

## **THE MISUSE OF DRUGS ACT (MDA) 1971**

The Misuse of Drugs Act places restrictions of what can be done with substances that are defined as 'controlled drugs'. It also sets up the penalties for breaches of the law in relation to them. The Act does not deal with all drugs but only those that Parliament considers to be most harmful to the individual and to society.

## **DRUGS ACT 2005**

Came into effect on 1<sup>st</sup> January 2006

- A reversal of the burden of proof in cases where suspects are found in possession of a quantity of drugs greater than that which would be required for personal use. In other words - it will be up to the defendant to prove there was no intent to supply. The actual amount has yet to be defined.
- Compulsory drug-testing of arrestees where police have "reasonable grounds" for believing that Class A drugs were involved in the commission of an offence. Failure to comply with this testing is itself an offence and positive tests can lead to compulsory drug treatment assessment.
- Suspected drug "mules" can be held for 192 hours (previously 96 hours) to allow extra time for drugs to pass through systems.
- Judges can view the sale of drugs near schools during school hours or use of under 18's as couriers, as aggravating factors.
- Plugging – dealers carry small wraps of heroin between buttocks, or in their mouths to swallow if stopped. Police now have the authority to request an x-ray or ultra sound scan and courts can draw their own conclusions if defendant refuses.

The Act has also linked drug legislation with measures to deal with Anti-Social Behaviour so that anyone given an Anti-Social Behaviour Order must undergo compulsory testing and drug treatment.

## **Psychoactive Substances Act 2016 (PSA)**

Is a blanket ban on everything that has a psychoactive effect, covering drugs NOT controlled by the MDA, and with some exceptions – detail later.

## Misuse of Drugs Act (1971):

This legislation was introduced in 1971. It divides drugs into three classes and gives guidelines for penalties for drug offences.

Class A includes:

- Cocaine, crack, heroin, ecstasy, LSD, Magic Mushrooms, Methamphetamine (incl. Crystal Meth) and amphetamines if prepared for injection.

The maximum sentence for possession of a class A drug is seven years imprisonment and/or a fine. The maximum sentence for supplying class A drugs is life imprisonment and/or a fine.

Class B includes:

- Cannabis (including Sativex), synthetic cannabis/cannabinoids, amphetamines, barbiturates, ketamine, codeine, Ritalin, Gabapentin and Pregabalin

The maximum sentence for possession of class B Drugs is five years imprisonment and/or a fine. The maximum sentence for supplying class B drugs is fourteen years imprisonment and/or a fine.

Class B drugs that are prepared for injection become class A drugs.

Note – Cannabis possession has different consequences – first time = a warning, second time = an £80 fine, third time = arrest.

Class C includes:

- Benzodiazepine tranquillisers, rohypnol, anabolic steroids, khat and some mild amphetamine type stimulants.

The maximum sentence for possession is two years imprisonment and/or a fine and 14 years and/or a fine for supply.

The penalties listed above are the maximum and only sentenced in a Crown Court. In a Magistrates Court the maximum sentence is six months imprisonment and a £5,000 fine. The actual sentence given will also depend on the amount of drug involved, their previous criminal record, their circumstances (e.g. single parent) and the attitude of the Magistrate/Judge.

Under certain conditions of production and possession, penalties may be increased – for example; passing drugs amongst friends is supplying and can dramatically increase the penalties.

# DRUGS SCHEDULE

## Schedule 1

Possession and supply are prohibited other than by Home Office Licence which is granted for educational and research purposes.

These drugs are considered to have no medical use and are not available on prescription – e.g. Coca leaf, Ecstasy, LSD

## Schedule 2

A Home Office licence is required for import, export, production, supply and possession.

These drugs are considered to have medical uses and are prescribed to people. The person they are prescribed to can legally possess them. Their possession by anyone else represents an offence – e.g. Amphetamines, Cocaine, Heroin, Methadone, (Cannabis - Medicinal cannabis is currently unlicensed so doctors can prescribe it only if a patient has a need that can't be met by licensed medicines. Under the new rule, GPs are not allowed to prescribe cannabis-derived medicines. It has to be a specialist consultant, for example in neurology or paediatrics.).

## Schedule 3

A Home Office licence is required for import & export, and authority required for production, supply and possession (e.g. a prescription).

These drugs are treated in much the same way as schedule 2 drugs – e.g. Barbiturates, Rohypnol, and Temazepam.

## Schedule 4

Part 1: Authority is required for production and supply and for possession (a prescription) – e.g. Minor tranquillisers, Sativex (medicinal Cannabis)

Part 2: Authority is required for production and supply, but no authority is required for their possession, import or export – e.g. Anabolic Steroids.

## Schedule 5

Some controlled drugs included in preparations in small quantities can be bought over the counter. No authority is required to possess them but it is needed for their production and supply – e.g. some cough medicines, painkillers.

<b>Offence</b>	<b>Magistrates Court</b>	<b>Crown Court</b>
<b>P o s s e s s i o n</b>		
Class A	6 months and/or £5,000	7 years and/or unlimited fine
Class B	3 months and/or £2,500	5 years and/or unlimited fine
Class C	3 months and/or £200	2 years and/or unlimited fine
<b>T r a f f i c k i n g</b>		
Class A	6 months and/or £5,000 fine	Life and/or Unlimited fine
Class B	6 months and/or £5,000 fine	14 years and/or unlimited fine
Class C	3 months and/or £500 fine	14 years and/or unlimited fine

## **Section 8 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 attempt to supply a controlled drug to another, or offering to supply a controlled drug to another
- c) administration or use of any controlled drug.

### **CANNABIS - implications of Class B Status**

- While Cannabis is a Class B drug, it is dealt with slightly differently from other class B drugs
- If someone is found in possession of Cannabis once, they will receive a warning. The second time they will receive an £80 fine, and the third time they will be arrested.

### **Cannabis and Medical Use:**

From 1<sup>st</sup> November 2018, patients can be prescribed medicinal cannabis by specialist doctors. The new law will not limit the types of conditions that can be considered for treatment and doctors will no longer need to seek approval from an expert panel in order for patients to access the medicines. The decision to prescribe these unlicensed medicines must be made by a specialist doctor – not a GP. These doctors focus on one field of medicine such as neurology or paediatrics and are listed on the General Medical Council's specialist register. They must make decisions on prescribing cannabis-based products for medicinal use on a case-by-case basis, and only when the patient has an unmet special clinical need that cannot be met by licensed products.

Patients under the care of a specialist should discuss their treatment plan with them.

# Psychoactive Substances Act 2016

This is a blanket ban on everything that has a psychoactive effect, introduced to try to stop the market in so-called 'legal highs' (New Psychoactive Substances, NPS)

## Definition:

Any substance which is capable of producing a psychoactive effect in the person who consumes it

## Exceptions:

- Any drug covered by the Misuse of Drugs act 1971
- Medicines – as defined by the Human Medicines Regulations 2012
- Alcohol
- Nicotine/Tobacco
- Alkyl Nitrites
- Food and drink (to deal with food and drink that might naturally have a psychoactive substance in it, for example when using nitrous oxide to make whipped cream)

## Offenses:

- Production
- Supplying or offering to supply
- Possession with intent to supply
- Importation or exportation
- Possession of a psychoactive substance in a Custodial Institution

## Sentencing:

Offence	Magistrates	Crown	N. Ireland
Production (incl. personal use)	12 months/fine	7 years/fine	6 months/2 years
Supply and offer to supply	12 months/fine	7 years/fine	6 months/2 years
Possession with intent to supply	12 months/fine	7 years/fine	6 months/2 years
Importation/Exportation (incl. personal use)	12 months/fine	7 years/fine	6 months/2 years
Possession in a custodial setting	12 months/fine	2 years/fine	6 months/2 years

## **Producers and Suppliers:**

If the police do not want to start with the criminal law route (say for dealing with a shop supplying these substances) there are other options available to them.

- Prohibition Notices – given by a senior police officer, national crime agency, Border Force official or local council. It will prohibit you from doing a certain thing and say what will happen if you don't obey the notice
- Premises Notices – as above but aimed at a landlord or similar, who must make sure such activities do not take place on premises they own
- Prohibition Orders – issued by the court if you didn't follow a Prohibition Notice, been convicted of one of the offences and the court thinks they need to have something in place to stop you doing this activity
- Premises Orders – as above but for Premises (as before)

NB Synthetic Cannabinoids are Class B under the Misuse of Drugs Act (January 2017)

## **Drugs not covered by the MDA, PSA, or treated in an exceptional way**

### **Alcohol**

Licensing/driving laws apply.

It is not an offence for an under 18-year-old to drink away from licensed premises (unless they are under 5).

### ***Licensing Act (Nov 2005)***

- It is unlawful to allow any unaccompanied child under the age of 16 to be present on authorised premises that are exclusively or primarily used for supply and consumption of alcohol on the premises. (A child is accompanied by an adult if they are in the company of an individual age 18 or over.)
- 16 and 17 year olds may drink beer, wine or cider with a table meal in relevant premises when accompanied by an adult age 18 or over.
- Licensing laws cover the whole area of the premises – including the garden.
- It is an offence to supply alcohol to a child.
- It is an offence for a child to buy or attempt to buy alcohol (unless requested to do so by the police for a test-purchase)
- It is an offence for a child to knowingly consume alcohol on relevant premises

### **Solvents (glues, gasses etc.)**

It is not illegal to possess, use or buy at any age. A shopkeeper can be prosecuted if they sell them to an under 18-year-old if they know they are going to be used for intoxicating purposes. The Government has extended this legislation to make it illegal for shopkeepers to sell lighter fuel (butane) to under 18s whether or not they know it will be used for intoxicating purposes. This law came into force on 1st Oct 1999, although it was not an 'extension' to the Intoxicating Substances Supply Act, but an amendment to the Consumer Protection Act.

### **Alkyl Nitrites (poppers, liquid gold, nitrites, rush)**

It is not illegal to sell, possess or use them. However, the Medicines Control Agency regards them as medicine, so they fall under the Medicines Act 1968. This allows only licensed outlets, such as chemists, to sell the drug.

### **Anabolic Steroids**

These are controlled under the Misuse of Drugs Act as Class C. However, the possession offence is usually waived, meaning that people who possess or use steroids without a prescription are unlikely to be prosecuted. But in some areas of the UK, police have successfully prosecuted people for



possession when the steroids have not been in the form of a medicinal product. It is always an offence to sell or supply, and people can be prosecuted for possession with intent to supply if they have large quantities of steroids without a prescription on them.

## **Tobacco**

It is not an offence for people of any age to buy or use tobacco products. It is an offence to sell tobacco products to under 18 year olds. Police can confiscate tobacco products from under 18 year olds that are smoking in public places.

## **Vaping**

From May 2016 the EU defined e-cigarettes and vaping (containing nicotine) as tobacco related products.

- Smaller refill containers - a maximum size of 10ml is enforced. This means users cannot bulk buy to save money.
- The maximum strength permitted is 20mg.
- Cartridges are no more than 2ml.
- Due to the sudden popularity of vaping, there have been concerns that they could become popular with school children as smoking begins to appear 'cool' again. Under new EU regulation, all e-cigs and related packaging must be 'child proof'.
- Manufacturers in the industry will be asked to submit to the government open, detailed and transparent information about what the products they sell do and contain.
- If at least three EU member states express a desire to do ban e-cigarettes, it will be possible to initiate processes towards banning them.

## **Minor Tranquillisers**

They are Class C drugs, but the possession offence is waived so that it is not illegal to possess or use them without a prescription. Temazepam and Rohypnol are the exception, as it is illegal to possess them without a prescription.

## **Other Drugs Legislation**

### **Intoxicating Substances Act 1985**

This outlaws the supply of solvents to young people under the age of 18. Although the possession of solvents and glue sniffing are not illegal, police do sometimes arrest and detain young people sniffing glue. If an arrest is made it will usually be done so under the Children and Young Persons Act *'for behaviour likely to cause a breach of the peace'*.

### **Drug Trafficking Offences Act 1986**

This outlaws the sale of drug paraphernalia and allows for the confiscation of the proceeds of drug trafficking. It also places a duty on third parties not to *'launder'* drug profits. Banks for example must inform the police about suspicious deposits.

### **The Medicines Act 1971**

This is intended to prevent the non-medical use of certain drugs. It controls not just medicinal drugs but also drugs with no current medical uses. Drugs subject to this Act are known as 'Controlled drugs'.

### **Customs and Excise Management Act 1979**

This penalises unauthorised import or export of controlled drugs.

### **Drugs and driving 2015**

It is an offence to be unfit to drive due to legal or illegal drugs. It is also an offence to drive with certain levels of specific drugs in the blood, even if they have not affected driving. This includes prescription and over-the-counter medicines and illegal drugs such as cocaine, cannabis and ketamine. Penalties can include 1-year driving ban, unlimited fine, up to 6 months prison and criminal record. More info on [www.gov.uk/drug-driving-law](http://www.gov.uk/drug-driving-law)

### **Drug Trafficking Act 1994**

It is an offence to sell articles for the preparation or administration of controlled drugs – such as cocaine snorting kits. The Act also allows for the seizure of assets and income of someone who is found guilty of drug trafficking, even if the assets and income cannot be shown to have come from the proceeds of drug trafficking.

### **Crime and Disorder Act 1998**

This Act introduces enforceable drug treatment and testing orders for people convicted of crimes committed in order to maintain their drug use.

## **Drugs and duty to inform the police**

**a) Members of the public**

Knowledge that a criminal offence is taking place does not mean you have to inform the police. The private citizen cannot be prosecuted under the criminal law for failing to report an offence.

**b) Professional staff**

This will be dependent upon the nature of employment and employer's policy, but the duty to take action and report offences to the police may extend beyond the duty of a private citizen, although the criminal law will not be involved. The decision to call in the police may depend upon the relationship between staff/agency and the police.

**c) Parents**

Parents often want to report their child's drug use to the police. This can have unforeseen difficulties and many parents are unhappy with consequences. Police might sometimes prosecute dependent upon circumstances.