

# 30 factsheet

## Cannabis law update

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On 26 January 2009 the government's reclassification of cannabis took effect and the drug is now controlled under Class B, rather than Class C, of the Misuse of Drugs Act.



The Home Secretary and Prime Minister heralded the upgrade to Class B as 'sending a message' to young people about cannabis. However, in reality, the move represents an amendment to the Misuse of Drugs Act – a piece of legislation that determines the legal penalties attached to the supply, possession and production of illegal drugs.



This factsheet details how these penalties, and the police approach to enforcing them, have been impacted by reclassification.

### Has the maximum prison sentence for cannabis possession changed?

**Yes.** As a Class B drug, the maximum penalty for possession of cannabis in the UK increases from two to five years imprisonment. However, in practice, the majority of those caught in possession of small amounts of cannabis are unlikely to go to prison. The way they are dealt with will vary according to the differing policing approaches in place in England, Wales, Scotland and Northern Ireland. The current approaches in each country are detailed below.

### Has the policing approach to cannabis possession changed in England and Wales since reclassification?

**Yes.** The Home Office has introduced what it refers to as "a strengthened approach to enforcement" for cannabis possession offences. Its centrepiece is an "escalation" penalty system. This means that the penalty issued for cannabis possession is now directly related to the number of times an individual has been previously caught in possession of the drug.

### What are the 'escalated penalties' for adults who are 18 and over?

The new police 'three strikes' response for adults caught in possession of cannabis will be to:

- Issue a 'cannabis warning' if it is the first time someone has been caught in possession of cannabis. Cannabis warnings were first introduced in 2004 as a way for police to respond to cannabis possession offences while the drug was at Class C. However, unlike when cannabis was Class C, police can no longer issue multiple cannabis warnings for repeat possession offences. Instead, subsequent offences will trigger an



escalated penalty, as outlined below.

- Issue a Penalty Notice for Disorder (PND) if it is the second time a person has been caught with cannabis. This is an on-the-spot fine of £80. If the fine is paid, the PND will not lead to a criminal record or conviction.
- Arrest anyone caught in possession of cannabis a third or further times. However, police can arrest people caught with cannabis on any occasion if they feel it is necessary, especially if aggravating factors, such as selling near to a school, are involved.

### PNDs and cannabis warnings – what are they?

Cannabis warnings and Penalty Notices for Disorder (PNDs) enable police officers to deal with low-level cannabis possession offences without the need to arrest. The aim of both cannabis warnings and PNDs is to cut down on police bureaucracy and the burden on courts for low-level offences, where appropriate, so that efforts can be concentrated on more serious crime.

A **cannabis warning** is a spoken warning given by a police officer, either on the street or at the police station. The police have the option of using a cannabis warning when someone is caught with a small amount of cannabis for personal use.

The **PND** scheme was first introduced by the government under the Criminal Justice Act in 2001. A PND is an on-the-spot fixed penalty fine issued by police to deal with a range of 'penalty offences'. When cannabis was reclassified on 26 January 2009, the PND scheme was extended to include cannabis possession as one of these 'penalty offences'. Other offences covered by the scheme include underage drinking, throwing fireworks in the street and drunk and disorderly behaviour.

According to the Government, when used for cannabis possession offences, "PNDs provide an incremental step between a cannabis warning and arrest, which re-enforces the criminal offence but keeps police bureaucracy to a minimum."

### Does being issued with a PND or cannabis warning result in a criminal record?

**No.** Neither a PND nor a cannabis warning is a conviction so therefore they will not result in a criminal record. The fact that a cannabis warning has been issued may be recorded by the police – this is a matter for individual police forces at a local level. However, PNDs will be logged on the Police National Computer and could be disclosed as part of an enhanced criminal records check.

### Will PNDs be issued to adults caught in possession of other class B drugs?

**No.** The Home Secretary states that "there are no plans to extend the (PND) scheme to other Class B drugs or any Class C drugs".

According to the Home Office, a key reason behind this is the instantly recognisable appearance of cannabis. With the drug easily identified police officers can, in most cases, issue an on-the-spot fine for cannabis possession without the need for forensic analysis, allowing them to deal with the offence relatively quickly.

The Home Office says that "other controlled drugs cannot necessarily be so readily identified as they are often in powder or tablet form". This means PNDs for other drugs would "preclude police officers from dealing with the matter on the streets".

### What do the 'escalated' penalties mean for under 18s?

The policing approach for under 18s caught in possession of cannabis remains the same as when cannabis was a Class C drug. The government felt that the 'reprimand, final and warning and charge' approach that was in place for cannabis possession offences provided an 'appropriate escalation mechanism' and so did not need to be altered for the drug's reclassification to class B. Accordingly, the police response will be to:

- Give a reprimand if it is the first time a young person has been caught with cannabis.
- Issue a final warning and refer the young person to a Youth Offending Team if it is the second time they have been caught in possession of cannabis.
- Arrest a young person if they are in possession of the drug a third or final time.

### Has the policing approach to cannabis possession changed in Scotland and Northern Ireland since reclassification?

**No.** Despite the reclassification, in Scotland and Northern Ireland policing approaches remain the same as when cannabis was Class C. Anyone found in possession of cannabis will be reported to the Procurator Fiscal (Scotland) or Public Prosecution Service (Northern Ireland), where a decision on cautioning or prosecution will be made.

### What are the penalties for supply or production of cannabis?

As a Class B drug, the maximum penalty for supplying or producing cannabis is 14 years imprisonment and/or an unlimited fine. This remains unchanged from when the drug was Class C.