

Tenants and Drugs

Guidance for Landlords

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KFX
Learning of Substance

1: Introduction

As a landlord, you probably have several different priorities. These include ensuring that properties are let, that payments are made, properties are not damaged and that, at the end of the rental period you are able to regain vacant possession of the property.

Many landlords are concerned that, if they let properties to people who use drugs, they will encounter more problems with rent, damage and nuisance. This can put many landlords off letting their properties to such people.

Even when properties are let to people who use drugs, they are often evicted. This is often because of confusion about key pieces of legislation.

This pamphlet will clarify these important issues for Landlords. It is especially aimed at Landlords who currently let properties to people who use drugs, or who are thinking about doing so.

It is written for people who do not necessarily have specialist knowledge about drugs or about the law; so all the important terms are explained. Essential information is highlighted. We hope that it will be useful to you.

Important:

Drugs legislation and housing legislation is constantly changing. You should **always** seek up-to-date legal advice.

2 About drugs

Lots of people use drugs. By "drugs" we mean a wide range of chemicals that affect the way that the mind and body work. This includes legally available drugs like alcohol and nicotine, medicines like antibiotics and antidepressants, and non-legal drugs like Ecstasy and cannabis. It also includes some substances like *volatile substances (glues and gases)*.

In this pamphlet, we will talk a lot about **controlled drugs**. These are drugs that are defined by the **Misuse of Drugs Act (1971)**. Some of these drugs are used as medicines, like Valium (a tranquillizer) or Methadone (used to treat people addicted to heroin). Others, like cannabis or Ecstasy are not currently used as medicines and so possession of them will generally be illegal.

Controlled drugs are important, because people can commit criminal offences if they produce, possess or supply them illegally. There may also be some issues for Landlords and these are discussed in detail below.

Landlords also need to be aware of other drugs not controlled under the Misuse of Drugs Act as these can also cause management issues for Landlords. Strategies for addressing these drugs are also discussed later on.

3 Landlords and the Misuse of Drugs Act

The Misuse of Drugs Act 1971 (MDA) creates offences including production, possession and supply of drugs. It also creates offences relating to the occupier and managers of premises. It is this last part which is of greatest importance to Landlords.

3.1 Section 8:

Section 8 of the Misuse of Drugs Act creates offences for people who are the occupiers or concerned in the management of premises.

Section 8 of the Misuse of Drugs Act 1971

A person commits an offence if, being the occupier or concerned in the management of any premises, he knowingly permits or suffers any of the following activities to take place on those premises that is to say

- (a) producing or attempting to produce a controlled drug
- (b) supplying or attempting to supply a controlled drug to another...or offering to supply a controlled drug to another;
- (c) preparing opium for smoking
- (d) smoking cannabis, cannabis resin or prepared opium.

3.2 Is a landlord liable for activities under Section 8?

In most letting situations, the **tenant** can be considered the **occupier** for the purposes of the legislation, and so would be liable for the activities of other parties on the premises.

Example 1:

Fred is housed by a private landlord. He lives in a one bedroom flat, and has an Assured Tenancy. Fred is frequently visited by his friend Roger, who often smokes cannabis in Fred's flat. Fred allows this to go on, but does not partake himself. Roger could be prosecuted for the possession of cannabis. Fred could be prosecuted under Section 8 for allowing the premises to be used for the smoking of cannabis. Fred has exclusive possession of the property and so is the **occupier** for the purposes of the Act. The landlord may also be considered **concerned in the management** for the purposes of the Act (see below).

However, as the law could potentially be interpreted differently, it is important that landlords are not complacent.

This is especially important as the words "concerned in the management" can be taken to mean a landlord, their agent or others acting on the Landlord's behalf.

In light of this, landlords should take action to address production and supply of drugs in their premises in consultation with partner agencies including other housing providers, local Drug Action Teams, and the police. This would be especially important where large-scale supply was taking place, and the landlord was aware of this and took no action.

Example 2:

Mr. Jones is a landlord and rents a house to Mr. Smith. In the course of a conversation with Mr. Smith, the Landlord becomes aware that Mr. Smith is growing a number of cannabis plants in the spare room.

Mr. Jones does nothing about this, and continues to collect rent.

Mr. Smith is raided by the police and arrested. Mr. Jones is also arrested and charged under Section 8(a) of the MDA of allowing premises to be used for the production of a controlled drug.

For a landlord to be committing an offence under Section 8 they must both **know** that a prohibited activity was taking place and **permitted or suffered** it by failing to take reasonable and available steps to stop it.

Due to the way the law is worded, clause (d) of Section 8 only obliges managers of premises to prevent cannabis or opium smoking. This obligation does not extend to the use of other drugs. So a landlord can know that a tenant is using heroin, for example, and the landlord is not themselves committing an offence.

Example 3:

Mrs. Scott runs a B+B. She is aware that several of her guests use heroin. She has seen evidence of drug use in several rooms when she has been servicing the rooms.

Mrs. Scott is not aware of any supply taking place, solely use.

Mrs. Scott is not committing an offence under Section 8.

3.3 Possession of controlled drugs:

If a tenant is in possession of a controlled drug unlawfully then they commit an offence of possession. They may also be in breach of the terms of their tenancy,

The Landlord however is not committing an offence in this situation, even if they are aware that the tenant is in possession of the drug.

Important:

If a landlord took possession of a controlled drug then normally they would be committing an offence. If you do come into possession of a controlled drug (e.g. when emptying a vacated property) then you should either destroy it yourself or hand it in to the police. Both these actions are legal. It would be useful to have both a witness for this and a written record. If you plan to take the drugs to the police, you should phone them in advance

3.4 Possession of paraphernalia:

Drug users do not commit an offence by possessing drug-taking equipment. There is an offence of supplying certain paraphernalia. It is also possible to be prosecuted for possession of drugs if traces are found on the paraphernalia.

Important:

Landlords should take great care in handling discarded equipment, especially injecting equipment. They should be trained in the safe handling and disposal of such equipment. They will need to ensure that any contractors undertaking work on site take similar precautions.

4: Anti-social Behaviour Act 2003

The Antisocial Behaviour Act 2003 creates a range of new powers to tackle antisocial behaviour. This includes a new power to close down premises that the police and the courts believe are associated with the production, use or supply of class A drugs and associated with serious nuisance or disorder.

When the Police had grounds to think a premises was associated with the production, use or supply of class A drugs and the property was associated with disorder or serious nuisance, then the police can issue, after consultation with the local authority, a Closure Notice.

This document would be served on the premises, and would inform those connected with the premises that an application is being made to close the premises, say when and where the closure hearing would take place, and restrict access to the building to the owner of the building or people who normally stay there.

Once a closure notice has been issued, the Police would seek a **Closure Order** from the Magistrates Court. The court will issue a Closure Order if they believe that the use or supply of Class A drugs has been taking place, that it has been connected to disorder or serious nuisance, and that without issuing a Closure Order, there is likely to be further nuisance or disorder.

A Closure Order means that the Police are now authorised to secure the premises, in the first instance for up to three months. Anyone attempting to remain on the premises or attempting to re-enter the premises without authority faces arrest and possibly imprisonment.

The legislation would work as follows:

- A Police Officer (superintendent or above) authorises the issue of a closure notice.
- A constable serves the closure notice on the property.
- The police apply to a magistrate's court for the making of a closure order.
- Once a closure order is made, the closure order will be enforced by the police.
- Breaches of the Closure Order will be an arrestable offence.
- Where needed the Closure Order may be extended to a maximum of six months.
- There is provision for appeals, reimbursement of police costs and grounds for compensation.

As a landlord you would not, yourself, be prosecuted for the anti-social behaviour. But you may find that you are unable to regain access to the property until you can demonstrate that the antisocial behaviour will not reoccur.

You may also have to make payment for work done to secure and maintain the property during the period of the closure order.

Where you are concerned about a tenant's behaviour, it will be preferable to use Tenancy Sustainment workers, outreach workers or Supporting People teams to address the behaviour before it reaches the stage where closure orders are utilised.

Where a legitimate tenant has lost control of a tenancy due to exploitation or other factors, the measures included in the Antisocial Behaviour Act can enable a landlord and the police to regain control of the property more rapidly.

5 Supporting drug users in accommodation

In order to sustain people who use drugs in accommodation, they may have access to a wide range of services. Some of these relate to housing and other relate more to drug use. Both can have a positive impact on a person's ability to manage and sustain their tenancy.

Treatment: some people will be in touch with treatment services. This could include GPs or special clinics where people get help, with support, counselling and prescribed drugs.

Harm reduction strategies: these approaches help people who are still using drugs to use in ways that are less dangerous. This includes advice and information or practical help including needle exchanges where people can get clean injecting equipment and discard of used equipment safely.

Floating support: This support can be set up as part of a supported housing package or can be independent of the housing provider. Workers visit the tenant in their home, and offer advice support and information. This could include support around drugs and mental health, life skills or help around managing a tenancy.

Important:

Where floating support is part of a contractual agreement between the Landlord and the support provider, this may have implications under Section 8.

The Landlord and the Floating Support provider would need to agree situations where the support provider would provide information to the Landlord, and when the support provider could continue to provide a confidential service. Such an agreement would also describe when the floating support provider would share information with the landlord.

Specialist housing: For some people, drug use or other issues may mean that independent living is not the best option at this time, and it may be better for them to be housed in supported accommodation where these issues can be addressed by specialist workers. Then the person could make the transition to independent living with support.

6 Clauses in a tenancy relating to drugs

Most tenancy agreements will have clauses that directly relate to drugs or can be applied to drugs and drug use. These will explain to tenants what is and what is not acceptable. They also give the landlord the grounds on which they would seek possession. Wherever possible we would encourage landlords to attempt to address the problem by working with support agencies rather than seeing eviction as the only option.

Important:

The clauses of a tenancy do not **oblige** a landlord to take action when they know that a tenant has broken a clause. But they do give the landlord the power to take action if they choose to. Sometimes a landlord would want to explore other options before seeking possession for breach of tenancy agreements.

The following examples of clauses in tenancy are often used:

No drugs, or no illegal drugs or no controlled drugs...

This clause would need to be worded very carefully. The “no drugs” clause is practically unworkable. The term “drug” is too vague, and could equally apply to caffeine as cannabis.

The “*no illegal drugs*” is better but doesn’t apply to non-illegal drugs such as solvents, alcohol, or prescribed medicines.

“*No controlled drugs*” can cause problems because some important prescribed medicines are also controlled drug, such as methadone and tranquillizers.

A clause that restricted the “*possession of controlled drugs unlawfully held*” would be the most appropriate form of words in this situation.

No immoral or illegal use (of property)

This is a wider ranging clause that does not refer directly to drugs but can be used to address drugs. It means that a landlord could take action where the Landlord knew that controlled drugs were being possessed, supplied or produced unlawfully.

Important

If a landlord wanted to seek possession, they would have to be able to prove that the unlawful action had taken place. Simply suspecting it would normally not be enough. This may require the Landlord to involve the police to get the required evidence.

Nuisance and anti-social behaviour

These are wide catch-alls that can be applied to drug-related situations. This includes where behaviour, drug-related or otherwise, is causing a nuisance to neighbours. This could include drink related behaviour, supply taking place in on near the building, disruptive visitors etc.

This is often easier to prove than illegal use as neighbours or professional witnesses can demonstrate that nuisance or anti-social behaviour was an issue.

Health and safety:

These clauses can be applied where drug use or other activity creates problems such as the unsafe disposal of injecting equipment.

Arrestable offence on or in vicinity of premises...

This is another catchall clause that could include drug-related activity. There will need to be proof that the arrestable offence took place, and this would normally require police involvement.

Landlord's checklist	
Drug Project contact numbers:	
Name	Number:
Local DAT contact numbers:	
Names and contact numbers for floating support workers:	
Name/Organisation	Number
Services for handling discarded hazardous waste:	
Name	Number
Local Police station	
Community Liaison Officer:	
Tenancy clauses relating to drugs and drug use:	
Clause numbers:	Legal check
Other Information:	

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