its intended use; if applicable, its brand name; its quantity; the name and address of the exporter in the country of export; the port of entry into Bermuda; the address of the premises to which the Cannabis product is to be delivered; and each mode of transportation used, the country of export and, where applicable, any country of transit or transshipment.
- Import licences are to be limited to the specifications provided with the application and subject to all terms and conditions imposed on the licence.
- HM Customs Department to verify specifications of all imported Cannabis product against the details contained in the licence.

56. Export licences

- Export licences are to be subject to the satisfaction that the importing (receiving) entity is recognized and regulated within the receiving jurisdiction.
- This should be a controlled process via a bonded warehouse (etc.) in compliance with all applicable international laws and the laws of the receiving jurisdiction.
- Documentary verification that an exported shipment has arrived at the approved location is needed.
- As stated above, spent convictions are not expected to be considered when determining an applicant's eligibility to obtain a licence. The policy regarding un-spent convictions is that they should only be considered relevant in relation to serious offences and offences which international prohibitions dictate, e.g., for trafficking and importation.

57. Research licences

- For research licences, the Minister must be satisfied that the applicant is duly qualified to provide provision of analytical services proposed.
- Licences will be available for experimental purposes and analytical services.
- Security logs to track access to any research facility must be kept and supplied upon request.

58. Transport licences

- The Minister may authorise, in an approved licensed vehicle, the transportation of Cannabis or medicinal Cannabis to or from specified locations.
- Specified locations are to be limited to transport to and from cultivation sites and facilities for any medicinal or research purpose. **[Should the permitted activities of a transport licence be expanded to include, for example, transport of all imported Cannabis products between Customs areas and Cannabis retail shops?]**
- Operational times are to be between 6:00 a.m. and 6:00 p.m.
- A security officer must accompany all transport runs; with logs kept for inspection by the Advisory Authority.

Licensing requirements for Cannabis retail shop licences (Schedule 4)

59. A Cannabis retail shop licence will authorise a licensee to sell Cannabis from a ‘bricks and mortar’ retail shop to patrons to carry away or to sell or supply Cannabis from a retail shop to patrons for consumption only within the retail shop premises. Any person who meets the age requirement for entry (with valid identification) will be able to purchase items for sale in a Cannabis retail shop. This includes local residents and tourists.

60. A licence will permit sales of Cannabis products (in the form of dried Cannabis; Cannabis oil; fresh Cannabis; edible Cannabis; Cannabis extracts; Cannabis topicals).

61. Cannabis accessories may also be sold within a Cannabis retail shop.

62. Only one Cannabis retail shop licence will be permitted per applicant; and investors can only hold interest in one Cannabis retail shop.

63. Cannabis retail shops must demonstrate adequate site security, storage and control measures must be, to the satisfaction of the Minister, as verified by the Cannabis Advisory Authority. An approved security plan must be in operation.
64. Mechanisms to allow for public objections to a Cannabis retail shop, on the basis of noise, trash, disruption to traffic, Cannabis misuse, etc., are set out in the Schedule. **[Are there any other legitimate grounds for objections to Cannabis retail shops?]**
65. There are restrictions on access to persons under 21 years of age, advertising and sale of products marketed to children and adolescents.
66. Specific restrictions will apply to the sale and sale and consumption of Cannabis in Cannabis retail shops where use is permitted. Where onsite use is not permitted, packaging cannot be opened on premises.
67. Cannabis retail shops cannot share facilities with a premise licensed under the Liquor Licence Act 1974.
68. Cannabis retail shops will be subject to direct police supervision and enforcement, similar to powers under the Liquor Licence Act 1974.
69. Specific offences and penalties relating to Cannabis retail shops will be included, e.g., altering Cannabis, consuming Cannabis at unlicensed retail shop, using Cannabis in an area ancillary to a Cannabis retail shop, procuring Cannabis for persons under the lawful age limit, etc. The same policy considerations, as stated under the subsection ‘Offences’, are applicable to offences and penalties for Cannabis retail shops.
70. Additional safeguards to direct conduct within Cannabis retail shops, hours of operation and record-keeping will be prescribed in legislation.