

Drugs on Premises The Updated Legal Position

**Working within Section 1 of the
Antisocial Behaviour Act 2003
and
Section 8 of The Misuse of Drugs Act 1971**

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Revised with the financial assistance of Shelter

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Drugs legislation and practice is frequently changing and so we would urge organisations to check for updates on the KFx website and elsewhere.

We would also strongly encourage organisations to seek legal advice and consult with stakeholders before implementing such protocols.

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Introduction:

Drugs agencies, housing providers and other social care agencies have become increasingly aware of their obligations under the Misuse Of Drugs Act 1971 (MDA) and related legislation.

Many providers are seeking to balance the desire to provide appropriate, high quality services against the need to provide a lawful, safe service. This has not been an easy process and, this has not been made any easier by a protracted series of changes to the law over the past three years.

We have now reached a period of relative stability, and this document seeks to reflect the current legal and practice position.

This document incorporates the current legal positions relating to Section 8(d) of the MDA and describes the new powers included under the Antisocial Behaviour Act 2003.

This paper should be read alongside other documents, most notably the more detailed KFx briefing on Legislation, the revised Sample Drugs Policy and the booklet "Managing Drugs, Guidance for Landlords."

These, and other resources on the KFx website, provide an unrivalled information depository for any agency concerned about safely managing substance use on premises.

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January 2006

1: What am I currently LEGALLY obliged to do under Section 8?

You are still **legally** obliged under Section 8 to prevent the following activities taking place on your premises if you are aware that they are taking place:

- a) production or attempted production of controlled drugs;
- b) supply, attempted to supply or offers to supply a controlled drug;
- c) preparing opium for smoking.
- d) smoking cannabis or prepared opium.

Clause (d) above was due to be replaced by Section 38 of the Police and Criminal Justice Act 2001. This would have widened the scope of 8(d) from just being concerned about cannabis and opium to cover all controlled drugs unlawfully held.

The amendment to Section 8(d) by Section 38 has NOT come in to force and was repealed by the Drugs Act 2005 and so has been abandoned.

However, the Home Office is insistent that the old Clause 8(d) remains in force and so organizations that failed to act to stop smoking of cannabis (or opium) on premises would be committing a criminal offence.

2: How does Section 8(d) work now that cannabis has been reclassified?

In January 2004, cannabis was moved to Class C from Class B. This means that the penalty for possession was reduced from a maximum of five years to a maximum of two years. Possession of cannabis remains an arrestable offence, but police have been advised to use this power only in exceptional circumstances.

Generally, there is a presumption against arrest for possession of cannabis, and police will normally confiscate the drugs and issue a caution.

Despite the reclassification of cannabis, organisations are still obliged to stop the supply of cannabis on site (under Section 8(b) of the MDA) and the smoking of cannabis on site (under 8(d) of the MDA). Unwillingness to use reasonable means readily available to prevent such activity remains a criminal offence.

As part of the process of reclassifying cannabis, penalties relating the supply of Class C drugs and offences under Section 8 relating to Class C drugs were increased. This means that the maximum penalty for allowing premises to be used for smoking cannabis or supplying cannabis is a maximum of 14 years imprisonment.

In order to reduce risk of prosecution and avoidable eviction or exclusion, organisations will need to agree local protocols with the police, and a model for developing such protocols is located on the KFx website.

3: What is the Anti-social Behaviour Act?

The Anti-social Behaviour Act received Royal Assent in 2003 and sections of it came in to force in 2004.

The Act contains a number of measures intended to address “anti-social” behaviour, and contains specific measures intended to address drug-related activities on premises.

4: Has the Act come in to force yet?

The Act came in to force in January 2004. Organisations should by now be fully aware of relevant sections of the Act, and have initiated discussions with police and Local Authorities to ensure smooth implementation locally.

A checklist of implementation stages is included at the end of this section.

5: What measures does the Act include?

When the Police have grounds to think premises are associated with the production, use or supply of class A drugs, and that the property is 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 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.

6: Is there any guidance on how the law should be interpreted:

The Home Office issued Notes of Guidance relating to the power to close premises connected with drug related activity.

The notes of guidance are primarily aimed at the police and courts. Housing providers and drugs agencies will need to be familiar with both the law and the notes of guidance. Where necessary, agencies should endeavour to negotiate local codes of practice and implementation with local authorities and the police.

7: How are the powers contained in the Anti-social Behaviour Act different from Section 8 of the Misuse of Drugs Act 1971?

This legislation is very different. Section 8 of the MDA 1971 creates **legal** obligations on the occupiers or managers of premises and compels them to do everything that they reasonably can to prevent the production, supply and use of Controlled Drugs on premises. Where an organisation failed in its efforts to do this, they ran the risk of prosecution and imprisonment.

The legislation in the Anti-social behaviour Act doesn't create the same **legal** obligations for organisations. It creates a model where, if production, use or supply of illegal Class A drugs is thought to be going on and if there is associated nuisance, then the Police can seek and order to close and seal the property.

In practice this would work as follows: an organisation could legally work with situations where ongoing use of Class A controlled drugs was taking place, and would not be committing an offence under Section 8(d).

However, if this use caused nuisance or disorder, the Police could issue a Closure Notice.

Before doing this, the Police would need to consult with the local authority. The social care organisation would be able to attend the court hearing and, if necessary, argue why a Closure Order was not appropriate.

8: Is the Home Office planning to exempt anyone from the legislation?

The Home Office have written provision in to the legislation so that the Home Secretary can, if he chooses, exempt organisations or types of provision from the legislation. This is a welcome inclusion. No examples of this have been given yet.

Organisations who feel that such exemption may be useful should contact the Drugs Legislation Enforcement Unit at the Home Office to find out how to seek exemption and under what circumstances it would be provided.

9: Under the current legislation, could a housing provider tolerate people injecting heroin in their rooms in hostels?

As the amendment to section 8(d) has been repealed, and will not now come in to force, the answer to this is 'yes,' albeit with a number of caveats.

You would need to ensure that such use did not put other residents at risk of harm or nuisance. This would be a breach of your organisations health and safety policy, and a breach of your duty of care to other residents.

If the activity started to cause nuisance to the public, you would run the risk that the police would seek a closure order. However, there would be scope for the organisation to seek other routes to resolve the problem other than facing closure.

10: Will the same thing apply if we know supply of controlled drugs is taking place?

No. Legally you must still do everything that you reasonably can to stop supply taking place.

If you do not, you could face prosecution under Section 8(b) and a closure order if the premises were associated with nuisance or serious disorder.

11: How about if the activity relates to cannabis:

The powers contained in the Antisocial Behaviour Act relate to Class A drugs and so do not apply where the only drug involved is Cannabis. However, allowing premises to be used for production of cannabis, supply of cannabis or smoking of cannabis remain criminal offences under sections 8(a),(b) and (d) of the MDA respectively and so organisations will not be able to tolerate these activities unless specific protocols have been negotiated with the police. This is discussed further below.

12: What should we do if the property that we manage is subject to a Closure Notice and we want to challenge it?

If the landlord, occupier or tenant wish to challenge a closure order they will need to attend court and should get legal representation as soon as possible.

It is essential that this is done very rapidly as from the point of Closure Notice, a Closure Order will be sought and issued within 48 hours.

With legal representation, the landlord, occupier, tenant or their representatives should attend court and apply for an adjournment; this should be allow for proper submissions to be prepared and submitted. The court can grant a period of adjournment for up to 14 days.

Representatives and the legal team should return to court and provide grounds to challenge the application for a closure order. This could include:

- demonstration that the property is not associated with Class A drug use.

This could be supported by evidence of drugs workers, housing support workers, evidence from drug treatment projects etc

- evidence that the property is not associated with disorder or nuisance: this could come from supporting evidence from other neighbours, evidence from Housing Support workers, diary to demonstrate that nuisance is caused by others, etc.
- proposals that other approaches will resolve the nuisance or disorder: this could include a willingness to attend treatment, agreement to exclude visitors who cause nuisance, or willingness to change behaviour that is causing nuisance.
- other submissions that support the contention that the issuing of a closure order is not an appropriate response.

If a Property is closed, the person will be homeless. It is ESSENTIAL at this point that they do NOT surrender their tenancy (if they have one) at this point as they may be considered intentionally homeless. They should continue to seek legal advice, and make a decision as to whether they wish to take further action.

They can apply to the court for the Closure Order to be discharged, but would have to demonstrate to the court's satisfaction that the nuisance or disorder will not recur.

There is an amended version of this document on the KFx website aimed at tenants and occupiers.

13: Where can I get further information?

You can download the Anti-social Behaviour Bill at:

<http://www.publications.parliament.uk/pa/cm200203/cmbills/083/2003083.pdf>

Explanatory notes relating to the Bill can be viewed at:

<http://www.publications.parliament.uk/pa/cm200203/cmbills/083/en/03083x--.htm>

The Guidance Notes Relating to the Closure Powers under the ASB can be viewed at:

<http://www.homeoffice.gov.uk/inside/consults/current/index.html>

Resources and information relating to Section 8 and other issues are posted at www.ixion.demon.co.uk

You can email kfx@ixion.demon.co.uk for further information, and to register for updates.

Appendix 1:

Working with the Anti-social Behaviour Act 2003.

Introduction:

This document looks at steps that organisations should consider to ensure that there are minimal problems when working within Section 1 of the Anti-social Behaviour Act 2003.

Any organisation that engages with people who are actively involved with Class A drugs needs to be aware of this legislation, especially:

- 1) Local Authorities Housing Departments, Social Services and Antisocial Behaviour Teams
- 2) Registered Social Landlords and other housing providers
- 3) Hostels, day-centres, night-shelters
- 4) Drug projects and needle exchanges

1) Familiarity with the legislation, the accompanying guidance notes and any other additional literature.

Key staff need to be familiar with Section 1 of the Antisocial Behaviour Act 2003. This can be viewed on the Home Office website, along with the notes of guidance. Links to this can be found on the KFx website, along with supplementary information.

2) Review scope of (class A drug-related) anti-social behaviour affecting the organisation, and the current strategies for dealing with this.

The organisation should audit the nature and extent of antisocial behaviour currently on or in the vicinity of properties that it manages.

The audit should highlight examples of antisocial behaviour that would fall within the remit of Section 1 of the Antisocial Behaviour Act 2003. This means identifying examples of behaviour which were causing disorder or serious nuisance and where the property was associated with Class A drugs.

The audit process should identify what strategies and resources have to date proved successful in managing such antisocial behaviour, and areas where additional strategies and resources may be needed.

Such evidence should be used to

- a) assess the extent to which such antisocial behaviour is currently an issue
- b) demonstrate the ability of an organisation to manage antisocial behaviour
- c) identify areas for improvement

3) **Revise policies, procedures, contracts, licenses or tenancies as appropriate.**

Most tenancies and licenses will make some reference to nuisance, health and safety or antisocial behaviour.

- Organisations may wish to add a specific clause relating to antisocial behaviour (whether drug-related or not) and bring it to the attention of clients when they engage with a service.
- Such a clause would need to make it explicit that service users have a responsibility both for their own behaviour and that of friends, guests or other visitors;
- It should also make it clear that this responsibility for behaviour relates both to activities on and also in the vicinity of the premises.
- The organisation can highlight that the police can act unilaterally to prevent such behaviour by closing down a property and that this power would override any rights contained with a licence or tenancy agreement.

When people are being considered for housing or start using a service, the importance of appropriate behaviour should be stressed, and the range of support options (and sanctions) available should be highlighted.

It may also be appropriate to review monitoring and notification systems, and develop form-letters that may be required.

4) **Liaison with Police**

Organisations should make contact with local police representatives to explore how powers to close premises will be implemented locally.

Ideally, the police will have a named individual who can act as a point of contact for agencies concerned about the powers included under the Antisocial Behaviour Act.

The same person can then act a police liaison at housing forums, at Drug Reference groups and at Crime and Disorder Partnership meetings.

Organisations should endeavour to negotiate the following:

- a) that the powers contained in Section 1 of the Antisocial Behaviour Act 2003 will be used only where absolutely essential and wherever possible other resolutions will have been explored first
- b) that where the police have concerns about drug-associated nuisance related to a property, they will wherever possible bring this to the attention of the owner or the building manager. The police will where feasible assist the organisation in

addressing the anti-social behaviour without recourse to powers to close premises.

- c) Where police are contemplating the use of Closure Powers, they will consult wherever possible with the Local Authority and the building owner/manager as applicable.
- d) That organisations will endeavour to work with clients to manage and reduce anti-social behaviour and will where necessary seek assistance from external agencies including the police to achieve this.
- e) That organisations may wish to utilise these powers to regain control over premises rapidly and agreed processes between the organisation and the police to achieve this result should be developed.

5) Liaison with Local Authority:

Were the organisation is NOT the Local Authority, it will be important to establish links and agreed working practices between the organisation and the Local Authority. While the police are not obliged to consult with property owners or managers they do have a statutory obligation to consult the Local Authority.

In turn, the Local Authority can then choose to consult with concerned parties even when the police deign not to.

Local protocols to ensure good communication between the Local Authority and local service providers should be developed, to ensure that such communication is followed through.

The Police, local organisations and statutory services should develop a response package that addresses the housing needs and support needs of people who have been displaced as a result of closure action being taken.