

Policing Cannabis

Joint-Working Protocols for Managing Cannabis in Residential Settings

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

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Joint working protocols for managing cannabis use in residential settings

This document looks at the scope and process for agreeing a local policy between the police and social care providers for the management of cannabis use in residential and other settings.

1 Who should read this guidance:

Any organisation which encounters cannabis use on premises that they own or manage; this includes but is not limited to:

- Hostels, Foyers and other housing provision
- RSLs and Local Authority housing
- NHS Trusts
- Youth Service
- Residential Services for young people
- Universities and Colleges

This document relates to work with people 18 years old and over, and is applicable in England and Wales. Protocols will need to be developed separately in Scotland, Northern Ireland and in situations where under-18s are involved.

2 Why is the guidance needed?

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 are 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 Misuse of Drugs Act 1971 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.

Section 8(d) of the Misuse of Drugs Act relates to cannabis and opium smoking and the Home Office is insistent that this clause remains in force at the present time.

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 penalty for allowing premises to be used for smoking cannabis or supplying cannabis will be 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.

3 What is the purpose of a joint-working protocol?

The aim of a joint working protocol is to create a framework which allows the organisation to work with service users who use cannabis, avoiding exclusion or eviction where possible. This may mean having to work outside the requirements of Section 8(d).

By agreeing working protocols with the Police, it should be possible to reduce the risk of prosecution. However, organisations should be aware that such local agreements cannot be legally binding and cannot wholly remove the risk of prosecution. They are at best a safeguard and reassurance against ill-conceived legislation.

4 What form should the protocol take?

In this instance, the form of the joint working protocol takes the form of an action plan on the behalf of the organisation managing the cannabis use; there is a reciprocal undertaking from the police not to prosecute an organisation under Section 8(d) provided that they have adhered to the agreed action plan.

The format, structure and content below is illustrative and could be added-to or amended as required.

However, any significant changes to the existing content below may result in an agreed protocol which does not adequately reflect the needs of either the police or service providers.

5 Organisational Undertakings:

- 1) The organisation is aware of its legal obligations under Section 8 of the Misuse of Drugs Act 1971, which includes obligations to prevent the production, supply or use of cannabis on premises.
- 2) The organisation seeks to balance these legal obligations against the nature and level of drug-related behaviour, the impact on the organisation, the individual, other service users and the wider public.
- 3) In a number of situations it may not be possible or desirable to evict or exclude a person from a service or a building solely for the use of cannabis where there are no other problems present.
- 4) In situations where a service user smokes cannabis within the building, the organisation will assess the following:
 - Is this behaviour creating health or social risks for other service users (e.g. is use taking place in shared or communal areas, are non-users and non-smokers being exposed to use, is it impacting on child safety etc.)
 - Is the behaviour having a negative or disruptive impact on the quiet enjoyment of other residents (e.g. loud music, late night visitors etc.)
 - Is the behaviour associated with the supply of cannabis, especially the sale of cannabis, the storage of large quantities or numerous visitors to the premises.

- Is the use of cannabis having other negative impact on the service or other service users?
- 5)** Where the use of cannabis is NOT having a negative impact as described above, the organisation will undertake the following interventions as appropriate:
- The person using cannabis will be reminded that the possession of cannabis remains a criminal offence, and that such use brings with it a risk of prosecution.
 - That the use of controlled drugs on site is a breach of tenancy, license or organisational rules as appropriate and may jeopardise continued access to the service.
 - The person will be given the opportunity to access support or advice services or literature as required.
- 6)** Where the use of cannabis on site is not associated with additional problems, the organisation asserts that it would be inappropriate and disproportionate to seek to ban the person from premises or seek eviction and would not pursue such a path in the absence of additional problem factors.
- 7)** Where the drug-related activity brings with it associated additional nuisance or risk, the organisation will seek to address this with the service user in the first instance and explore opportunities to change. Where these are not successful, the organisation will proceed to enforcement action which may ultimately result in police involvement, eviction or both.
- 8)** Where the organisation knows or suspects supply is taking place they will act to address this. Different responses will be appropriate depending on the nature and level of the supply.
- Where 'supply' involves the sharing of cannabis in pipes, spliffs etc. amongst two or more peers, the organisation will address this by:
 - Ensuring that vulnerable people are not being put at risk
 - Reinforcing that the users are committing a criminal offence which may result in prosecution or jeopardise continued use of service/tenancy.
 - Where small quantities of cannabis are being exchanged or sold, this will require more robust action; if the behaviour does not cease it will require further action which may include eviction, exclusion or possible police involvement.
 - Where supply is more large-scale or more frequent then enforcement action may be required which may lead to loss of tenancy, exclusions or police action.
- 9)** The organisation will keep records of actions taken; records that identify specific individuals will not normally be shared with external agencies unless there is an obligation to do so. However, anonymised information may be shared externally, for example to establish that enforcement protocols are being followed.
- 10)** This protocol relates only to situations involving people aged 18 or over. Separate protocols will be required for situations involving juveniles, and may need to include Social Services, YOTs Police and other agencies.

11) This policy will be reviewed internally by the organisation at least annually and more frequently as required, such as after police advice or a critical incident. The organisation will also maintain effective communication with the police through regular meetings and ongoing liaison.

6 Police Undertakings:

- 1) The Police recognise the tension between the need to provide appropriate housing to people who use cannabis and the obligations created by Section 8 of the Misuse of Drugs Act 1971.
The agreed joint working protocols are an attempt to reflect the spirit of the cannabis reclassification and changes revisions to Section 8 of the MDA.
- 2) The Police are aware that social care organisations who knowingly permit or suffer the use of cannabis on their premises are committing an offence under Section 8(d) of the MDA 1971.
- 3) However, the police recognise that, short of evicting or barring people who smoke cannabis from such premises, it may not be practical to bring an end to such use. The police agree that to evict or bar people from services solely for use of cannabis is liable to be counter-productive.

The police expect that organisations will undertake proactive measures to discourage the use of cannabis on site. This may include:

- reminding service users that possession of cannabis is still illegal, and can still lead to prosecution;
 - that ongoing use of cannabis on site may result in eviction, bans or other sanctions, especially where the use cause nuisance or disruption to other service users or the wider community,
 - that advice, information and support services are made available to the service user as needed.
- 4) That provided such proactive measures have been adopted, the police would not generally view legal proceedings as being appropriate even where it was known that cannabis use was still taking place on site.

The police undertake therefore will not seek to prosecute an organisation for cannabis offences under Section 8 of the MDA provided that they are working within the spirit of this joint working protocol.

- 5) Notwithstanding the above, where use is taking place on premises and this is causing risk to other service users, nuisance to service users or the wider community or is in other ways causing disruption, then the police would expect the responsible agency to address this and, if necessary, seek assistance from the police or other bodies as required.

- 6) Where supply of cannabis is taking place on site, the police would expect robust action to be taken place when cannabis is being sold or distributed. If other measures to prevent supply taking place have proved unsuccessful, it may be necessary to involve the police. Failure to adequately respond to episodes of supply may be a criminal offence and, where there is any uncertainty or confusion as to how to proceed, an informal discussion with the police is advised.
- 7) That wherever possible, the police would endeavour to consult and negotiate solutions in situations where cannabis-related activity was a cause of concern.
- 8) This document represents an agreed working protocol. However, it should be stressed that the agreement in no way constrains police powers and as such the police may take action as deemed necessary on an operational basis which may override this agreement.

7 Implementation:

Implementation can take place on an organisation-by-organisation basis, or area-wide agreements could be developed between the police, DATs and local service providers.

It may be useful to form a working group involving local services, the Police and representatives from the DAT and the Local Authority.

The working group or agency and police should negotiate an agreed framework for responding to cannabis-related incidents.

The final decision will need to be endorsed on the police-side by a police officer of sufficient seniority and will need to reflect the geographical area covered. This will probably require the involvement of the Chief Constable to ensure that sufficient weight and authority is behind the agreed protocol.

For additional protection, it may be helpful to involve the local offices of the Crown Prosecution Service (CPS) in the process and if possible secure their endorsement of the agreed protocols.

Once agreed, the police should issue a 'letter of comfort' to agencies which should reflect the agreed protocols and make it clear that the police will not seek to prosecute an organisation working within the agreed protocols.

8 Review and safeguards:

The efficacy of the agreed protocols will need to be reviewed and where necessary revised. Local agencies should have named contacts within the police to clarify and troubleshoot any issues that may arise.

9 Further Information

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We would reiterate that organisations will still be committing a criminal offence if they allow use of cannabis use on site but, through the implementation of agreed protocols such as this one, the risk of prosecution should be negligible.

Such approaches have been used successfully in other aspects of drugs work, most notably the distribution of injecting equipment prior to the changes to the paraphernalia legislation.

We would stress that the development of working protocols such as this is an imperfect response, and the best interest of all parties would be served by revising the relevant sections of legislation.

We would encourage organisations to contact the Home Office to lobby for resolution of this problem, but in the meantime advocate adoption of strategies as outlined in this document.

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.

We are happy to answer any further questions or help in the development of local agreements or protocols. Contact details are included below.

For further information about cannabis, drugs and housing or other related aspects please see the following information sources:

KFx: www.ixion.demon.co.uk

Email: kfx@ixion.demon.co.uk

Cannabis Reclassification – Frequently Asked Questions (Home Office)

<http://www.drugs.gov.uk/drugs-laws/cannabis-reclassifications/faq/>

