



# Pleasant Lands

THE CAMPAIGN FOR UK HEMP

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## Executive Summary

Industrial hemp cultivation is permitted under licence in the UK and farmers are able to process the seeds and stalks for a defined commercial use, such as producing hemp seed oil, textiles and building materials. Yet despite unprecedented global expansion hemp remains classified as a niche crop in the UK - with cultivation estimated at only 800 hectares annually, a tiny fraction compared to the US or Australia.

The primary obstacle that is stopping the UK from unleashing the potential of industrial hemp is the licensing regime that prohibits farmers from harvesting the whole plant. The leaves and flowers of the hemp plant must be disposed of and cannot be used for any purpose, including to extract CBD.

UK regulators have supported the ongoing growth of the CBD market by providing a pathway for wholesale CBD companies to secure novel food authorisation, advising that any company which has not made a valid application to the Food Standards Agency by March 31st 2021 will have its products removed from UK shelves.

However, as the licensing regime inhibits domestic CBD production, this regulatory pathway only helps the overseas companies who import their products into the UK. It is nonsensical that the Home Office provides a regulatory pathway for these overseas CBD companies, but excludes British businesses from participating in a market which has a current market value of £300 million in the UK. This is expected to reach £1 billion market by 2025.

The Home Office can amend its current guidance, without the need for primary or secondary legislation, to permit Industrial Hemp cultivation licences to be granted that do not require the green material to be discarded and permit the whole plant to be processed (by the cultivator or another business) to enable CBD to be extracted.

## CHAPTER 1: CURRENT SITUATION

### A 'green' revolution

Hemp is a sustainable, versatile and high value crop that has a long history of use in the UK but with unfulfilled potential. A female variety of the cannabis sativa, hemp is distinguished by its very low THC content (typically <0.2% in Europe). THC is the psychoactive chemical compound found in cannabis. This means that it is not possible to get high from hemp products.

Hemp has over 250,000 uses but its most common applications are textiles, sustainable building materials, fibres, hemp seed oil and CBD extract can be used as an ingredient in wellness products.

During the reign of Henry VIII it was mandated that one quarter of all farmed land should cultivate hemp to supply rope to the Royal Navy. However, it fell out of favour with the invention of cheaper synthetic materials and cultivation was restricted with the introduction of drugs legislation in the 20th century.

In recent years, the environmental credentials of industrial hemp and its economic potential in the construction and wellness markets have prompted a wave of policy reforms liberalising its cultivation. In 2014, the US government made the landmark decision to federally legalise industrial hemp, allowing small-scale cultivation, and the 2018 Farm Bill expanded on this to allow the transfer of hemp-derived products across state lines for commercial or other purposes, placing no restrictions on the sale, transport, or possession of hemp-derived products.<sup>1</sup> In 2019, 285,000 acres of hemp were grown in the US - a 72% increase from the previous year.<sup>2</sup>

In 2017, Australia approved the legalisation of hemp-based foodstuffs for human consumption and last year, more than 50,000 hectares of industrial hemp was cultivated in Europe, an increase of over 50% from 2016 and accounting for an estimated 20% of FAO-reported global acreage.<sup>3</sup>

With the global industrial hemp industry reaching 4.71 billion USD in 2019<sup>4</sup> and expected to register a revenue-based Compound Annual Growth Rate of 15.8% by 2027, this industry is expected to be a thriving fixture, generating a range of jobs and ancillary industries.

Industrial hemp cultivation is permitted under licence in the UK and farmers are able to process the seeds and stalks for a defined commercial use, such as producing hemp seed oil, textiles and building materials. No restrictions are placed on how seeds and stalks can be sold, and they can be freely imported and exported out of the country.

Yet despite unprecedented global expansion hemp remains classified as a niche crop in the UK - with cultivation estimated at only 800 hectares annually, a tiny fraction compared to the US or Australia. The primary obstacle that is stopping the UK from unleashing the potential of industrial hemp is the licensing regime that prohibits farmers from harvesting the whole plant.

<sup>1</sup> <https://www.brookings.edu/blog/fixgov/2018/12/14/the-farm-bill-hemp-and-cbd-explainer/>

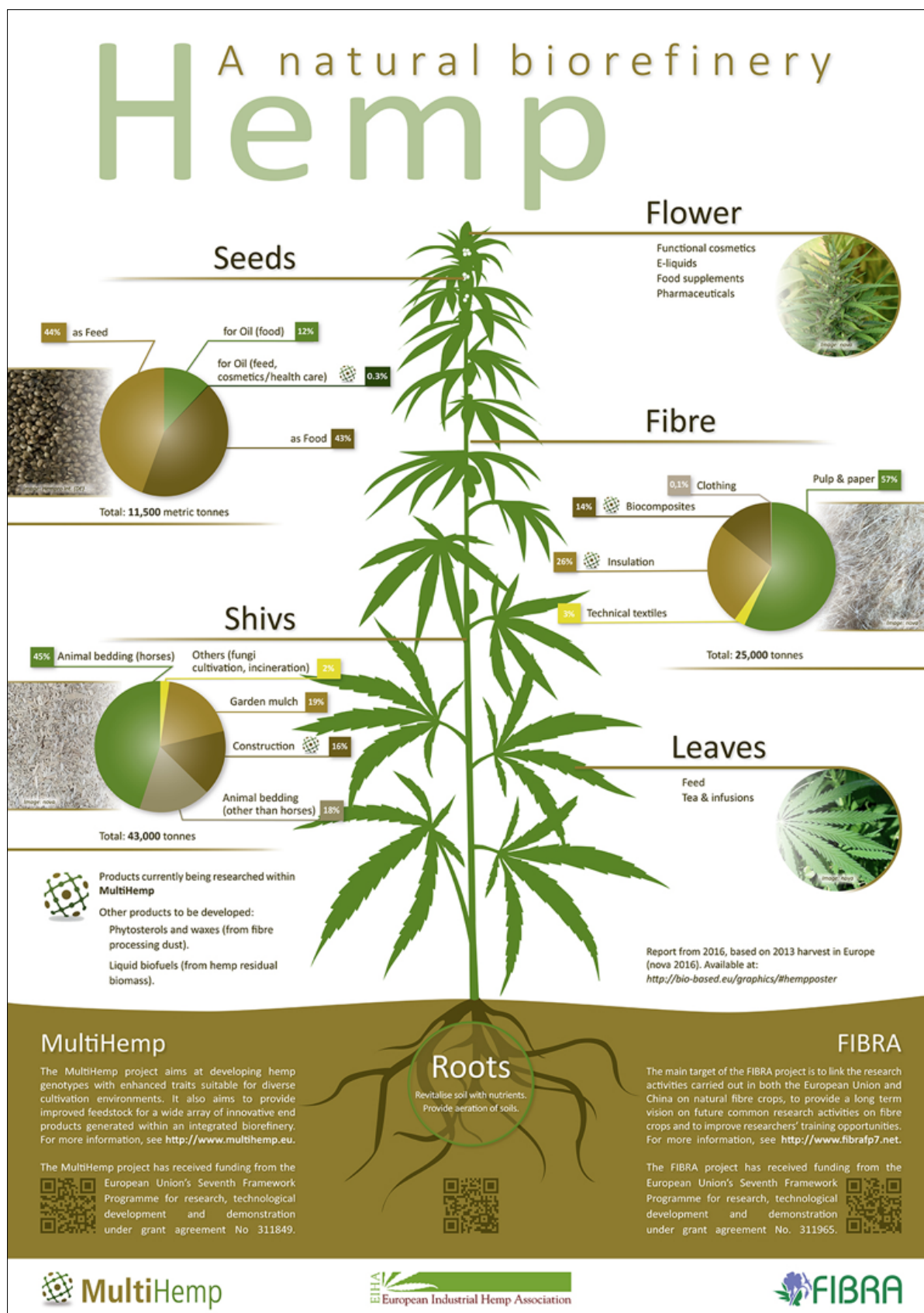
<sup>2</sup> <https://content.brightfieldgroup.com/2019-hemp-cultivation-landscape>

<sup>3</sup> <https://cannabusinessplans.eu/european-hemp-market-legalization-and-opportunities/#:~:text=In%202019%2C%20European%20cultivation%20grew,hectares%20used%20for%20hemp%20cultivation.>

<sup>4</sup> <https://www.grandviewresearch.com/industry-analysis/industrial-hemp-market>



## Anatomy of the hemp plant and commercial uses for its components



Source: MultiHemp

Despite the fact they are not psychoactive, the leaves and flowers of hemp are 'controlled' under the Misuse of Drugs Act (MODA). For this reason, industrial hemp can only be cultivated under a Home Office controlled drugs licence. Hemp seeds, stalks or fibre produced from the stalks are not, in themselves, controlled when removed from the rest of the plant, and do not require a Home Office drugs licence to possess.

CBD is a non-psychoactive chemical compound that can be extracted from hemp flower and much like the legal position of seeds, stalks and fibre, CBD is not a prohibited drug under the MODA in its isolated form, with no detectable levels of THC.

THC is controlled under the MODA and, crucially, small amounts of THC will be present when CBD is extracted from hemp flower. These trace amounts must be removed, with no detectable levels present, for the end product to not be in breach of the MODA. However, it is worth remembering that the industrial hemp flower has an imperceptibly low level of THC within it. That the extracted product (CBD) is not controlled, but the flower itself is, means the legal framework is unnecessarily complicated and impractical for hemp farmers.

## Industrial Hemp licensing policy

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Home Office guidance establishes two separate controlled drugs licensing regimes dependent on whether the THC content of the plant is "high" or "low".

If the THC 0.2% or below, farmers can apply for a low THC Industrial Hemp licence which would allow for cultivation with a defined end commercial use. This type of controlled drugs licence is a 'light touch' regime which does not require a Home Office visit, though staff are expected to have an enhanced DBS check and the crop cannot be visible to the public.

The most restrictive condition of the licence is the requirement that farmers can only use the seeds and stalks of the plant, and are unable to harvest the controlled parts of the plant - the leaves and flowers. This part of the plant must be disposed of and cannot be used for any purpose, including to extract CBD.

Only through securing a high THC Research and Development (R&D) licence can the controlled parts of the plant be harvested and CBD extracted. R&D licences are mainly used by universities and the pharmaceutical industry and with its high associated costs, this is not commercially viable for businesses seeking to enter the CBD wellness market, particularly when faced with competition from abroad. It also does not incorporate wholesale of hemp flower within its framework, which excludes businesses that intend to solely cultivate.

## Consequences of the Licensing Regime

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The licensing restrictions that prevent the use of the whole plant has meant that the UK hemp industry is not yet commercially viable. The controlled 'green material', or leaves and flowers, is the most valuable part of the hemp plant. Per two acres the current yield for saleable hemp products is approximately £800. Farmers are having to destroy £20,000 worth of hemp flower that could be extracted and processed in the UK.<sup>5</sup>

<sup>5</sup> <https://vimeo.com/391498530>

*“Last year we threw away £100,000 of CBD from a crop with a value of £20,000 on our small farm. It helps nobody to do this – most of all the farmers. Imagine the opportunity for farmers and the treasury that larger farms across the country could offer.”*

**Margent Farm, Huntington**

This has left UK farmers with insufficient economic incentive to cultivate hemp solely for fibre and seeds and has stilted the growth of the industry. The fact that the crop remains classified under the Misuse of Drugs Act means that the UK industry imports hemp fibre from abroad, due to a lack of domestic production.

It is predicted that the global hemp industry will be worth \$15.26 billion in 2027<sup>6</sup>, but the UK will be left behind if British hemp farmers are unable to harvest the whole plant and fully participate in the market.

The wider economic impact of the current legislative framework is to prevent the UK from participating as a producer in the CBD wellness market. In recent years, the UK CBD market has rapidly expanded, with the number of users doubling from 125,000 to 250,000 between 2017 and 2018, making CBD products a common staple in high street chains such as Holland & Barrett, Boots and Lloyds Pharmacy.<sup>7</sup> In 2019, the global CBD oil market size was USD 414.7 million and it is expected to reach USD 3197.2 million by the end of 2026, with a Compound Annual Growth Rate of 33.5% during 2021-2026.<sup>8</sup>

UK regulators have supported the ongoing growth of the CBD market by providing a pathway for wholesale CBD companies to secure novel food authorisation, advising that any company which has not made a valid application to the Food Standards Agency by March 31st 2021 will have its products removed from UK shelves.

However, as the licensing regime inhibits domestic CBD production, this regulatory pathway only helps the overseas companies who import their products into the UK. It is nonsensical that the Home Office provides a regulatory pathway for these overseas CBD companies, but excludes British businesses from participating in a market which has a current market value of £300 million in the UK. This is expected to reach £1 billion market by 2025.

It is only international competitors who stand to gain from the existing licensing framework of the UK industrial hemp licensing regime, which has hindered the growth of British industry and exported jobs out of the country.

## **CHAPTER 2: THE ECONOMIC AND ENVIRONMENTAL BENEFITS OF ALLOWING WHOLESALE OF HEMP FLOWER AND CBD EXTRACTION UNDER AN INDUSTRIAL HEMP LICENCE**

When utilised to its full potential, hemp is a rare crop that produces high returns both from an economic and environmental standpoint.

<sup>6</sup> <http://www.globenewswire.com/news-release/2020/12/28/2150959/0/en/Hemp-Inc-Reports-Global-Industrial-Hemp-Market-One-of-the-Fastest-Growing-Industries-of-2020.html#:~:text=Today%20the%20global%20industrial%20hemp,report%20by%20Grand%20View%20Research>.

<sup>7</sup> <https://newfrontierdata.com/cannabis-insights/the-global-hemp-market-expansion/>

<sup>8</sup> <https://www.globenewswire.com/news-release/2020/07/30/2070078/0/en/Global-Cannabidiol-Oil-CBD-Oil-Market-2020-Growing-Rapidly-with-Modern-Trends-Development-Status-Investment-Opportunities-CAGR-of-33-5-Revenue-Demand-and-Forecast-to-2026-Says-Indu.html>

The attention of policy makers across the globe is quite rightly focused on fiscal policies to combat economic destruction caused by the COVID-19 crisis, yet the climate change emergency remains ever-important. The International Monetary Fund has called for 'green' fiscal policy responses to prevent one crisis exacerbating the other, and emphasises that decisions made in response to the economic crash will have implications on the climate for decades to come<sup>9</sup>. Rapid and deep-reaching policy changes are being implemented across every continent in response to both health and economic disasters, and rarely has it been more essential to develop shovel-ready policies<sup>10</sup> that mutually protect people, the environment and domestic industries.

Many jobs have been, and will continue to be, lost as a result of the economic downturn. It is essential that workers are retrained and supported through the transition away from diminishing sectors and towards more future-proof opportunities. Industrial hemp has been referred to as a 'gateway crop' for young farmers<sup>11</sup>, having the potential to attract more young people to the agricultural industry and adjacent areas including downstream processing and R&D. Action is urgently needed to encourage sustainable growth that reduces the burden of climate change and rising carbon emissions. Wider uptake of industrial hemp will create long-term sustainable jobs for farmers and down-stream processors and manufacturers.

Reform to enable wholesale of hemp flower for extraction of CBD will provide significant direct and indirect benefits to the UK's agricultural and manufacturing industries, the economy, environment and society as a whole.

## Environmental benefits

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Modern agricultural practices are increasingly being scrutinised for their environmental impact, as the need to address climate change, biodiversity loss and pollution becomes ever more urgent for both governments and businesses. Hemp presents a remarkable set of characteristics as a sustainable crop for UK farmers, both directly as the crop itself, and indirectly as a facilitator for sustainable industries. The Department for Environment, Food and Rural Affairs (Defra) estimates that UK farming emits a total CO<sub>2</sub> equivalent of 57 millions tonnes (average of around **3.1 tonnes of CO<sub>2</sub> per hectare** total embodied emissions), and with the UK Government's target to reach net zero carbon emissions by 2050, increasing hemp acreage could play a key role in rectifying this figure, as well as assisting in remediation of brownfield and nutrient-depleted, intensively farmed land.

## Direct environmental benefits

### A Carbon Sink

Industrial hemp has been shown to absorb more CO<sub>2</sub> per hectare than any forest or commercial crop, making it an ideal carbon sink and one of the most effective tools for CO<sub>2</sub> to biomass conversion. One hectare of industrial hemp can absorb 22 tonnes of CO<sub>2</sub> per hectare. In addition, the CO<sub>2</sub> is permanently bonded within the fibre that is used for anything from textiles, to paper and as a building material.

Every tonne of industrial hemp stems contains 0.445 tonnes of carbon absorbed from the atmosphere (44.46% of stem dry weight). Converting carbon to CO<sub>2</sub> that represents 1.63 tonnes of CO<sub>2</sub> absorption per tonne of UK hemp stem harvested. On a land use basis, using Hemcore's yield averages (5.5 to 8 T/ha), this represents **8.9 to 13.4 tonnes of CO<sub>2</sub> absorption per hectare** of UK hemp cultivation<sup>12</sup>.

<sup>9</sup> <https://www.imf.org/en/Topics/climate-change/green-recovery>

<sup>10</sup> <https://www.imf.org/~media/Files/Publications/covid19-special-notes/en-special-series-on-covid-19-greening-the-recovery.ashx>

<sup>11</sup> <https://civileats.com/2019/10/21/for-young-farmers-hemp-is-a-gateway-crop/>

<sup>12</sup> <https://hemp-copenhagen.com/images/Hemp-cph-Carbon-sink.pdf>

## Phytoremediator

Hemp is a powerful phytoremediator, removing toxic heavy metals and contaminants from the soil through its deep roots. Hemp was planted exclusively to remove heavy metals from contaminated soil following the nuclear disaster at Chernobyl in 1986, and increasing hemp acreage in the UK can play a role in restoring brownfield land and renewing soil quality.

## Soil decompaction

Primarily growing grain crops like wheat has led to major soil compaction issues, as there is no crop that is breaking up the compacted soil. Inefficient use of land and poor farming techniques has meant that soil is currently lost at 10 times the rate it is created, costing the economy an estimated £1.2bn a year in England & Wales alone<sup>13</sup>. Hemp improves soil structure while also protecting soil, as its long taproots help to bind soil and combat erosion. Due to the length of its roots, hemp is also able to absorb sub-soil nutrients that are outside of the reach of other plants.

## Reduction in pesticide and fertiliser use

The majority of hemp varieties are naturally resistant to insect pests and predators, requiring minimal, if any, use of chemical pesticides. Industrial hemp can be grown in soil conditions of varying quality, without the need for fertiliser, and can be planted between other crops as a ground crop cover, naturally suppressing the growth of weeds due to its rapidly growing canopy. Crucially, this makes hemp an excellent crop for farms transitioning to organic cultivation, or organic farms that require a suitable break crop between cereal crops to reduce disease and levels of pests and weeds. Industrial hemp also produces significant quantities of pollen during periods of floral scarcity, making it an ideal crop to protect the dwindling bee population<sup>14</sup>.

## Indirect environmental benefits

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### Reduction in imports

Net greenhouse gas emissions need to fall by 100% by 2050 compared to 1990 levels<sup>15</sup> to meet the target reduction set out by the UK parliament in June 2019, following an increase from the 80% reduction commitment of the Climate Change Act 2008. Currently, the UK sources the majority of CBD and hemp inputs from abroad, incurring a high carbon footprint in the process. Every tonne of air freight shipped from China to the UK results in an estimated 4.68 tonnes of CO<sub>2</sub> emissions, based on the European Chemical Transport Association's calculation guidelines<sup>16</sup>.

According to industry estimates, approximately 85% of the UK's demand for hemp products is currently supplied by imported hemp. An estimated 15 tonnes of flower is required as an input for the UK's food supplement market, while hemp cultivated in the UK cannot be used for this purpose. The growth of a UK industry manufacturing CBD extracts and hemp composites will reduce the need to import goods at a high carbon cost, and in turn will retain profits within the UK economy.

### Increased viability of hemp composites

Enabling wholesale of hemp flower will make hemp more commercially viable as a crop to UK farmers. This in turn will expand the UK's domestic hemp acreage and result in increased viability of value-added hemp products, including sustainable construction materials and bioplastics, due to increased supply of fibre and shiv.

<sup>13</sup> <https://www.wwf.org.uk/updates/only-10-million-pounds-investment-needed-year-ensure-we-still-have-harvests-end-century#:~:text=The%20agriculture%20sector%2C%20which%20is,year%20in%20England%20and%20Wales.>

<sup>14</sup> <https://eiha.org/wp-content/uploads/2020/06/2018-Hemp-agri-report.pdf>

<sup>15</sup> <https://www.instituteforgovernment.org.uk/explainers/net-zero-target#:~:text=In%20June%202019%2C%20parliament%20passed,to%201990%20levels%20by%202050.&text=Prior%20to%20this%2C%20the%20UK,1990%20levels%2C%20also%20by%202050.>

<sup>16</sup> [https://www.ecta.com/resources/Documents/Best%20Practices%20Guidelines/guideline\\_for\\_measuring\\_and\\_managing\\_co2.pdf](https://www.ecta.com/resources/Documents/Best%20Practices%20Guidelines/guideline_for_measuring_and_managing_co2.pdf)



A large proportion of UK hemp is currently used for animal bedding, partly driven by the limited number of domestic firms that are able to process into more sophisticated products and materials. While some of the leading hemp cultivators have invested in their own on-site processing capabilities, the UK lacks industrial scale regional processing facilities, and consequently the manufacturing sector for hemp material-based products remains underdeveloped.

Notably, carbon net-zero hemp composites can be manufactured using the crop's comparatively lower-value by-products such as shiv, creating additional revenue opportunities for farmers primarily cultivating hemp for wholesale production of flower. Industrial hemp processing has the potential to displace the use of unsustainable oil-based and tree-derived materials, and hemp biocomposites offer robust and varied uses for construction, acting as insulation and a substitute for fibreglass, cement and plaster. Per person, construction waste in the UK is over double the amount relative to household waste, and construction materials alone account for 20% of the UK's ecological footprint and greenhouse gas emissions<sup>17</sup>. Locally manufactured hemp composites would also provide an environmentally sustainable substitute material for short-life products (such as fencing and pallets), rather than timber, which is typically imported and releases stored carbon upon its eventual combustion or decomposition.

Industrial hemp has the potential to meet multiple objectives set out in the 2018-2030 Bioeconomy Strategy, including “developing a new generation of advanced and environmentally sustainable plastics” and “increasing the productivity, sustainability and resilience of our agriculture and forestry”<sup>18</sup>.

## Economic benefits

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Enabling the development of the hemp industry in the UK creates an opportunity for a significant number of economic benefits both private (to farmers and the industry) and external - to the wider economy on a local and regional scale.

### Economic benefits for wider society

#### Growth of CBD market

Stalk fibres and seeds are the only parts of the hemp plant permitted for commercial use, meaning licensed farmers cannot legally trade or process the cannabinoids contained in hemp flower, chiefly CBD, and must destroy flower biomass on-site. In parallel, the UK is home to the largest CBD market in Europe with a current estimated market value of £300 million, projected to reach £1 billion by 2025. CBD extracts and isolates must be sourced from outside the UK, which comes with significant costs and impacts on supply chain stability that are likely to become more apparent following the UK's departure from the European Union.

New Frontier Data projects the European Union's CBD market at €8.3 billion in 2020, with an expected increase to €13.6 billion by 2025 at a CAGR of 10.4%<sup>19</sup>. While ambitious, such figures indicate the potential economic opportunity presented by CBD consumer goods, which span multiple sectors from supplements and food and drink, to cosmetics and nicotine substitutes. The UK is missing out on prospects to carve a role in the CBD supply chain to meet rising domestic and international demand. Meanwhile, the United States is emerging as a global supplier following the passing of the 2018 Farm Bill, and China continues to lead the charge as the largest producer of hemp in the world, producing nearly half the world's supply after removing its prohibition of the crop in 2010<sup>20</sup>.

<sup>17</sup> <https://www.architectsjournal.co.uk/news/opinion/the-future-is-green-but-the-regs-have-yet-to-catch-up>

<sup>18</sup> <https://www.gov.uk/government/publications/bioeconomy-strategy-2018-to-2030/growing-the-bioeconomy-a-national-bioeconomy-strategy-to-2030>

<sup>19</sup> <https://newfrontierdata.com/cannabis-insights/ask-our-experts-the-european-market-for-cbd/>

<sup>20</sup> [https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=2019%20Hemp%20Annual%20Report\\_Beijing\\_China%20-%20Peoples%20Republic%20of\\_02-21-2020#:~:text=It%20is%20the%20largest%20producer,Europe%20and%20the%20United%20States.](https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=2019%20Hemp%20Annual%20Report_Beijing_China%20-%20Peoples%20Republic%20of_02-21-2020#:~:text=It%20is%20the%20largest%20producer,Europe%20and%20the%20United%20States.)

At present, UK regulations fall behind other European nations, despite being party to the same United Nations conventions on controlled substances. Extracting CBD from hemp is only permitted under a high THC controlled drugs licence issued by the Home Office, and to date such licences have only been granted for scientific research or for the production of medicines. Pursuing a high THC licence is not commercially viable for businesses looking to supply the CBD consumer goods market, especially when competing with lower-cost foreign suppliers operating under more permissive regulatory frameworks. It is important for the Home Office to carve out a separate licensing regime for CBD extraction from industrial hemp to ensure UK businesses can compete on a level playing field with global suppliers and benefit from rising domestic demand.

Boosting the UK's CBD industry has widespread support from the general public, with three quarters of respondents to YouGov's survey commissioned by the Centre for Medicinal Cannabis (CMC) agreeing that UK hemp farmers should have the ability to trade or process hemp flower and leaves for the purpose of CBD production<sup>21</sup>.

### **Growth of hemp market and processing infrastructure**

The global market for industrial hemp applications (excluding hemp-derived CBD sales) was estimated at \$776 million in 2018, and the European market contributed over half of this total with an estimated market value of \$424 million<sup>22</sup>.

France alone accounts for 40% of European production<sup>23</sup> with roughly 17,900 hectares planted in 2018<sup>24</sup>, whilst Defra considers hemp to be a niche crop as its adoption by the UK agricultural industry is so limited. An estimated 800 hectares of hemp is cultivated annually in the UK, compared to around 170,000 hectares apportioned for horticultural crops, with just 33 licences issued in 2019 according to FOI requests<sup>25</sup>. In comparison to Germany, where the number of operators cultivating hemp increased from 86 in 2013 to 575 in 2019<sup>26</sup>, the growth of the hemp industry in the UK has been severely hampered and the benefits of its use restricted.

Industrial hemp licences are issued only with a defined commercial end use, currently limited to the production of non-controlled hemp products derived from fibre and seed. Despite the multitude of high potential outputs including non-woven textiles, biofuels and 'hempcrete' construction materials, a significantly large proportion of UK hemp seed and fibre is used for birdseed and animal bedding due to limited processing capacity.

Reforming hemp policy will expand domestic hemp acreage and result in growth of the UK's adjacent processing infrastructure, creating skilled jobs and adding significant value to the production chain due to higher value outputs. Many farmers are interested in cultivating hemp but are currently limited in part by the poorly developed value chain, with constrained routes to market due to the small number of facilities able to offtake and process hemp biomass. Supporting the growth of hemp composite processing facilities will make it more viable to supply added-value B2B and consumer goods including building materials, textiles, ropes and paper. Unyte Hemp is in the process of constructing a £30 million hemp processing plant in south Leicestershire, which is expected to create over 30 new jobs<sup>27</sup> while providing opportunities for the local agricultural community to participate in the developing hemp economy. Permitting wholesale of hemp flower and extraction of CBD will unlock opportunities for domestic extraction facilities to establish, with the potential to rapidly scale to meet growing demand for CBD-derived products.

<sup>21</sup> <https://irp-cdn.multiscreensite.com/51b75a3b/files/uploaded/Report%20%7C%20CBD%20in%20the%20UK%20-%20Exec%20Summary.pdf>

<sup>22</sup> <https://newfrontierdata.com/product/global-cannabis-2019/>

<sup>23</sup> <https://newfrontierdata.com/cannabis-insights/developed-global-markets-hemp-acreage-comparison/>

<sup>24</sup> <https://hempindustrydaily.com/france-italy-netherlands-lead-europe-for-hemp-land-use-industry-group-says/#:~:text=France%20dwarfed%20other%20European%20countries,France%3A%2017%2C900%20hectares.>

<sup>25</sup> CDPRG

<sup>26</sup> URL TO ADD

<sup>27</sup> <https://www.business-live.co.uk/enterprise/30m-hemp-processing-plant-could-18893313>

## Economic benefits for farmers

### Increase in value of crop per hectare

Currently restricted to production of seed and fibre, UK farmers are forced to destroy the most valuable part of their crop, while the imported end product (CBD extracted from hemp flower) is freely sold across high street chains. Foreign growers are reaping the benefits of the UK's flourishing CBD market and enjoy a competitive advantage over UK farmers who are unable to supply wholesale flower for CBD production due to the Home Office's restrictions.

Currently, estimates suggest that the hemp industry achieves similar crop values to wheat - and is also likely to receive higher subsidies following the UK's departure from EU Common Agricultural Policy. Wheat crops are expected to see an 18% lower<sup>28</sup> yield in 2020 than the 9 tonnes per hectare average in 2019<sup>29</sup>, at an average 7.38 tonnes per hectare. Combined with declining UK wheat values to £163.40 per tonne<sup>30</sup>, this results in a possible value of £1205.89 per hectare. Savills estimates that under optimal growing conditions, yields of hemp fibre can reach 7.5 tonnes per hectare, reaching a potential value of £1200 per hectare based on a value of £160 per tonne<sup>31</sup>. If wholesale of hemp flower for extraction for CBD was authorised, the crop would have a significantly higher value per hectare and be substantially more appealing to UK farmers than cereal crops. According to estimates given by the Financial Times, the potential value of "two acres of hemp with seeds, fibrous materials and extracted CBD" is 25 times that of the same acreage of wheat, and 10 times the value of two acres of hemp harvested for fibre and seeds<sup>32</sup>.

### Opportunities for marginal farmers

With a comparatively higher value per hectare if wholesale of flower is permitted and the crop's favourable credentials under subsidy schemes, hemp cultivation is likely to be an attractive option for marginal farmers, who cultivate 1 to 5 acres of land. At present, restrictions on the permitted end uses for the crop and limited UK processing facilities are a blocker<sup>33</sup> to more smaller farms taking up cultivation of hemp, coupled with the licensing process being facilitated by the Home Office rather than Defra like most agricultural crops.

## Brexit opportunities

Distancing from the EU's restrictive policies has the potential to increase UK competitiveness in the global hemp and CBD market, but only if the UK adopts a pragmatic regulatory framework.

### Favourable crop under upcoming subsidy scheme

The current EU Common Agricultural Policy scheme, where subsidy payments are issued to UK farmers based on acreage, is gradually being phased out over the following years. With an estimated 16,150 UK farms unable to make ends meet without EU-style subsidies, Defra is developing a new system expected to be active from 2022 called the Sustainable Farming Incentive<sup>34</sup>, as a transitional scheme into Environmental Land Management (ELM). Under the proposed scheme, subsidy decisions will now be environmentally-based, incentivising sustainable farming practices and working towards achieving net-zero greenhouse emissions. Hemp is likely to be viewed favourably under the proposed scheme, due to the crop's ability for carbon sequestration, soil improvement and natural resistance to pesticides, placing hemp farmers in a stronger financial position.

<sup>28</sup> <https://ahdb.org.uk/news/analyst-insight-lower-yields-predicted-to-push-up-unit-costs-of-production>

<sup>29</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/868943/structure-jun2019prov-UK-28feb20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868943/structure-jun2019prov-UK-28feb20.pdf)

<sup>30</sup> <https://ahdb.org.uk/news/uk-rapeseed-short-and-long-term-market-factors-analyst-insight>

<sup>31</sup> <https://www.savills.co.uk/landing-pages/landscape/HempSpotlight.pdf>

<sup>32</sup> <https://www.ft.com/content/d37e21ae-3d14-11ea-b84f-a62c46f39bc2>

<sup>33</sup> <https://www.fwi.co.uk/arable/crop-selection/market-opportunities/why-hemp-is-an-attractive-alternative-crop-to-osr>

<sup>34</sup> <https://www.ft.com/content/73633213-d14a-4ab4-b927-daf6d89c2672>

## Permitted hemp varieties and imposed THC limits

Currently, farmers are required to use EU-certified hemp varieties authorized under the EU's Common Catalogue of Varieties of Agricultural Plant species, with limitations on permitted THC content. Recently in October 2020, the European Parliament voted in favour of increasing the THC limit from 0.2% to 0.3% as part of the reform of Common Agricultural Policy (CAP)<sup>35</sup>. While the change still awaits approval from the Council and the European Commission, it signifies a broader motion to allow European hemp farmers to compete on more equal footing with global producers.

At present, EU hemp directives mandate that farmers must conform to the 0.2% THC limit to be eligible for EU subsidy payments for their acreage<sup>36</sup>, which may not have the most attractive properties, yields or cannabinoid content. As a wet and windy island, the UK is unlikely to emerge as a hub for mass cultivation, but if a liberal regime for permitted crop varieties were to be introduced the UK would be an ideal hub for investment in plant science, agri-tech and plant genetics. A permissive THC limit framework in line with the Swiss model would allow UK farmers a competitive advantage; Switzerland increased their THC limit to 1% in 2011<sup>37</sup> and cultivation is not limited to EU-authorized varieties, enabling the development of specialised CBD-dominant genetics and Europe's largest hemp tobacco substitute market. The full benefits of this innovation would however only be felt if CBD extraction was permitted under an updated licensing regime.

In June 2020, Aberystwyth University announced a research project under Home Office licence into the potential of growing hemp seed and fibre on Welsh farms for industrial purposes, with funding from the Welsh government<sup>38</sup>. If a more liberal regime and grant options were to be introduced, it can be expected that more universities would invest in hemp research and accelerate the UK agricultural industry in the process.

## CHAPTER 3: A LEGAL PATHWAY

Allowing hemp farmers to harvest the whole plant, and wholesale hemp flower for extraction is a pragmatic policy goal that would increase UK hemp cultivation and the value of hemp crop, and nurture a domestic CBD extraction industry. With this aim in mind, Volteface instructed legal counsel, Gary Grant, Vice Chairman of the Institute of Licensing and barrister at FTB, and Robert Jappie, solicitor at INCE and specialist in cannabis law and regulation, to put forward a legal solution to achieve this goal.

Grant and Jappie advised:

*"The Home Office can amend its current guidance, without the need for primary or secondary legislation, to permit Industrial Hemp licences to be granted that do not require the green material of the hemp plant to be discarded, and permit the whole plant to be processed by the cultivator, or another business, to enable CBD to be safely extracted."*

This change can be made without legislation due to the existing discretionary powers that sit with Secretary of State (SoS) to authorise drug activities that would otherwise be unlawful, including the production, supply and possession of controlled drugs as well as the cultivation of cannabis plant.

<sup>35</sup> <https://hempindustrydaily.com/european-parliament-votes-to-add-0-3-thc-limit-for-hemp-to-eu-farm-policy-overhaul/>

<sup>36</sup> <http://iiha.ie/wp-content/uploads/2018/03/THC-Regulations-regarding-industrial-hemp-in-the-EU-20160901.pdf>

<sup>37</sup> [https://www.tni.org/files/publication-downloads/cr\\_swiss\\_27032019.pdf](https://www.tni.org/files/publication-downloads/cr_swiss_27032019.pdf)

<sup>38</sup> <https://www.aber.ac.uk/en/news/archive/2020/06/title-233248-en.html>



Section 7 of the Misuse of Drugs Act (MDA) provides the SoS with extensive powers to make regulations:

- a. That exempt such controlled drugs as may be specified in the regulations from the prohibition on importing, exporting, producing, supplying or possessing those drugs.

And,

- b. To *“make such other provision as he thinks fit for the purpose of making it lawful for persons to do things which...it would otherwise be unlawful for them to do”*, in so far as it relates to the production, supply and possession of controlled drugs or the cultivation of cannabis plants.

Grant and Jappie advise that *“it is this primary power that enables the SoS to bring in a licensing regime, and adapt it, in order to promote new policy objectives”* and it is section 30 of the MDA that enables the *“SoS to design any licensing scheme that is thought proper to meet policy aims (so long as it is legally rational and proportionate) and charge fees”*.

The principal relevant regulations made under the enabling provisions of the MDA are the Misuse of Drugs Regulations 2001 (“MDR,” as amended).

Regulation 5 provides for *“licences to be issued by the SoS, in a scheme administered by the Home Office, which may authorise certain drug-related activities which would otherwise be unlawful, in so far as the person acts in accordance with the terms of that licence and in compliance with any conditions.”*<sup>39</sup>

Regulation 12 provides the broad discretion to the SoS to licence the cultivation of cannabis or hemp plants as follows:

*“Where any person is authorised by a licence of the Secretary of State issued under this regulation and for the time being in force to cultivate plants of the genus Cannabis, it shall not by virtue of section 6 of the Act be unlawful for that person to cultivate any such plant in accordance with the terms of the licence and in compliance with any conditions attached to the licence”*

Thus, due to the scope of these powers, the Home Office licensing framework relies on “discretionary guidance issued to provide some clarity and steer to applicants on the approach the Home Office is likely to take when considering and determining applications for a hemp cultivation licence” (see Home Office “Factsheets”).

Grant and Jappie advise that “it is this policy, expressed only in guidance and not law, which currently prohibits British farmers from extracting CBD in an isolated form from the green material, or wholesaling it to others to do so” and this guidance “can readily be amended, or completely re-drafted, by the Home Office to meet any new policy aims set down by the SoS without the need for primary or secondary legislation (in so far as the new guidance furthers the objectives of the underlying law in a rational and proportionate manner)”.

Policy makers should consider whether secondary legislation could provide legal certainty to an emerging industry, however, the enabling provisions within the Misuse of Drugs Act 1971 would permit the Secretary of State to make regulations that would achieve the same policy aim as legislation.

<sup>39</sup> Grant and Jappie legal opinion

## CHAPTER 5: RECOMMENDATIONS

### Industrial Hemp Licence

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1. In order to permit extraction and whole sale of hemp flower under an Industrial Hemp licence, whilst ensuring the necessary safeguards are in place, we would recommend that the Home Office consider implementing a licensing regime that follows this basic framework:
  - a. A single Industrial Hemp Licence may be granted on application to the Home Office (or other suitable regulatory body);
  - b. The application must stipulate which one or more of the following licensable activities is intended to be carried on by the applicant:
    - i. The cultivation of hemp;
    - ii. The processing of the non-green and/or green material (as indicated) for specified commercial purposes (e.g, to produce fibre or seed-oil or for CBD extraction);
    - iii. The wholesale supply of the non-green and/or green material (as indicated) to other businesses for the purposes of processing for specified commercial purposes (so long as the other business holds any necessary authorisation or licence);
    - iv. The possession and processing of the non-green and/or green material (as indicated) by businesses who did not cultivate the hemp itself.
2. Depending on the licensable activity, or activities, that the applicant proposes to carry on, the licence can be appropriately, robustly and proportionately conditioned to safeguard against any perceived risks. For example, conditions could be added to the licence to ensure that any THC extracted during the CBD extraction process is safely disposed of and there are sufficient security arrangements in place at a processing plant and in transit to it.
3. If the regulator is concerned that the expected standards are not being met by a licence holder, then the licence can be reviewed and, ultimately, revoked following a hearing before an appropriate tribunal to ensure procedural fairness.
4. This approach – one unitary Industrial Hemp licence with varied specific licensable activities permitted under its authority – has the advantage of simplicity and flexibility.
5. It permits licences to be proportionately conditioned to suit the different risks involved between the different types of licensable activities.
6. A graduated level of application fees could also be introduced depending on which of the licensable activities are proposed to be carried on and the size of the business involved.

#### **CBD Extraction Licence – points to consider**

In relation to applications for a new type of industrial hemp licence that permits the extraction of CBD, as outlined above, the following points should be considered:

1. Processors should be licensed to handle the controlled parts of hemp, extract cannabinoids and dispose of extracted THC and other controlled cannabinoids.

2. Secondary legislation that specifies in law what is permissible under the new licensing regime would offer more legal certainty to the industry and encourage investment. In other developed countries, commitment to hemp and CBD has been accompanied by legislative reform.

3. Allowing hemp seed varieties with a THC percentage above 0.2% and up to 1% would improve the health of the plant and increase the yield of CBD per acre, and would not affect the end product, which could still have undetectable levels of THC present. This would allow the UK to compete with other non-EU countries, which are not bound by EU registered seed varieties, and would support the UK to become a hub of research and development.

4. The Agriculture and Horticulture Development Board should consider industrial hemp as leviable crop and provide advice to farmers on this basis.

5. Industrial hemp cultivation should be considered as a “public good”, due to the environmental benefits that a thriving hemp industry would bring, notably a highly efficient carbon sink and its use as a sustainable building material. On this basis, British hemp farmers should be entitled to subsidies, as laid out in the 2020 Agricultural Bill.

## **Conclusion**

This report has outlined the environmental, economic and agricultural benefits of amending licences related to hemp policy. Not only are the economic and environmental benefits of these amendments to industrial hemp licenses clear, they are simple and uncomplicated for the UK Home Office to implement in that they do not require a change in the law. As discussed, the enabling provisions within the Misuse of Drugs Act 1971 would permit the Secretary of State to make regulations by way of statutory instrument that will achieve the same policy aim.

Moving the THC cap from 0.2% to 1% would not make hemp or CBD products psychoactive, and these recommendations should be regarded as entirely separate to the broader recreational cannabis discussion. The UK finds itself at a critical juncture for the UK hemp and CBD industries.

Allowing the harvesting and processing of the flower would allow both to flourish and thrive. The current set up gifts a significant competitive advantage to international companies that operate within more rational regulatory frameworks. Legal and policy experts agree that these changes would enable UK businesses big and small to benefit our future national economy in a way that is just, rational and fair.

This report proposes that the UK government follow the footsteps of countries such as Switzerland, by amending policy and licencing to ensure that British farmers benefit from this multi-million pound industry. During post-covid recovery, the UK must encourage growth industries that are environmentally friendly, create rural jobs and help to level up non-metropolitan communities.

# LEGAL ADVICE ON THE LAW & LICENSING OF HEMP CULTIVATION & CBD EXTRACTION IN THE UK

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## SUMMARY OF CONCLUSIONS

1. The Home Office can amend its current guidance, without the need for primary or secondary legislation, to permit Industrial Hemp licences to be granted that do not require the green material of the hemp plant to be discarded, and permit the whole plant to be processed by the cultivator, or another business, to enable CBD to be safely extracted.
2. An appropriately revised licensing regime can achieve this aim whilst ensuring the necessary safeguards are in place.
3. If it is thought that secondary legislation is preferable, the enabling provisions within the Misuse of Drugs Act 1971 would permit the Secretary of State to make regulations by way of statutory instrument that will achieve the same policy aim.

## INTRODUCTION

4. We are asked to advise Volteface, a leading advocacy organisation which seeks to reduce the harm drugs pose to individuals and society through evidence-based policy and reform, on the following matters:
  - a. The legislative, regulatory and licensing framework for hemp cultivation and CBD extraction in the UK;
  - b. Potential solutions to the regulatory prohibitions that currently restrict the full ability of UK businesses and farmers to extract CBD from the hemp plants they lawfully grow.
5. The specific practical issue that British hemp farmers face is that the current licensing scheme in the UK has the effect of permitting farmers to use the seeds and stalks of the hemp plants they grow, but creates unrealistic barriers that prevent them from extracting CBD from the valuable remainder of the plant which includes the leaves and flowers (known as “green material”), or else wholesaling this green material so that other appropriately licensed businesses can isolate the CBD component for commercial purposes.
6. The wider economic impact of the current regime is to prevent legitimate British farmers from effectively participating in the rapidly-growing global CBD market, with the consequent losses to the UK economy and gains to its international competitors. By way of example, farmers in many countries within the EU and the United States are already permitted to use the green material to extract CBD, whereas UK farmers are prohibited from doing so.
7. In common, but not strictly legal, parlance plants which contain 0.2% or less THC (for which see below) are often referred to as “hemp plants”, whilst those containing more than 0.2% of THC or more are known as “cannabis” or “marijuana” plants. For the purposes of this advice, we generally refer to “hemp plants”, since it is the low THC variety of the plant that British farmers wish to cultivate in order to extract CBD.



## CANNABIS AND THE MISUSE OF DRUGS ACT 1971

### *Cannabis as a Class B controlled drug*

8. Cannabis<sup>40</sup>, cannabis resin<sup>41</sup>, cannabinol, and cannabinol derivatives<sup>42</sup> are specified as Class B controlled drugs under the Misuse of Drugs Act 1971 (“MDA”): section 2(1) and Schedule 2, Part II, paragraph 1.

9. “Controlled drugs” means any substance or product for the time being specified in Part I, II or III of Schedule 2 of the MDA (or else specified under a temporary class drug order)<sup>43</sup>.

10. Schedule 2 of the MDA, which includes cannabis and its derivatives, contains drugs which have a narcotic or psychoactive effect, or which have some legitimate medicinal indication. They are categorised as a Class A, B or C drug according to the Government’s assessment of their respective harms.

11. Her Majesty may by Order in Council make such amendments to Schedule 2 as may be required for the purpose of adding any substance or product to, or removing any substance or product from Schedule 2: section 2(2). This is generally done by way of a Statutory Instrument.

12. From 1 November 2018, regulations came into force to allow the wider use of cannabis-based products for medicinal use in humans, essentially for medical purposes.<sup>44</sup>

### *The hemp plant, its uses and Misuse of Drugs Act 1971*

13. The stem of the cannabis plant can be used to make hemp. Hemp is a fibre widely used for making ropes, netting and fabrics. So important was its use historically, that Henry VIII legislated to mandate farmers to grow it (the decree stipulated that for every 60 acres of arable land a farmer owned, a quarter acre was to be sown with hemp<sup>45</sup>).

14. The seeds of the plant are often consumed as a food-supplement or pressed to make seed-oil.

15. Cannabis seeds are not, in themselves, prohibited under the MDA. Nor are the mature stalks, or fibre produced from the stalks, of the cannabis plant after separation from the rest of the plant.<sup>46</sup>

16. The buds (or flowers) and resin of the female plant contain numerous ingredients, including delta-9-tetrahydrocannabinol (“THC”). THC is the main psychoactive chemical produced by the cannabis plant and generally gives rise to the “high” experienced by cannabis users.

17. Other ingredients of the hemp plant include cannabidiol (“CBD”). CBD is a non-psychoactive compound produced by the cannabis plant. It is widely claimed to have medicinal uses for the relief of pain and anxiety, to reduce epileptic fits and the symptoms of Parkinson’s and multiple sclerosis among other ailments. CBD has no mood-altering effects. It is now widely marketed as a “well-being” supplement in health food stores and pharmacies, and is reported to have a number of wellness benefits including improved sleep quality.

<sup>40</sup> By virtue of s.37 MDA: “Cannabis” (except in the expression “cannabis resin”) means any plant of the genus Cannabis or any part of any such plant (by whatever name designated) except that it does not include cannabis resin or any of the following products after separation from the rest of the plant, namely—

(a) mature stalk of any such plant. (b) fibre produced from mature stalk of any such plant, and (c) seed of any such plant;

<sup>41</sup> By virtue of s.37 MDA: “cannabis resin” means the separated resin, whether crude or purified, obtained from any plant of the genus Cannabis

<sup>42</sup> By virtue of Part IV of MDA: “cannabinol derivatives” means the following substances, except where contained in cannabis or cannabis resin, namely tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives.

<sup>43</sup> S.2 of MDA

<sup>44</sup> The Misuse of Drugs (Amendments) (Cannabis and Licence Fees) (England, Wales and Scotland) Regulations 2018.

<sup>45</sup> “Marijuana – the first 12,000 years”, Ernest Able (Plenum Press, 1980) as cited in “Drugs without the Hot Air”, David Nutt, 2nd ed, Chapter 5 (UIT)

<sup>46</sup> By virtue of the definition of “cannabis” in s.37 MDA

18. Importantly, CBD in isolated form is not a prohibited drug under the MDA. However the process of extracting CBD from the hemp plant is highly specialised and technical and generally requires a multistep process of extraction and purification involving standard industrial chemical methods, such as solvent extraction, distillation, crystallisation and chromatography. It is generally impossible to extract CBD from hemp green material without also extracting THC. Pure CBD must then be separated from THC by chemical purification, resulting in a waste product containing concentrated THC.

### ***Criminal sanctions under MDA***

19. Unless otherwise authorised (for which see below), the importation, exportation, production, supply, and possession of drugs falling within Schedule 2, as well as the cultivation of hemp (or cannabis) plants, are unlawful activities which can carry heavy criminal sanctions: Sections 3-5 MDA.

20. By way of example, in relation to offences under the MDA involving cannabis and its derivatives (and other Class B drugs), the maximum criminal penalties available to the Crown Court are as follows (in addition to an unlimited fine):<sup>47</sup>

- a. Possession (s.5(2)) – 5 years
- b. Cultivation of a cannabis plant (s.6(2)) – 14 years
- c. Production (s.4(2)) – 14 years
- d. Supply or possession with intent to supply (s.5(3)) – 14 years
- e. Being the occupier, or concerned in the management of premises and permitting production/supply of a controlled drug (s.8) – 14 years
- f. Unlawfully importing or exporting<sup>48</sup> - 14 years

### **POWERS OF SECRETARY TO STATE TO AUTHORISE DRUG-ACTIVITIES BY REGULATIONS (ETC)**

21. Despite these criminal prohibitions and sanctions, certain drug-related activities may nevertheless be lawful if they are authorised by the Secretary of State (“SoS”), generally by way of regulations made under one of the enabling provisions within the MDA. The most relevant enabling provisions are to be found in sections 7, 10, 11, 22 and 31.

22. Importantly, the MDA provides the SoS with extensive powers to make regulations:

- a. That exempt such controlled drugs as may be specified in the regulations from the prohibition on importing, exporting, producing, supplying or possessing those drugs.<sup>49</sup>

And,

- b. To “*make such other provision as he thinks fit for the purpose of making it lawful for persons to do things which...it would otherwise be unlawful for them to do*”, in so far as it relates to the production, supply and possession of controlled drugs or the cultivation of cannabis plants.<sup>50</sup>

23. Regulations made under s.7 MDA, may also provide for licences to be issued by the SoS that authorise activities that would otherwise be unlawful, in so far as the licence, and any conditions attached, are complied with. These licensable activities include the production, supply and possession of controlled drugs as well as the cultivation of cannabis plants.<sup>51</sup>

<sup>47</sup> S.25 of MDA and Schedule 4

<sup>48</sup> The prohibition on importing or exporting controlled drugs is imposed by s.3 MDA but creates no offence. The offence is, therefore, generally prosecuted under s.170(2) of the Customs and Excise Management Act 1979.

<sup>49</sup> S.7(1)(a) MDA

<sup>50</sup> By virtue of the definition of “cannabis” in s.37 MDA

<sup>51</sup> s.7(2) MDA

**It is this primary power that enables the SoS to bring in a licensing regime, and adapt it, in order to promote new policy objectives.**

24. In relation to licences, section 30 of the MDA provides broad powers enabling the SoS to design any licensing scheme that is thought proper to meet policy aims (so long as it is legally rational and proportionate) and charge fees:

30. Licences and authorities.

(1) A licence or other authority issued by the Secretary of State for purposes of this Act or of regulations or orders made under this Act may be, to any degree, general or specific, may be issued on such terms and subject to such conditions (including, in the case of a licence, the payment of a prescribed fee) as the Secretary of State thinks proper, and may be modified or revoked by him at any time.

(2) Subsection (1) applies to a licence issued by the Scottish Ministers under regulations made in pursuance of section 10(2)(i) as if references in that subsection to the Secretary of State were references to the Scottish Ministers.

25. The SoS has further wide powers to make regulations or give directions under the MDA (in so far as relevant):

a. For excluding, in such cases as may be prescribed, the application of any provision of the MDA which creates an offence: s.22(1)(a)(i) MDA;

b. For excluding, in such cases as may be prescribed, provisions in relation to the exportation or importation of controlled drugs under the Customs and Excise Management Act 1979: s.22(1)(a)(ii) MDA;<sup>52</sup>

c. As appear necessary or expedient for preventing the misuse of controlled drugs: s.10 MDA;

d. As to the precautions for the safe custody of controlled drugs at certain premises s.11 MDA.

26. By virtue of s.31(1) MDA, regulations made by the SoS:

a. May make different provision in relation to different controlled drugs, different classes of persons, different provisions of this Act or other different cases or circumstances;

b. May make the opinion, consent or approval of a prescribed authority or of any person authorised in a prescribed manner material for purposes of any provision of the regulations;

c. May contain such supplementary, incidental and transitional provisions as appear expedient to the Secretary of State.

27. Any power of the SoS to make regulations under the MDA is exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament: s.31(2) MDA.

28. The SoS is not permitted to make any regulations under the MDA except after consultation with the Advisory Council on the Misuse of Drugs: s.31(3) MDA.

29. In its application to Northern Ireland, references to the SoS are substituted by references to the Ministry of Home Affairs for Northern Ireland: s.31(4) MDA.<sup>53</sup>

<sup>52</sup> Under s.50(1)-(4), 68(2)-(3) and s.170 of Customs and Excise Management Act 1979

<sup>53</sup> Any regulations made under the MDA by the Ministry of Home Affairs for Northern Ireland shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act.

## THE MISUSE OF DRUGS REGULATIONS 2001 & LICENCES

30. The principal relevant regulations made under the enabling provisions of the MDA are the Misuse of Drugs Regulations 2001 (“MDR,” as amended).

31. Regulation 5 provides for licences to be issued by the SoS, in a scheme administered by the Home Office, which may authorise certain drug-related activities which would otherwise be unlawful, in so far as the person acts in accordance with the terms of that licence and in compliance with any conditions. Regulation 5 states:

### 5. Licences to produce etc. controlled drugs

Where any person is authorised by a licence of the Secretary of State issued under this regulation and for the time being in force to produce, supply, offer to supply or have in his possession any controlled drug, it shall not by virtue of section 4(1) or 5(1) of the Act be unlawful for that person to produce, supply, offer to supply or have in his possession that drug in accordance with the terms of the licence and in compliance with any conditions attached to the licence.

32. This regulation provides a very wide, and existing, power for the SoS to licence almost any drug activity she deems permissible. (It will be noted that regulation 5 does not cover the cultivation of cannabis which is separately dealt with in regulation 12).

33. Regulation 12 provides the broad discretion to the SoS to licence the cultivation of cannabis or hemp plants as follows:

12- Where any person is authorised by a licence of the Secretary of State issued under this regulation and for the time being in force to cultivate plants of the genus Cannabis, it shall not by virtue of section 6 of the Act be unlawful for that person to cultivate any such plant in accordance with the terms of the licence and in compliance with any conditions attached to the licence.

34. Certain cannabis products are automatically exempt from the general prohibition on importing, exporting, production, supply or possession (and so require no licence), if they fall within the definition of an “exempt product”. An exempt product means a preparation or other product consisting of one or more component parts, any of which contains a controlled drug, where (in so far as relevant):<sup>54</sup>

- a. The preparation or other product is not designed for administration of the controlled drug to a human being or animal;
- b. The controlled drug in any component part is packaged in such a form, or in combination with other active or inert substances in such a manner, that it cannot be recovered by readily applicable means or in a yield which constitutes a risk to health; and
- c. No one component part of the product or preparation contains more than one milligram of the controlled drug.

All three limbs of the test need to be satisfied to render a cannabis product as an “exempt product”.

## HOME OFFICE LICENSING GUIDANCE FOR CANNABIS CULTIVATION

35. The Home Office’s licensing framework relies, in practice, on guidance issued in the form of “Factsheets” by the Home Office, in particular:

- a. Drug Licensing Factsheet- Cannabis, CBD and other cannabinoids<sup>55</sup>

<sup>54</sup> Regulation 2 and 4(5)

<sup>55</sup> Updated 16 August 2019: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/825872/factsheet-cannabis-cbd-and-cannabinoids-2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/825872/factsheet-cannabis-cbd-and-cannabinoids-2019.pdf)



b. Low THC Cannabis (Industrial Hemp) Licensing Factsheet<sup>56</sup>

c. Low THC Cannabis (Industrial Hemp) Cultivation - Domestic Licensing Application Guidance<sup>57</sup>

36. This guidance is not “Statutory Guidance” (i.e. prescribed by legislation). It is simply discretionary guidance issued to provide some clarity and steer to applicants on the approach the Home Office is likely to take when considering and determining applications for a hemp cultivation licence. The Factsheets acknowledge this when they state:

**Important Note:** *This is intended as general guidance only; it is not legal advice. Anyone in doubt should seek their own independent legal advice to ensure they are compliant with any relevant legislation.*

37. So, the guidance is not law. It can readily be amended, or completely re-drafted, by the Home Office to meet any new policy aims set down by the SoS without the need for primary or secondary legislation (in so far as the new guidance furthers the objectives of the underlying law in a rational and proportionate manner).

38. The current guidance reflects the Home Office’s policy approach to determining licence applications in regards to hemp cultivation and is, we are advised, the principal obstacle to British farmers being able to lawfully extract CBD from the plants or wholesale hemp flower to licensed businesses for the purpose of CBD extraction.

39. The guidance establishes two separate licensing regimes relating to hemp cultivation dependent on whether the THC content of the plant is “high” or “low”.

40. If the THC content of the plant does not exceed 0.2%, then it is considered “low” and referred to as “Industrial Hemp” in the guidance. If the THC content is above 0.2% then it is “high”. The differentiation is set out, albeit in a different context, in regulation 2(1) of The Misuse of Drugs (Licence Fees) Regulations 2010.

41. Where the THC content is high (i.e. above 0.2%), or if the plant is not grown from an EU-approved low THC seed variety, the Home Office will not grant, as a matter of policy, an Industrial Hemp licence. Instead, the grower must apply for a high-THC Controlled Drug Licence of a type that pharmaceutical and research scientists require in order to lawfully produce, possess or supply controlled drugs for medicinal or research purposes. However, the costs of doing so are prohibitively expensive, and the requirements too onerous, to enable many British farmers to successfully apply for such a licence.

42. In the case of low THC Industrial Hemp, the guidance indicates that the Home Office will consider the intended “commercial end use” prior to granting any licence. The acceptable end uses are highly restrictive, and amount to the production of hemp fibre from the stalks and the production of oil from pressed seeds. The remaining - highly valuable - green material must be disposed of.

43. The “Low THC Cannabis (Industrial Hemp) Licensing Factsheet” sets out the Home Office’s policy as follows:

*“For both of these uses, licences are granted to enable the use of non-controlled parts of the plant (i.e. seeds and fibre/mature stalk only). This policy is only applicable where non-controlled parts of the plant are used and does not allow for use of ‘green’ material- i.e. the leaves and flowers as these are controlled parts of the plant. Applications for low THC cultivation licences made beyond the scope of this policy- i.e. seeking to produce so-called CBD oils from controlled parts of the plant- will not be considered under this licensing provision as they do not fit with the applicable policy, irrespective of what ‘variety’ of cannabis is intended to be cultivated.”*

<sup>56</sup> Updated January 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/857636/Hemp\\_-\\_FAQs-Grower\\_notes-2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/857636/Hemp_-_FAQs-Grower_notes-2020.pdf)

<sup>57</sup> Issued 14 November 2014: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/480817/Application\\_guide-\\_Hemp-\\_4\\_12\\_14-\\_DLCU\\_final\\_\\_Web\\_version\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/480817/Application_guide-_Hemp-_4_12_14-_DLCU_final__Web_version_.pdf)

And,

*“Under these Regulations, a licence may be issued authorising cultivation. Low THC cannabis grown for the commercial production of industrial hemp fibre or the pressing of seed for oil are purposes for which licences may be issued where- after harvesting- non-controlled parts of the plant are used and controlled parts of the plant are retted at the licensed location or otherwise lawfully disposed of.”*

44. It is this policy, expressed only in guidance and not law, which currently prohibits British farmers from extracting CBD in an isolated form from the green material, or wholesaling it to others to do so.<sup>58</sup>

45. In addition, the guidance indicates the Home Office’s presumption of, arguably, excessive caution in relation to CBD products are follows:

*CBD as an isolated substance, in its pure form, would not be controlled under the MDA 1971 / MDR 2001.*

*If a CBD ‘product’ contained any controlled cannabinoids, unintentionally or otherwise (e.g. THC or THC-V), then it is highly likely that the product would be controlled. It is our understanding that it is very difficult to isolate pure CBD, and in our experience many products in fact do not fully disclose their contents or provide a full spectrum analysis at an appropriate level of sensitivity to accurately and consistently determine their true content or control status.*

*Against this background, the presumption has to be one of caution - that is, that a CBD containing product would be controlled under the MDA 1971 / MDR 2001 as a result of its other cannabinoid content.*

## PROPOSED SOLUTION

46. The current regulatory restrictions that prevent British farmers from using the green material of hemp plants to extract its non-controlled CBD component are a product of Home Office policy and guidance rather than the law.

47. Despite the length of this advice, the solution is relatively simple.

48. The Home Office can amend its current guidance, without the need for primary or secondary legislation, to permit Industrial Hemp cultivation licences to be granted that do not require the green material to be discarded and permit the whole plant to be processed (by the cultivator or another business) to enable CBD to be extracted.

49. An appropriately revised licensing regime can achieve this aim whilst ensuring the necessary safeguards are in place.

50. If it is thought that secondary legislation is preferable, the enabling provisions within the Misuse of Drugs Act 1971 would permit the Secretary of State to make regulations by way of statutory instrument that will achieve the same policy aim.

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<sup>58</sup> The guidance also states that licences will only be issued for cultivation of plants from EU approved seed types with a THC not exceeding 0.2%. The Hemp (Third Country Imports) Regulations 2002 also require, except in specified circumstances, that hemp from ‘third countries’ be imported under a licence and, in the case of hemp seeds other than for sowing, under an authorisation.



For more information about how to support Pleasant Lands,  
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