

# 31 factsheet

## Drugs and premises: the law

What risks do landlords or hostel managers face if people are dealing drugs on their premises? Why are some homes and venues subject to closure orders?

This factsheet includes the latest developments on the two main pieces of legislation which impact on premises where drugs are consumed, produced or supplied: Section 8 of the Misuse of Drugs Act 1971 ('the 1971 Act') and Part 1 of the Anti Social Behaviour Act 2003 ('the 2003 Act')

### Section 8 of the MDA

Section 8 of the MDA controls the consumption of certain controlled drugs (cannabis and opium) and the production and supply of all controlled drugs on premises. This section creates a criminal liability for occupiers or managers who allow their premises to be used for certain drug related activities.

### The law states:

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 in contravention of section 4(1) of this Act [the 1971 Act];
- (b) supplying or attempting to supply a controlled drug to another in contravention of section 4(1) of this Act, or offering to supply a controlled drug to another in contravention of section 4(1) [the 1971 Act];
- (c) preparing opium for smoking;
- (d) smoking cannabis, cannabis resin or prepared opium.

There are a number of considerations relating to the definition of s.8, such as, who constitutes an occupier of premises or what constitutes knowledge.

### Who is section 8 aimed at?

Section 8 affects anyone who is the 'occupier or concerned in the management of any premises'. This places an obligation on anyone who has a sufficient degree of control over the premises. In reality, this can range from a director of an organisation, a team leader, or a parent of a person who is

using cannabis within the home, the overriding issue will be control. It will be usual to assess whether the person deemed to be the occupier/ concerned in management has the power to exclude someone involved in one of the activities listed in section 8.

### What constitutes premises under s8?

This has not been defined in law but it would appear that it could apply to any property where there is an element of control. Section 8 has been applied to hostels and other services accessed by drug users. It has also been applied to residential properties, where the person deemed to be in control is the property owner or tenant.

### Knowledge

In order for an offence to be committed under s8 the occupier/ manager "must knowingly permit or suffer" one of the prohibited activities. The definition of "permit" is actual knowledge of the act(s) however the definition of "suffer" is slightly more complicated. To suffer is the failure to take action, in essence, it is turning a blind eye to the activities. This clearly places an obligation on occupiers/ managers to take action to stop the act(s) otherwise they may face criminal prosecution.

### Activities prohibited under s8

Section 8 creates a criminal offence where an occupier/manager permits or suffers the production or attempted production of any controlled drug; the supply or attempted supply of any controlled drug; the preparation of opium; or the smoking of cannabis or opium.

It is worth noting that only cannabis



and opium use are prohibited and no offence occurs under section 8 in relation to the consumption of other drugs like cocaine or heroin.

#### Sentences available to the Court

The maximum sentence which can be imposed on a person found guilty under section 8 is 14 years imprisonment – in reality sentences for such offences are not as high.

#### Closure Orders: Anti Social Behaviour Act 2003

Part One of the Anti-Social Behaviour Act 2003 ('ASBA 2003') created powers for the Courts and police to close down premises that are associated with class A drug use, production or supply and serious nuisance or disorder.

ASBA 2003 has recently been amended by the section 118 of the Criminal Justice & Immigration Act 2008 to allow the police or the local authority to apply for the closure of a premises where there is anti social behaviour and persistent and significant disorder. This new power removes the need to demonstrate Class A drug activity and can be applied for by a local authority unlike the original Closure Order.

It is worth noting that these powers now co-exist together and either can be applied for depending on the circumstances. The procedure continues to be the same.

#### Type of premises

ASBA 2003 does not define which premises can be subject to a Closure Order. In theory, any premises could be affected, where the police (or in the case of the new power the local authority) have a reasonable suspicion that there is either:

- a) Class A drug use, production or supply and anti-social behaviour or
- b) Anti social and persistent and significant disorder.

#### Process of Closure Order

Depending on the grounds on which a closure order is obtained the process is either initiated by an officer not below the rank of Police Superintendent or by the Local Authority. In an application for an order (closure notice) based on Class A drug activity and anti social behaviour, an application may only be made by the police. Where an application is based on anti social behaviour and persistent and significant disorder, the application can be made either by the police or the local authority. The Closure Notice must be served on all parties with an interest in the premises.

The police can enter the property to serve the closure notice – reasonable force can be used to gain entry.

A Court hearing must take place no less than 48 hours after the Closure Notice is issued, to decide whether a Closure Order will be made. It is important that the person(s) subject to these proceedings gets legal representation as soon as possible – they should seek the advice of a criminal solicitor.

During those 48 hours, anyone who is not a habitual resident can be arrested if they are found on the property.

At the hearing it is possible to seek a 14-day adjournment of the hearing, but this will not be granted routinely.

If a Closure Order is made, the premises will be sealed for three to six months. No-one will be allowed to enter the premises, regardless of any legal interest in the property – anyone attempting to do so will be committing an offence. This applies to both residential and business premises. This means that even the owner or tenant of a property will be unable to access the premises while the Order is in place.

It is possible to appeal against the making of a Closure Order.

#### Impact of Closure Orders

The most serious impact of closure orders for individuals tends to be when

a closure order is made in respect of someone's home. This can lead vulnerable individuals suddenly to become homeless. There is guidance on the provision of accommodation whilst the closure order is in effect. Clients facing closure proceedings should therefore be directed to seek immediate legal representation. Often emergency accommodation will be provided for by the local authority.

#### Breach of Closure Order is an Offence

Anyone who breaches a closure order will be liable on summary conviction to not more than 6 months imprisonment and/or a fine not exceeding the statutory minimum.

#### Closure Orders and tenancy rights

A tenant who has been subject to a closure order does not lose their tenancy rights. Whilst the property is closed the tenant will still have a legal interest in the property, they will simply not be able to enter the property by virtue of the closure order. Once the closure order has expired the tenant should be able to return to the property.

However, it is not unusual for legal proceedings to be issued against a tenant by the landlord where a closure order had been obtained. This is a separate legal action and the client should always be referred to a housing solicitor for legal advice.

If you need advice contact Release on 0845 4500 215, the helpline is open Monday – Friday 11am – 4pm (closed between 1 & 2 pm). Release provides both specialist legal and drugs advice.

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