Parliamentary Options Analysis

SI 2018/1055: What Was Parliament Told — and What Questions Arise From Emerging Research?

(Based on ministerial and official materials including HCWS994, HLWS961, HCWS1058, and Home Office Circular 018/2018)

As part of the wider research informing *Discrimination by Design*, **this paper** examines how the Home Office's chosen regulatory pathway for SI 2018/1055 was presented to Parliament in 2018, and how this aligns with the practical and legal effects of the instrument itself.

Understanding Class vs Schedule (MDA 1971 vs MDR 2001)

For clarity, this paper refers to two distinct legal systems:

- **Drug Class (A/B/C)** — defined under the *Misuse of Drugs Act 1971*.
  This determines the **severity of criminal penalties** for unlawful possession, supply, or production.
- **Drug Schedule (1–5)** — defined under the *Misuse of Drugs Regulations 2001*.
  This determines whether a substance may be **lawfully prescribed, researched, manufactured, supplied, or used** for medical or scientific purposes.

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A substance may be, for example:

- **Class B but Schedule 1** (as cannabis is), meaning:
  - it attracts Class B criminal penalties, and
  - it is legally defined as having **no recognised medical use**, unless moved to another Schedule by statutory instrument.

This distinction underpins the regulatory options considered in 2018 and set out in the supporting graphic.

By considering:

- the **three regulatory options** available to ministers at the time, and
- the content of the ministerial and official statements issued in October–November 2018,

a set of **open research questions** emerges regarding transparency, clarity, and the completeness of the information provided to Parliament.

This paper does **not** assert conclusions about motive or intent.
Its purpose is to identify where aspects of the 2018 reforms may not have been fully visible through the explanations given at the time.

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1. Did Parliament understand that the Home Office chose the only regulatory option that preserved Schedule 1 status (no recognised medical use)?

Of the three pathways available in 2018:

- **Option 1** (rescheduling cannabis to Schedule 2), and
- **Option 2** (creating a dedicated Schedule 2A category),

would both have removed the contradiction between medical prescribing and **Schedule 1 (no recognised medical use)** status under the Misuse of Drugs Regulations 2001.

The route actually taken — **Option 3** — retained cannabis in Schedule 1 while creating a new legal construct ("CBPMs") in Schedule 2.

None of the Written Ministerial Statements — **HCWS994**, **HLWS961**, or **HCWS1058** — explicitly indicated that cannabis would remain Schedule 1 after the reform.

This raises a research question:

Would Parliament have interpreted the reform differently had the retention of Schedule 1 status been clearly stated?

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2. Did SI 2018/1055 create new circumstances under which a patient could become criminally liable?

Regulation 16A(3) introduced a prohibition on administering a cannabis-based medicinal product **by smoking**.

Before November 2018:

- no legal situation existed in which a patient could smoke a *lawfully prescribed* cannabis medicine.

After November 2018:

- a patient may lawfully possess a Schedule 2 CBPM,
- yet become criminally liable **solely because of the method of administration (combustion)**.

None of the ministerial statements referenced this new condition under which lawful possession could give rise to criminal exposure.

Thus:

Would Parliament reasonably have expected explicit disclosure that the instrument introduced a new legal condition under which a patient could incur criminal liability?

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3. Was the creation of "CBPMs" understood as a regulatory mechanism rather than a clinical or pharmacological classification?

CBPMs were defined specifically for the purposes of the Misuse of Drugs Regulations.
They do not correspond to MHRA-recognised medicines categories.

Their creation was necessary only under **Option 3**, where cannabis remained in Schedule 1 and required a bespoke legal pathway to permit limited medical use.

The ministerial statements outlined the definition but did not explore its structural significance.

This leads to the question:

Did Parliament understand that CBPMs were a legal workaround arising from the regulatory option chosen, rather than a clinically derived medicines category?

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4. Were the implications of prohibiting only one specific inhalation route (smoking) visible within the ministerial explanation?

Inhalation and smoking are not interchangeable terms.

In clinical practice, inhalation may involve:

- vaporisation,
- nebulisation, or
- combustion (smoking).

SI 2018/1055 prohibits **only smoking**, not inhalation generally.

This creates an unusual situation:

- a patient may lawfully possess a Schedule 2 medicine;
- inhalation may be clinically appropriate;
- yet normal patient protections fall away **only** if the medicine is consumed by combustion.

No equivalent route-specific criminal prohibition applies to any other prescribed controlled medicine.

Across **HCWS994**, **HLWS961**, **HCWS1058**, and the Home Office Circular, there is no discussion of:

- the clinical distinction between inhalation and smoking,
- the relevance of rapid-onset administration, or
- the potential implications for disabled patients who rely on inhaled routes.

Hence the research question:

Did Parliament have sufficient information to recognise that only smoking—not inhalation—was prohibited, and that this uniquely removed standard patient protections for those lawfully prescribed a Schedule 2 medicine?

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5. Did Parliament recognise how scrutiny levels differed between the available regulatory options?

Options involving rescheduling (Options 1 and 2) would typically require:

- **affirmative procedure**,
- parliamentary debate, and
- greater cross-government involvement.

Option 3, by contrast, enabled the reforms to be implemented via **negative resolution**, requiring no debate unless actively requested.

The ministerial statements did not highlight this distinction.

Thus the research question becomes:

Would MPs or peers have viewed the reform differently if the level of scrutiny associated with alternative options had been expressly acknowledged?

Summary

This paper identifies areas where the ministerial explanations of SI 2018/1055 and the legal structure of the instrument raise **reasonable research questions** relating to:

- the visibility of Schedule 1 retention,
- the nature of route-specific criminal liability,
- the regulatory purpose of the CBPM definition,z-i
- differential effects on disabled patients, and
- the scrutiny implications of the chosen regulatory pathway.

These questions do not assert wrongdoing.
They help clarify where the 2018 framework may have been incompletely described, unusually structured, or insufficiently transparent within the delegated legislation process.

This analysis forms part of the ongoing development of Version 3 of *Discrimination by Design*.

Editors note: Update v2, sect 6 to reflect options and context