

Release

Drugs, The Law & Human Rights

DRUGS AND THE LAW

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Release is the national centre of expertise on drugs and drugs law - providing free and confidential specialist advice to the public and professionals. Release also campaigns for changes to UK drug policy to bring about a fairer and more compassionate legal framework to manage drug use in our society.

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FOREWORD

In the tradition of access to justice, this publication, produced by Release and supported by the Nuffield Foundation, aims to promote a greater understanding of the role of law in society and of the legal system by outlining the main legislation relating to drugs and by explaining the practical implications of the law.

“Drugs and the Law” outlines: the criminal offences relating to drugs; police powers of stop, search, and entry; rights on arrest and at the police station; drug testing and interventions; police-station and court procedure; bail and sentencing. In short, it is hoped that this publication will be a practical guide for those engaged with the criminal law through their drug-use, and also for their families and friends, statutory and voluntary agencies, and other professionals who come into contact with those affected by drugs and the law.

Release is a charity which since 1967 has offered advocacy, education, campaigning and the only free helpline specialising in drug-related legal issues. Our advice is professional and confidential and it is our aim to promote understanding of drug-related issues and to support an often marginalised section of society. We are delighted to be able, with the help of the Nuffield Foundation, to advance these aims by means of this publication.

EDITOR'S NOTE

This booklet was written by Niamh Eastwood and Anna Ling with the assistance of Siaf Alam, Chris Hallam, Geni Horwood, Amber Marks and Lorna MacFarlane. ‘Drugs and the Law’ has been peer reviewed by David Potter of Potter Shelley Solicitors.

The information contained in this booklet is meant only as guidance and not to be solely relied on. Always seek appropriate legal advice.

The areas of law discussed in this publication are subject to change. Check with Release for developments and changes in the law at www.release.org.uk or 0845 450 0215.

Thank you to all the staff and volunteers at Release for their support in the development and publication of ‘Drugs and the Law’.

INTRODUCTION

In this booklet, we explain the relevant offences and other risks that you should be aware of in relation to drugs and police powers as well as explaining your rights.

Release, or one of the organisations listed in the Useful Contacts section from page 108, can refer you to a solicitor and give you free legal advice.

Cannabis

The Government announced in May 2008 that they intended to reclassify cannabis from a Class C drug to a Class B drug. This has not yet become law and it is not thought that reclassification will be implemented until January 2009. This booklet therefore still refers to cannabis as a Class C drug and any offences concerning cannabis should be viewed as such.

Criminal Justice and Immigration Act 2008 (CJIA 2008)

The CJIA 2008 was passed by Parliament in May 2008, provisions which are relevant to this publication but are not yet in force include:

- A new sentencing regime to deal with young people and children under the age of 18;
- Amendments of the Rehabilitation of Offenders Act 1974 to include cautions. This will provide the public with clear guidance on when a caution becomes 'spent', currently cautions fall outside this regime. Please see Chapter 5 for further details.

Scottish law

This booklet is primarily concerned with the law and practice in England and Wales. While the position in Scotland is often similar, it does differ in certain respects.

Legal references

As well as explaining what the law says, in this booklet we give you the relevant legal references (e.g. section 5, MDA 1971) so that you can easily do further research yourself.

For a more brief guide to the law you may be interested in one of our Rights cards. These are pocket-sized summaries of useful information. Contact our publications department on 020 7749 4044 if you would like to know more about these, or would like to order copies of these or any other publications.

Abbreviations for statutes

The following abbreviations are used throughout this booklet:

CDA - Crime and Disorder Act 1998
CJA 88 - Criminal Justice Act 1988
CJA 03 - Criminal Justice Act 2003
CJPOA - Criminal Justice and Public Order Act 1994
CLA - Criminal Law Act 1967
DA 2005 - Drugs Act 2005
DPA - Data Protection Act 1998
DTA - Drug Trafficking Act 1994
ISSA - Intoxicating Substances (Supply) Act 1985
MA - Medicines Act 1968
MCA - Magistrates and Courts Act 1980
MDA - Misuse of Drugs Act 1971
MDR 85 - Misuse of Drugs Regulations 1985
MDR 01 - Misuse of Drugs Regulations 2001
MDR 05 - Misuse of Drugs Regulations 2005
PACE - Police and Criminal Evidence Act 1984
PCC(S)A - Powers of Criminal Courts (Sentencing) Act 2000
POCA - Proceeds of Crime Act 2002
PSM - Professions Supplementary to Medicine Act 1960
ROA - Rehabilitation of Offenders Act 1974
RTA - Road Traffic Act 1988
SOCAP - Serious Organized Crime and Police Act 2005
TA - Terrorism Act 2000

GLOSSARY

Advisory Council on the Misuse of Drugs (ACMD)

The ACMD is an independent body of experts that advises the UK government on drug-related questions and issues, including the appropriate classification and scheduling of drugs. It was formed under the auspices of the Misuse of Drugs Act 1971.

Anti-Social Behaviour Order (ASBO)

ASBOs were introduced by the 1998 Crime and Disorder Act. They are court orders which prohibit individuals from engaging in specific types of “anti-social” conduct; these can include visiting certain areas or spending time with particular people.

Custody officer

A uniformed sergeant who is responsible for the welfare of someone in police custody, the custody officer keeps a record of the unfolding process of arrest, charging, detention and so on; he/she must ensure that the detainee is informed of their right to legal representation.

Drug Interventions Programme (DIP)

The Drug Interventions Programme is a central aspect of the government’s current drugs strategy. Its object is, in essence, to use the criminal justice system to direct adult offenders into drug treatment, thereby breaking the link between drugs and crime.

Duty solicitor

The duty solicitor is an independent solicitor available on a 24 hour basis. If someone is arrested and detained at a police station, and they do not have their own solicitor, the duty solicitor may be consulted free of charge. He or she is an expert in criminal law and must be approved by the Criminal Defence Service.

Intervention order

Intervention Orders derive from the Drugs Act 2005, which contains a provision for mandatory drug testing and treatment for those subjected to ASBOs.

Police caution

These may be used to dispose of minor offences where the person detained admits they are guilty. While there is no requirement to go to court, a Police Caution is a serious matter: it is recorded on the Police National Computer and forms part of a criminal record. There are two types: Simple and Conditional Cautions, with the latter having certain conditions attached to it- for example, that the person attends drug treatment.

Required assessments

Required Assessments form part of the DIP process. If someone has been arrested, and has tested positive for heroin and/or cocaine, they may be required to attend initial and follow-up interviews with a DIP worker, in order to investigate their drug use. These interviews are compulsory.

Trigger offence

This term refers to a group of offences which set in motion (or “trigger”) certain legal processes, often including drug testing. Trigger offences usually involve theft, fraud, drugs and begging, and form a part of the government’s Drug Strategy, bringing offenders into contact with drug treatment services.

DRUGS OFFENCES

- CLASSIFICATION SYSTEM OF CONTROLLED DRUGS
- POSSESSION OF A CONTROLLED DRUG
- CANNABIS GUIDELINES
- SUPPLY OFFENCES
- PRODUCTION OFFENCES
- CULTIVATION OF CANNABIS
- IMPORTATION & EXPORTATION OFFENCES
- SECTION 8 OFFENCES
- MEDICINES ACT 1968
- DRUGS ACT 2005

There are a number of pieces of legislation which create offences in relation to illicit drugs. These include the Misuse of Drugs Act 1971 (the 1971 Act), the Misuse of Drugs Regulations 1985, the Intoxicating Substances (Supply) Act 1985, the Misuse of Drugs Regulations 2001 (the 2001 Regulations), the Misuse of Drugs Regulations 2005, the Medicines Act 1968 and the Drugs Act 2005.

This chapter outlines the main drugs offences with the aim of providing a general overview of the law relating to illicit drugs. If you have been arrested for an offence you should always consult a solicitor.

CLASSIFICATION SYSTEM OF CONTROLLED DRUGS

The 1971 Act places restrictions on 'controlled drugs'. Controlled drugs are those drugs that Parliament considers harmful and therefore makes subject to control under the Act. If controlled drugs are handled in an unauthorised manner, for example without a prescription, an offence is committed under the 1971 Act. The 1971 Act categorises controlled drugs under classes A, B or C. The '2001 Regulations' determine the class of person authorised

to supply and possess controlled drugs by categorising the drugs under schedules 1 to 5. Thus, every controlled drug is categorised under both a class and a schedule. Please see Appendix for a list of the most commonly used controlled substances.

The classes

The class of a controlled drug is intended to reflect the harm associated with it. Parliament determines the relevant class based on the recommendations of the Advisory Council on the Misuse of Drugs (ACMD). This classification, in turn, determines the penalties that are available to the courts when sentencing.

Class A drugs are considered by Parliament to be the most harmful. This category includes heroin, methadone, crack, cocaine, ecstasy, magic mushrooms and 'crystal meth'. An offence involving a class A substance carries the harshest penalties.

Class B drugs are considered by Parliament to be less harmful than class A drugs and include amphetamines, barbiturates and dihydrocodeine. Certain class B drugs are reclassified to Class A if they have been prepared for injection. These include amphetamines, dihydrocodeine and codeine.

Class C drugs are considered by Parliament to be the least harmful of the controlled drugs. These include cannabis¹ (including cannabis oil), benzodiazepines, steroids and subutex (buprenorphine).

1. IN JUNE 2008 THE HOME SECRETARY ANNOUNCED THAT CANNABIS WOULD BE RECLASSIFIED TO A CLASS B DRUG. IT IS EXPECTED THAT THE LEGISLATION RECLASSIFYING CANNABIS WILL COME INTO FORCE AT THE BEGINNING OF 2009. UNTIL THEN CANNABIS WILL REMAIN A CLASS C DRUG.

The schedules

The 2001 Regulations determine in what circumstances it is lawful to possess, supply, produce, export and import controlled drugs. The authorised scope of activity will depend on the schedule to which the controlled drug is assigned. There are five schedules.

Schedule 1. Drugs belonging to this schedule are thought to have no therapeutic value and therefore cannot be lawfully possessed or prescribed. These include LSD, MDMA (ecstasy) and cannabis. Schedule 1 drugs may be used for the purposes of research but a Home Office licence is required.

Schedules 2 and 3. The drugs in these schedules can be prescribed and therefore legally possessed and supplied by pharmacists and doctors. They can also be possessed lawfully by anyone who has a prescription. It is an offence contrary to the 1971 Act to possess any drug belonging to Schedule 2 or 3 without prescription or lawful authority. Examples of schedule 2 drugs are methadone and diamorphine (heroin). Schedule 3 drugs include subutex and most of the barbiturate family. The difference between Schedule 2 and Schedule 3 drugs is limited to the application of the 2001 Regulations concerning record keeping requirements in respect of schedule 2 drugs.

Schedules 4 (i) and 4 (ii). Schedule 4 was divided into two parts by the 2001 Regulations. Schedule 4 (i) controls most of the benzodiazepines. Schedule 4 (i) drugs can only be lawfully possessed under prescription. Otherwise, possession is an offence under the 1971 Act. Schedule 4 (ii) drugs can be possessed in medicinal form without a prescription as long as they are clearly for personal use. Drugs in this schedule can also be imported or exported in the form of a medicinal product for personal use. The most common example of a schedule 4(ii) drug is steroids.

Schedule 5. Schedule 5 drugs are sold over the counter and can be legally possessed without a prescription.

POSSESSION OF A CONTROLLED DRUG²

It is unlawful to have a controlled drug in your possession unless you have authorisation in the form of a licence or if you did not know the substance was a controlled drug.

Three elements constitute the offence of possession:

- The substance is in the possession or under the control of the individual. The substance must be in an individual's physical custody or under their control. This can include being at the property of someone who is not present but has control over that property.

- The individual knows the 'thing exists'. The individual must know of the existence of the substance and they must know that the substance is a controlled drug.

So, it is a defence if a person in possession of ecstasy tablets honestly believed they were headache tablets. However, if a person is in possession of cocaine and honestly believed that they were in possession of class B amphetamine they would still be charged with a Class A offence.

Ignorance of the law is not a defence. It is therefore no defence for an individual to say that they knew they were in possession of ecstasy, but did not realise that ecstasy was a controlled drug.

- The substance is a controlled drug. The substance must in fact be a controlled drug. Therefore, if the individual thought they were in possession of cannabis but they were in fact in possession of tea leaves, no offence has been committed. However, if a person has something which they believe to be a controlled drug and they have made a statement confirming they believed it to be a controlled drug, then if it in fact turns out not to be so they can be prosecuted for the offence of attempting to possess it under the Criminal Attempts Act 1981 and the penalty for the attempt is the same as for the substantive offence.

It is a defence against a possession charge if the defendant can prove that, as soon as was practicable, they intended to destroy the substance or give it to someone who had legal authority to possess it.

Possession or supply of controlled drugs is legally authorised in the following circumstances:

- Someone lawfully in possession of a controlled drug may lawfully supply it to the person from whom they lawfully obtained it.
- Someone who has been prescribed a drug and is lawfully in possession of it may lawfully supply it to any doctor, dentist or pharmacist for the purpose of destroying it.
- Someone who has been prescribed a drug for the treatment of animals and is lawfully in possession of it may lawfully supply the drug to any veterinary practitioner, veterinary surgeon or pharmacist for the purpose of destroying it.
- Someone who has been granted a licence under section 16(1) of the Wildlife and Countryside Act 1981 to supply drugs may lawfully be in possession of the drugs for which the licence was granted.
- The following persons are entitled to be in possession of a controlled drug:
 - (a) A police officer acting in line with his duties;
 - (b) Someone acting in the course of business as a carrier;
 - (c) Someone acting in the course of business as a postal operator;
 - (d) A customs and excise officer acting in line with his duties;
 - (e) Someone acting in the course of business who works in a laboratory which tests drugs for forensic examination;
 - (f) Someone who lawfully gives drugs to another person who is lawfully entitled to have them in their possession.

Joint possession

Depending on the circumstances of a case, an allegation of joint possession may be made, for example, where a group of people are apprehended when travelling in a car with a stash of drugs. If it can be proven that they were all in control of the drugs, they might all be guilty of joint possession of the same batch.

Traces

Even a small trace of a substance can amount to possession, although the prosecution may have difficulties in proving the defendant had knowledge of the existence of the substance.

Drug testing

In the case of *Hambleton v Callinan* [1968], where traces of amphetamine had been found in urine samples, the Divisional court upheld the decision of the magistrates' court to acquit the defendants of a possession charge. The reasoning behind this decision was that the defendants were not in possession of the powder as it had been consumed and its character had been altered.

Drug testing has become more prevalent within the criminal justice system, most notably with the introduction of testing on arrest. However, these tests are used solely for the purposes of referral to the Drug Interventions Programme and not to establish the offence of possession. Drug testing will be discussed further in Chapter 2.

Penalties available for possession

The severity of the penalty applied in relation to drugs offences will depend on the individual circumstances of the case. Please see Chapter 4 for more information on sentencing guidelines.

Penalties for simple possession

Class A - 7 years imprisonment, a fine or both.

Class B - 5 years imprisonment, a fine or both.

Class C - 2 years imprisonment, a fine or both.

Please note these are the maximum sentences only and in most cases will not be reflective of the sentence given.

CANNABIS GUIDELINES

The reclassification of cannabis led the Association of Chief Police Officers (ACPO) to issue guidelines³ advising their officers to presume against arrest for simple possession of cannabis unless the following aggravating factors exist:

8. THE GUIDELINES WERE UPDATED IN JANUARY 2007
[HTTP://WWW.ACPO.POLICE.UK/ASP/POLICIES/](http://www.acpo.police.uk/asp/policies/)

- Where a person is smoking in a public place;
- Where a person has been repeatedly warned for possession of cannabis;
- Where there is a locally identified policing problem;
- Where someone is found in possession and they are in the vicinity of children;
- Where a child under the age of 10 is found in possession;
- Where an individual is considered a 'vulnerable person';
- Where the individual is aged 17 and under;
- Where the name or address of an individual is not known or is doubted.

If these factors are not present, and if the police officer thinks it would be a proportionate and appropriate method of dealing with the offence, then the police officer may simply confiscate the cannabis and issue a cannabis warning. Where a police officer decides to proceed with a cannabis warning the offender should be warned that:

- A record of the investigation will be made at the police station;
- The offence of possession will be recorded against them, for statistical purposes, as a detected crime;
- This procedure does not constitute a criminal record.

If caught in possession of a small amount of cannabis for personal use where none of the aggravating conditions are present and the police deal with the matter either by issuing a caution or charging, legal advice should be sought by contacting Release.

There is at present no information available to suggest that the Guidelines will be amended once cannabis is reclassified to a Class B drug. Please contact Release or check the Release website (www.release.org.uk) for further developments in this area.

3. SECTION 4 MISUSE OF DRUGS ACT 1971

4. SECTION 5(4) MISUSE OF DRUGS ACT 1971

SUPPLY OFFENCES³

There are several offences connected with the supply of drugs. The main offences are:

- Actual supply
- Aggravated supply
- Offer to supply
- Being concerned in supply
- Possession with intent to supply⁴

Actual supply

It is an offence to supply a controlled drug to another. In order to establish guilt, the prosecution need only show that the defendant transferred the physical control of a controlled drug to another. It is not important whether the defendant made a profit or benefited in any way, although this will be reflected in sentencing. Supply can therefore range from passing a joint between friends to large scale supply of crack for profit.

Aggravated supply

This offence came into force on 1 January 2006. This requires the court to treat a supply offence as 'aggravated' if certain conditions are met which are thought to increase the seriousness of the offence. The relevant conditions are:

- The offence was committed on or in the vicinity of school premises at a relevant time; or
- An under 18 year-old was used as a courier in the commission of the offence.

Where someone is found guilty of aggravated supply, the court should ensure that the sentence given reflects the seriousness of the offence and so sentences will be longer or more onerous than for instances of simple supply.

Offer to supply

This offence may occur even where an individual offers to supply a controlled drug but in fact supplies a substance which is not controlled.

Concerned in supply

Two further supply offences exist under the 1971 Act, namely:

- Being concerned in the supply of a controlled drug; and
- Being concerned in the making to another of an offer to supply a controlled drug.

In order to establish either of these offences, the prosecution must prove:

- The supply of a drug to another or the making of an offer to supply a drug to another, and;
- That the defendant was involved in the supply or offer to supply, and;
- That the defendant knew the nature of the enterprise, namely that it involved the supply or offer to supply drugs.

Possession with intent to supply

It is an offence for a person to have a controlled drug in his possession, whether lawfully or not, with the intent to supply it to another. This offence is known as possession with intent to supply.

A person charged with possession with intent to supply can enter a plea of guilty to the charge of possession and not guilty to supply, on the grounds that the drugs seized were for personal use. At this point the prosecution may adduce evidence to attempt to prove guilt. Prosecutions for this offence may be based on circumstantial evidence, statements made by the defendant at the time of arrest and expert evidence.

Examples of relevant circumstantial evidence would include the possession of drug supply paraphernalia such as scales, bags, Clingfilm and large sums of unexplained cash. The manner in which the drugs were wrapped could also be used as evidence of intent to supply, or to support the defendant's case (if the offence is denied) that the drugs were for personal use.

Statements at the time of arrest can be important. For example, a young person who is caught in possession of 2 ecstasy tablets and tells the police, 'I was holding them for a friend,' could face a charge of possession with intent to supply.

In many cases the prosecution case will be built largely on the quantity of drugs seized, on the basis that the quantity was so large that it could not have been for personal use. Expert evidence can be crucial in such cases, to help the court to determine whether this is the case.

Penalties available for supply offences

The severity of the penalty applied in relation to drugs offences will depend on the individual circumstances of the case. The different types of supply charges are all subject to the same maximum penalties.

Penalties for supply offences

Class A - life imprisonment, a fine or both.

Class B - 14 years imprisonment, a fine or both.

Class C - 14 years imprisonment, a fine or both.

Please note these are the maximum sentences only and in most cases will not be reflective of the sentence given.

5. SECTION 4 MISUSE OF DRUGS ACT 1971

PRODUCTION OFFENCES⁵

The two main production offences are:

- Production of a controlled drug; and
- Being concerned in the production of a controlled drug.

Production is defined as 'manufacturing, cultivating or production by any other method'. For example, separating those parts of the cannabis plant which are not usable from those which are, is considered preparation and, therefore, can amount to the offence of production.

Penalties available for production offences

The severity of the penalty applied in relation to production offences will depend on the individual circumstances of the case.

Penalties for production offences

Class A - Life imprisonment, a fine or both.

Class B - 14 years imprisonment, a fine or both.

Class C - 14 years imprisonment, a fine or both.

Please note these are the maximum sentences only and in most cases will not be reflective of the sentence given.

CULTIVATION OF CANNABIS⁶

It is unlawful to cultivate any part of a cannabis plant. It is not an offence to supply or possess cannabis seeds, but any action which germinates or cultivates them is an offence.

As we have seen above, it is also an offence to produce or be concerned in the production of cannabis. However, a person can only be charged with cultivation or production, rather than both offences together.

6. SECTION 6 MISUSE OF
DRUGS ACT 1971

Penalties for cultivation of cannabis

14 years imprisonment, a fine or both.

Please note these are the maximum sentences only and in most cases will not be reflective of the sentence given.

IMPORTATION & EXPORTATION OFFENCES⁷

Schedule 4 (ii) drugs can be imported or exported provided that they are in a medicinal form and for personal use.

In any other circumstances, the importation or exportation of any controlled drug is prohibited unless it is done in accordance with the terms of a licence granted by the Secretary of State and in compliance with any conditions attached to the licence.

The potential for prosecutions in this area have grown with the increase of internet pharmacy sites. It is important to remember if ordering a controlled drug over the internet you

7. SECTION 3 MISUSE OF
DRUGS ACT 1971

may risk prosecution. There are also concerns about the safety of such drugs as there has been a huge increase in counterfeit pharmaceutical products over the last few years.

Penalties available for importation/exportation offences

The severity of the penalty applied in relation to importation and exportation offences will depend on the individual circumstances of the case.

Penalties for importation/exportation offences

Class A - life imprisonment, a fine or both.

Class B - 14 years imprisonment, a fine or both.

Class C - 14 years imprisonment, a fine or both.

Please note these are the maximum sentences only and in most cases will not be reflective of the sentence given.

SECTION 8 OFFENCES

Section 8 of the 1971 Act makes it a criminal offence for occupiers of premises knowingly to 'permit or suffer' those premises to be used for the following activities:

- Production or attempted production of any controlled drug, or
- Supply or attempted supply of any controlled drug, or
- Preparing opium for smoking, or
- Smoking cannabis or prepared opium.

Penalties for section 8 offences

14 years imprisonment, a fine or both.

Please note these are the maximum sentences only and in most cases will not be reflective of the sentence given.

MEDICINES ACT 1968

The Medicines Act 1968 (the '1968 Act') provides the framework for the regulation and control of all medicinal products. Medicinal products can include controlled drugs. Many of the substances prescribed for drug treatment (including methadone) are subject to both the 1968 Act and the 1971 Act.

The 1968 Act sets out regulation and licensing requirements governing the manufacture, sale, supply, importation and exportation of medicinal products. There is no offence of possession under this Act.

Failure to comply with the 1968 Act can lead to prosecution. Penalties include fines and up to two years' imprisonment. However, the 1968 Act is unlikely to have an impact on most clients and prosecutions are relatively uncommon. Offences may be committed where someone supplies a medicinal product and fails to comply with the requirements of the 1968 Act when doing so. However, if the relevant product is a controlled drug the police will prosecute under the 1971 Act, and are unlikely to pursue the matter under the 1968 Act as well.

DRUGS ACT 2005

The Drugs Act 2005 had wide-ranging impact on drugs and criminal justice. It introduced a number of changes to the 1971 Act and has created new powers under the Drug Interventions Programme (DIP). The Act also increased police powers in relation to searches and detention.

Some of the main changes to the 1971 Act have been: the introduction of the new offences of aggravated supply (see page 17) and the classification of fresh magic mushrooms as a Class A substance.

The other major development under the Drugs Act 2005 was the introduction of testing on arrest and required assessments, which will be covered in Chapter 2.

DRUGS ACT 2005 AND THE DRUG INTERVENTIONS PROGRAMME

- TESTING ON ARREST
- REQUIRED ASSESSMENTS
- RESTRICTIONS ON BAIL
- INTERVENTION ORDERS

The Drugs Act 2005 increased and expanded police and court powers against drug users. It introduced a number of changes to the 1971 Act and has created new expansive powers under the Drug Interventions Programme (DIP). The Drug Interventions Programme has been a major part of the UK's drug strategy to tackle drug misuse since 2003. DIP involves engaging drug users caught up in the Criminal Justice System.⁹ The following details the major provisions of the Drugs Act 2005 impacting on drug users in DIP areas.

9. THE DRUG INTERVENTION PROGRAMME IS NOT ACTIVE IN ALL AREAS. WHERE IT IS NOT ACTIVE, AND DEPENDING ON IF THE AREA HAS BEEN DESIGNATED AN 'INTENSIVE' OR 'NON-INTENSIVE' AREA (I.E., WHETHER THE AREA IS PERCEIVED TO HAVE A LOW OR HIGH DRUG PROBLEM), DRUG TESTING ON ARREST AND REQUIRED ASSESSMENTS (AS EXPLAINED BELOW) ARE NOT PERMITTED. DETAILS OF WHICH BOROUGH COMMAND UNITS ARE PART OF THE DIP PROGRAMME, AND THOSE WHICH ARE NOT, ARE AVAILABLE AT ANNEX A OF THE 'OPERATIONAL PROCESS GUIDANCE FOR IMPLEMENTATION OF TESTING ON ARREST, REQUIRED ASSESSMENT AND RESTRICTION ON BAIL' (HOME OFFICE, 6 OCTOBER 2005) (SEE WWW.DRUGS.GOV.UK).

TESTING ON ARREST

The police have the power to drug test a person after arrest in certain circumstances.

Section 7 of the Drugs Act 2005 amended section 63 of the Police and Criminal Evidence Act 1984 allowing the police to demand a sample from suspects upon arrest, or after charge, in certain circumstances.

Previously, testing was only available where a person had been charged with an offence. Now, police can require a sample from those merely arrested in 'intensive' DIP areas, that is, areas perceived to have high levels of drug problems. The Drugs Act 2005 only allows testing for the presence of specified drugs (heroin and crack/cocaine). Further, drug testing can only be carried out where:

- The person to be tested has been arrested or charged with a 'trigger offence' (see below), or;
- A police officer of at least the rank of inspector has reasonable grounds for suspecting that the alleged offence was linked to the use of specified Class A drugs and authorises the taking of a sample.

In these circumstances, a police officer must inform the person subject to arrest or charge that they are required to give a sample.

Trigger offences

Trigger offences are generally acquisitive, fraud, or drug offences and include the following:

- Theft and attempted theft
- Robbery and attempted robbery
- Burglary and attempted burglary
- Aggravated Burglary
- Handling stolen goods and attempting to do so
- Taking a conveyance without owners consent/authority (TWOC)
- Aggravated TWOC
- Going equipped for burglary or theft
- Fraud and attempted fraud by false representation, failing to disclose information, or by abuse of position
- Possession of articles for use in frauds

- Making or supplying articles for use in frauds
- Begging and persistent begging
- Possession of a specified controlled drug
- Production or supply of a specified controlled drug
- Possession of a controlled drug with intent to supply where that drug is a specified class A drug.

Method of testing

Currently, oral swabs are taken to determine whether there is evidence that the person arrested or charged has recently consumed specified Class A drugs. Alternatively, a urine sample may be taken instead of a saliva sample. Force may not be used to take any sample for the purpose of drug testing.

Confirmatory tests

If the detainee does not agree with or accept a positive drug test, s/he must inform the police. The sample will then be sent to an approved confirmatory testing laboratory for analysis.

A confirmatory test will also be conducted when there is a positive drug test and the detainee admitted to using any medicine, whether prescribed or not, in the last 24 hours.

The refusal to give a sample is a crime.

Failure to provide a sample for testing is a crime punishable by imprisonment for up to three months and fine of up to £2,500.

If a detainee refuses without good cause to provide a sample, they should be informed by a police officer that they may face prosecution.

The consequences of a positive drug test

The consequences of a positive drug test include a mandatory drug assessment, the possibility of required drug treatment, and restrictions on bail. It is regardless whether the detainee is subsequently released without charge they will still have to undergo a mandatory drug assessment.

The Drugs Act 2005 s.9 gives the police the power to require a person who has tested positive to undergo an initial assessment. The purpose of the initial assessment is to see if the

person has a propensity or likelihood to misuse a Class A drug again and whether they would be suitable for treatment.

Where the test shows the presence of heroin or crack/cocaine, the information will be passed to the court and the positive test must be taken into account when the court makes a bail decision.

Drug testing young people

Testing on arrest cannot be carried out on those under 18 years old. Testing upon charge can be carried out on those aged 14 years and above. Young people should not be tested without the presence of an 'appropriate adult'. An appropriate adult can be any of the following:

- A parent or guardian or, if the young person is in the care of the local authority, a representative;
- A social worker of a local authority social service department;
- If none of the above is available, then any responsible person aged 18 or over, who is not a police officer or a person employed by the police.

REQUIRED ASSESSMENTS

Required assessments came into effect on 1 December 2005 and were initially launched in three DIP areas. On 31 March 2006 they came into force in all areas where DIP is present. The term 'required assessment' refers to initial assessments and follow up assessments.

If someone tests positive upon arrest or charge for the presence of heroin or crack/cocaine, they may be required to attend an initial assessment and a follow up assessment with a Drug Intervention Programme or a Criminal Justice Interventions Team (CJIT) worker. Both of these will be required assessments and arrestees who are asked to attend them must do so. However, arrestees will not always be asked to attend a follow up assessment if, after the initial assessment, the assessor does not think a follow up assessment is necessary.

Procedure

Where someone has tested positive for crack/cocaine or heroin upon arrest or charge, leading to the need for a required assessment, the police must inform them orally:

- Of the time and place where the required assessment will be carried out;
- That they will also receive this information in writing;
- That failure to attend or remain for the duration of the initial assessment or any follow up assessment may result in prosecution.

The police will also be required to provide the following information in writing:

- An explanation of the requirement to attend and remain for the initial assessment and any follow up assessment;
- Confirmation that the person has been informed of these details orally;
- An explanation that failure to attend and remain for either assessment may result in prosecution.

This must all be completed before the person is released from detention at the police station and should be noted in the custody record.

Initial assessments

Initial assessments will be conducted by a 'suitably qualified assessor'. All such workers will have, or will be working towards, the relevant Drug and Alcohol National Occupational Standards (DANOS). The initial assessment will seek to determine:

- whether the person is dependent on, or has a propensity to misuse, any specified Class A drug;
- whether the person would benefit from further assessment, or from treatment (or both), in connection with the dependency or propensity.

If the assessor thinks that the client might benefit from assistance or treatment, advice will be included as part of the initial assessment, including an explanation of the types of assistance or treatment (or both) which are available.

Follow up assessments procedure

If the assessor determines that a follow up assessment is necessary, he or she must inform the person both orally and in writing:

- When and where the follow up assessment will take place;
- And that failure without good cause to attend and remain for the duration of the follow up assessment may result in prosecution.

The assessor must also confirm in writing that the person was advised of these details orally. This must all be completed before the conclusion of the initial assessment.

If, after the initial assessment, the assessor does not think a follow up assessment is necessary, the person will not be required to attend any further assessments.

Purpose of follow up assessment

The aims of the follow up assessment are:

- To complete any matters that were not addressed at the initial assessment;
- To draw up a care plan if necessary, setting out the nature of any recommended assistance or treatment.

There will be no requirement to attend any further assessment or treatment provided that the person concerned has attended and remained for the duration of the follow up assessment.

Failure to attend required assessments

Failure without good cause to attend or remain for the duration of either the initial assessment or follow up assessment is a crime punishable by up to three months' imprisonment and a fine of up to £2,500.

If a person fails without good cause to attend or remain for the duration of a required assessment, the assessor is obliged to inform the police.

RESTRICTIONS ON BAIL

Court bail may be restricted for adult defendants who have tested positive for a specified Class A drug and whose offence is a drug offence or believed by the court to be related to, or motivated by, drug misuse. Those who refuse to undergo a relevant assessment of that drug misuse, when offered, or who then refuse any follow-up treatment, may be denied bail unless the court is satisfied that there is no significant risk of them offending on bail. Where they agree and bail is granted, the court must make this a condition of their bail. Therefore courts will be able to deny bail unless the offender agrees to a drug assessment (if one hasn't already taken place) and any recommended follow-up treatment or support.

INTERVENTION ORDERS

The Drugs Act 2005 also contains a provision allowing mandatory drug testing and treatment to those subject to Anti-Social Behaviour Orders (ASBOs). Intervention orders were introduced by s. 20 of the Drugs Act 2005, and enacted in October 2006. Intervention orders require an individual subject to an ASBO to undergo drug testing and treatment. Thus, an intervention order can only be imposed on someone who must comply with an ASBO.

An intervention order has limitations and cannot be imposed for more than 6 months or against anyone under 18 years of age.

Who can apply for an Intervention Order?

The following bodies can apply for an Intervention Order:

- Police
- Local authorities
- Housing associations
- Registered social landlords
- Environment Agency
- Transport for London

When will an Intervention Order be made?

An Intervention Order may only be imposed if the court is satisfied that:

- An Intervention Order is desirable in order to prevent repetition of the behaviour that has led to the ASBO;
- Appropriate activities which relate to the defendants drug misuse are available; and
- The defendant is not subject to another intervention order or treatment order.

Failure to comply with an Intervention Order

Failure to comply with the terms of an Intervention Order is a criminal offence which could lead to a fine of up to £2,500.

POLICE POWERS

- STOP & SEARCH
- VEHICLE STOPS & SEARCHES
- POWERS OF ARREST
- POLICE INTERVIEW
- THE SOLICITOR AND LEGAL ADVICE
- AFTER THE POLICE INTERVIEW
- POLICE CAUTIONS
- CHARGE
- WHEN THE POLICE GET IT WRONG
- SEARCHES
- SEIZURE OF PROPERTY ETC.

STOP AND SEARCH

The police have extensive powers to stop and search and to arrest a person in connection with the investigation of a crime. There are many laws and codes of practice governing what the police can and can't do. The main piece of legislation relating to this area is the Police and Criminal Evidence Act 1984.

The following information will explain the general powers of the police, and will not cover every situation that may arise with the police. If you have problems with the police, you should seek advice. If you are cautioned or taken to the police station, you should always contact a solicitor.

What is a stop?

A stop is when a police officer stops somebody and asks them to account for themselves. For example, questions such as, 'What are you doing?' 'Where are you going?' 'Where have you

been?' and 'What are you carrying?' are all questions intended to elicit responses from somebody in order get them to account for themselves. If a person has been stopped by the police and asked these types of questions, they have been 'stopped' as defined by the law.

However, not every conversation with a police officer is a stop. For example, if the police questions are about locating a witness or when somebody has witnessed a crime and police are obtaining information about that incident, or giving directions, these are not stops as defined by the law.

Who can stop somebody?

A police officer or a police community support officer can stop a person. A police community support officer must be in uniform. A police officer does not have to be in a uniform. If the police officer is not in a uniform, he/she or she must show his identity card.

Nobody should be stopped or searched solely because of their race, age, gender, sexual orientation, disability, religion or faith; the way they dress; the language they speak; or because they have committed a crime in the past. For information on cases in which someone believes this is why they have been stopped or searched, see the section below about When the Police Get it Wrong.

What is a stop and search?

A stop and search is when a police officer stops an individual and searches them, their clothes and anything they might be carrying. They may only search outer clothing. Only a police officer can carry out a search. A community police support officer cannot do so.

Unless the police are exercising a statutory power to stop and search or arrest, somebody cannot be compelled to remain with the officer, and is free to leave at anytime.

When can police stop and search someone?

A person can only be stopped and searched if the police officer has reasonable grounds for suspecting that they will find:

- Controlled drugs;
- An offensive weapon or firearm;
- A sharp article (except folded pocket knife with bladed cutting edge not more than 3 inches);
- Prohibited fireworks;
- Stolen goods;
- Articles which could be used to commit a crime, for example burglary or theft;
- Articles which could be used to commit a terrorist attack;
- Articles that could cause criminal damage, for example spray paint cans.

The police cannot stop someone merely with hopes of finding grounds to search them. The following passages give details of statutory police powers to stop and search a person:

Section 23 Misuse of Drugs Act 1971 ('the 1971 act')

Where a constable has reasonable grounds to suspect that any person is in possession of a controlled drug, he/she or she has power to search and detain that person, stop and detain any vehicle or vessel where he/she or she expects to find the drug and seize and detain anything found that appears to be evidence of an offence under the 1971 Act.

Also, section 23 allows a Justice of the Peace to authorise a search warrant if he/she is satisfied by evidence on oath that there are reasonable grounds for suspecting that controlled drugs are in the possession of a person on any premises, or that there are documents relating to drugs offences on any premises.

It is an offence to intentionally obstruct a person in the exercise of either of the above powers.

This section also authorises a constable to enter the premises of a person carrying on business as a producer or supplier of any controlled drugs and to demand the production of, and to inspect, any books or documents relating to dealings in any such drugs and to inspect stocks of any such drugs. This section could impact on pharmacies, for example. There is no requirement under this section that the constable has reasonable grounds to suspect that anything improper is

occurring; it simply enables checks to be carried out. Those affected should always ask the constable under what lawful authority he/she purports to be acting, why he/she is undertaking an inspection of the premises, and make sure that a record is made of the constable's details and what is said at the time of the search.

Section 1 Police and Criminal Evidence Act (PACE) 1984

This section is the most commonly used and provides a broad power for police to stop and search people and vehicles where a constable believes that he/she has reasonable grounds for suspecting that he/she will find stolen goods or prohibited articles such as offensive weapons.

Section 60 Criminal Justice and Public Order Act 1994

Where an inspector reasonably believes that incidents involving serious violence may take place in a specific area or that people may be carrying dangerous instruments or offensive weapons in that area, for example, anticipated football hooliganism or gang fights, he/she can authorise the police to stop and search people in that specific area, throughout a specific time (usually 24 hours). The police do not have to have reasonable grounds for suspecting any wrong-doing on the part of the individual that is specifically stopped and searched; rather the power, and the police presence that goes along with it, is supposed to act as a deterrent in the problem area.

Section 44 Terrorism Act 2000

A senior police officer (of the rank of Commander in the City of London and of Assistant Chief Constable in most other areas) can authorise a constable in uniform to stop and search pedestrians, drivers, passengers and vehicles for articles that could be used in connection with terrorism; this power is often used to conduct random searches on trains and in tube stations. As with the power under Section 60 of the Criminal Justice and Public Order Act 1994, the constable does not have

to have reasonable grounds for suspecting any wrong-doing on the part of the individual that is specifically stopped and searched.

It is a criminal offence to fail to stop for a constable or wilfully obstruct a constable when he/she purports to be acting under the above power.

What happens if somebody is stopped and searched?

Before somebody is searched, the police officer should tell him or her:

- Their name and police number;
- The name of their police station;
- The object of the search or what they are looking for;
- The grounds or authority for the search and;
- The individual's right for a copy of the record of the search.

If the search is connected to terrorism, the officer can give their police number instead of their name, and does not need to state the reason for the stop.

Where can somebody be stopped and searched?

The police can stop and search a person in any public place, or anywhere where the police believe they have committed a crime. Examples of a public place include on the street, in a park and in a cinema. This power cannot be extended to a suspect's home and garden or any other dwelling and garden without the occupier's consent.

What is the extent of the search?

Generally, if in a public place, only the suspect's outer clothing should be searched. The search can include any bags they may be carrying, their pockets and anything found in their bags or pockets.

The police should not require them to take off any clothing other than an outer coat, jacket or gloves, unless the police have stopped them in relation to terrorism or where the officer reasonably believes they are using clothes to hide their identity or illegal items.

If the police require somebody to remove more than their coat, or if they are wearing clothing for religious reasons (such as

a face scarf, veil or turban), they must conduct the search out of public view. A search of this kind should be made by a police officer of the same sex as the suspect.

Can force be used during the search?

The police should be professional, polite and respectful. However, because the above stated laws in the appropriate circumstances give the police the power to search a suspect, the process is not voluntary and the officers do not need their permission to search the suspect or their belongings. If the suspect refuses to allow the search, the police can use reasonable force when they stop and search him or her.

You run the risk of both physical injury and serious criminal charges if you physically resist a search. If it is an unlawful search, you should take action afterwards by using the law.

The police must record all stops and searches

If someone is stopped or searched, the officer must fill in a form saying why they were stopped or searched and give them a copy of the form at the time, unless it is impracticable to do so, such as the officer is called away to an emergency. Regardless, the person searched can get a copy from a police station anytime within 12 months. The officer must write down:

- The individual's name or a description (only if they are searched);
- Their ethnic background;
- When and where they were stopped or searched;
- Why they were stopped or searched;
- If further action is taken;
- The names and/or numbers of the officers, and;
- If they were searched, what they were looking for and anything found.

This record should not be held on file against the individual unless they are charged with an offence.

The searched individual should keep the form or receipt, as that will be their only record of the event. If they have questions or concerns about the stop or search, or if they want to make a complaint, this information will be needed.

Does a suspect need to give their name and details?

A suspect does not have to give their name, address or date of birth to the police if they are stopped and searched unless they are being reported for an offence. If the police advise that someone is being reported for an offence, and he/she or she does not provide the information, they could be arrested.

Bodily searches

In general, a suspect must consent prior to the police conducting an intimate search (physical search of body orifices other than the mouth) or use an X-ray (where a person is suspected of swallowing a controlled drug). However, if a suspect refuses to consent to undergo either procedure without good cause, it can lead to adverse inferences being drawn by a court if criminal proceedings ensue. These types of more intrusive searches are strictly regulated and the police must follow a specific code of practice.

VEHICLE STOPS & SEARCHES

A police officer can legally stop any vehicle at any time. The police can also ask somebody where they are going and why. Under the Road Traffic Act 1988 (sections 164-172), a motorist has a legal duty to provide certain information and documents when they have been stopped by the police or have been involved in an accident/incident on a public road. The documents they may be asked to produce include driver's license, insurance certificate and vehicle registration document.

The police can search a vehicle if they have reasonable grounds to think it contains stolen goods, drugs, weapons, or explosives or other terrorist material. The vehicle search could include the search of the car itself, including the boot, the driver, passengers and bags contained in the vehicle. As in a pedestrian stop and search, members of the public have a right to a form

explaining the process. If individuals do not cooperate, they could face further questioning and reasonable force may be used.

If a car is unattended, it could still be searched.

If a stop and search concerning serious violence or terrorism is underway and someone has left their vehicle in the area, it can be searched in their absence. The police do not need permission to conduct the search.

However, the police must leave a form explaining who searched the car, why it was searched, and who to contact with questions.

If the search caused damage to the car, the owner may be compensated, but only if the police did not find anything to connect them to a crime or terrorism.

POWERS OF ARREST

An arrest will occur during a criminal investigation where the police have the legal and factual grounds to justify depriving the suspect of his liberty. Being arrested means that someone cannot do as they please. Their liberty is taken away from them for the period of the arrest.

One of the most important reasons for arresting a suspect is so that the police can question the suspect about his or her possible involvement in or knowledge of a crime. Thus, being arrested does not necessarily mean that the police have enough evidence to charge a suspect with a criminal offence and take their case to court. However, once they are arrested, the police can detain them in order to investigate whether or not they believe the suspect has committed an offence.

For most people being arrested and being taken to the police station is a frightening experience. Suspects may be handcuffed upon arrest and on the journey to the police station. The police are in a very powerful position and the experience can seem unfair. If people know their rights and understand what is happening, they can deal with some of the uncertainty and fear.

When can the police make an arrest?

Generally, the police may arrest a suspect when:

- There has been a breach of peace
- A magistrate has issued an arrest warrant
- There are reasonable grounds connecting the suspect with any criminal offence.

Depending on the type or seriousness of the offence, an arrest may be made by a police officer or a member of the public (citizen's arrest). Code G of the Police and Criminal Evidence Act 1984 governs the power of arrest.

Can force be used during an arrest?

Section 3(1) of the Criminal Law Act 1967 allows reasonable force to be used when making an arrest or when preventing a criminal offence. The magistrate or judge will decide on the specific facts of each case whether reasonable or unreasonable force was used.

Additional powers of arrest

There are preserved powers of arrest under the amendments to PACE 1984, including:

- arrest in connection with the taking of fingerprints at a police station;
- arrest for the taking of samples in certain circumstances;
- arrest for failure to surrender to police bail;
- arrest of a person who has broken or is likely to break a condition of bail.

Where can an arrest be made?

The police can arrest a suspect on the street or any other public place. The police may also enter and search premises without a warrant to conduct an arrest under the following circumstances:

- to execute a warrant of arrest or warrant of committal to prison;
- when the arrest is for an either-way or indictable offence. See court Procedures section regarding definitions of either-way or indictable offences;

- arrest in relation to public order offences like possession of an offensive weapon at public meetings and processions;
- when the officer is in uniform, for any offence relating to entering and unlawfully remaining on property;
- to recapture a person unlawfully at large and whom the officer is pursuing;
- to save life or limb or prevent serious damage to property.

With the exception of the previous item, the police must also have reasonable grounds to believe that the person they seek is on the premises.

Police powers to search a suspect's person, property and/or home after arrest

After a suspect has been arrested, the police have a wide range of powers to search the suspect's person, property and premises owned or occupied by the suspect. The purpose of the search is to find evidence relating to the offence(s) under investigation.

Section 32 PACE 1984 permits the search of an arrested person when there are reasonable grounds for believing that a search is necessary. For example, the police had reasonable grounds to believe the search would uncover evidence relating to an offence, that the suspect concealed an item on his person to assist in escaping, or the arrested person may present a danger to himself or others.

Section 32 also grants the police power to enter and search any premises where the suspect was at the time of arrest, or immediately before the arrest, for evidence relating to the offence for which he/she was arrested.

The police should only search the section of the premises that the arrested person occupied and any communal areas of the premises.

Further, under section 18 PACE 1984, the police can search any premises occupied by someone who is under arrest for certain serious offences, even though the suspect was arrested away from these premises. But, the police must have reasonable grounds for suspecting that there is evidence on the premises relating to the arrested person's offence or similar offence. Usually a section 18 search will have to be authorised by an officer of at least the rank of Inspector.

When the police are lawfully on any premises, they then have the power to seize anything on the premises when there are reasonable grounds to believe that it had been illegally obtained or is evidence relating to any offence, and seizure is necessary to prevent it from being concealed, lost, altered or destroyed.

Remember, police may enter without a search warrant in many situations, including:

- Following an arrest, the police are allowed to search premises the detained person occupies or has control over.
- To capture an escaped prisoner.
- To arrest a person.
- To protect life or to stop serious damage to property.
- Where other laws give police specific powers to enter premises.
- Or where consent has been given.

Under arrest at the police station

Once a suspect is arrested he/she must be taken to the police station immediately. If there is something preventing this from happening, then the suspect must be taken to the police station as soon as is practical. If someone has been arrested, they always have the right to:

- Be treated humanely and with respect.
- See the written Codes governing their rights and how they are to be treated.
- Speak to the custody officer (the officer who must look after their welfare).
- Know why they have been arrested.
- Be told who the arresting officer is and from which station.
- Have present with them a responsible adult if they are 16 years or under.

Suspects also have the right (but they can in rare situations be delayed) to:

- Have someone notified of their arrest (not to make a phone call themselves).
- Consult privately with a solicitor.
- Request for a medical examiner to attend to them if they feel unwell.

Suspects should inform the custody officer at the earliest opportunity if they are on prescribed medication, including methadone and buprenorphine. They may in certain circumstances be permitted to ingest, or negotiate for the collection and administration of, their medication. If not, suspects should notify their solicitor and refer them to PACE 1984 Code C Part 9.

- Do not panic. The police sometimes keep you isolated and waiting in the cell. Above all else, try to keep calm. The police can only keep you for a certain period of time. (See section below regarding detention times).

- Make sure the correct time for your arrest is on your custody record.

- Make sure you know why you have been arrested.

- Insist on seeing a solicitor even though you might have to wait. Always request that a solicitor be present when you are interviewed. Do not be put off seeing a solicitor by the police. It is your right, and it is free.

- If you ask for anything and it is refused, make sure this is recorded in your custody record.

Detention times

The police must adhere to strict rules and guidelines around the decision to detain someone after arrest and before charge. The following details the time limits that must be followed:

Person arrested. In general the time of arrest is taken to be when the person arrives at the police station.

Maximum period of detention is 24 hours. Periodic reviews must be carried out by a review officer. The first review must be carried out within 6 hours of the arrest. Then, reviews should not normally be more than nine hours apart up to a maximum of 24 hours

Detention of 24 hours can be extended to a total of 36 hours. Detention without charge beyond 24 hours can be extended to 36 hours if authorised by an officer of at least the rank of superintendent. They must have reasonable grounds for believing that:

- Detention without charge is necessary to secure or preserve evidence which relates to the offence; and
- The person is under arrest for an indictable offence;
- The investigation is being conducted efficiently.

After 36 hours the detainee must be charged unless the police apply to a Magistrates' court for a warrant to extend detention by a further 36 hours.

The Magistrates' court can issue a warrant for further detention if:

- The application for the warrant is made on oath and supported by written information; and
- The detainee is present in court; and
- Detention without charge is necessary to secure or preserve evidence which relates to the offence; and
- The person is under arrest for an indictable offence;
- The investigation is being conducted efficiently.

After 72 hours the court may authorise a further detention of 36 hours if the above criteria are met.

After 96 hours the detainee must either be charged or released without charge.

Detention of suspected drug offenders

The Drugs Act 2005 changed detention times regarding those arrested by the police who are thought to have swallowed controlled drugs. The Act amended the Criminal Justice Act 1988, section 152 to allow the Magistrates' court the power to remand a person to detention for a period not exceeding 192 hours.

Detention under the Terrorism Act 2000

It should be noted that detention times differ under the Terrorism Act 2000. If held under this Act a person can be detained for up to 48 hours before an application has to be made to the Magistrates' court for a warrant of further detention.

A warrant granted by the Magistrates for further detention can be for up to 28 days – this is subject to strict reviews. For further information go to www.yourrights.org.uk

The role of the custody officer

When a suspect arrives at the police station, he/she will be brought before the custody officer. This will be a uniformed sergeant whose job is to:

- Decide if there are grounds to detain the suspect, to keep him or her under arrest.
- Tell them why they are being detained.
- Keep a record of everything that happens to them while they are at the police station, and ensure that their welfare is looked after. This record is called the custody record. The custody record will include details of the arrest, the reason for the detention, authorisation of search procedures or continued detention, requests for legal/medical advice, reviews of detention, details of meals and refreshments given and any complaints made by the suspect. If the case goes to court the suspect is entitled to a copy.

The custody officer must tell the suspect:

- The reason for their arrest and the grounds for their detention.
- That they have a right to see a copy of the Codes of Practice that govern their detention.
- That the suspect has a right to have a person informed that they have been arrested.
- That they have a right to see an independent solicitor free of charge.

It is only in exceptional circumstances that these rights can be delayed or withheld. This is the time for the suspect to ask for a solicitor, unless they have a very good reason not to. It costs nothing. No-one should let the police persuade them that it is unnecessary or that it will delay things.

Search upon arrival at the police station

Property and clothing may be seized and retained if it could cause physical injury, damage to persons or property or could be used to assist an escape. Strip searches and intimate searches require special justification.

Testing on arrest

If someone is arrested for a 'trigger offence', the police will test for the presence of heroin and cocaine/crack. Please see Chapter 2 for more details.

POLICE INTERVIEW

The interview is usually the centrepiece of the police enquiry. The suspect will be interviewed by an interviewing officer, sometimes called the officer in the case. This may well be the officer who arrested them.

Interviews are tape recorded. If the case goes to court, the suspect will be entitled to a copy of the tape. Sometimes interviews are video recorded. The suspect may not want to be video recorded, for example, if the police have seized their clothing for forensic purposes and they are dressed in a boiler suit provided by the police. Suspects should discuss this with their solicitor.

If your case goes to court, the court will be told what you said when you were interviewed by the police. The court may even listen to the tape. Do not try and be funny or clever with the police. If you decide to answer the questions do so in a confident and straight-forward manner. If, during the interview, you wish to speak to the solicitor in private, then you will be entitled to do so. If you're unclear about the meaning of any questions, ask the police to explain.

What is a caution?

Generally, suspects must not be interviewed before being taken to the police station and cautioned. Upon an arrest a person must be cautioned in the following terms:

'You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.'

The caution explains that the suspect does not have to answer any police questions and cannot be forced to do so. However, if his or her case goes to trial then their silence can mean that their defence is less likely to be believed. This is also the case where the defendant changes their account from what was said in interview at the police station. The right to silence is legally complicated and suspects should always get legal advice about this. The caution will be repeated on a number of occasions while they are under arrest.

Remember, you should seek the advice of a solicitor prior to any interview and during the interview. This is your right.

The police should not question you with the purpose of getting evidence until after they have cautioned you. If you volunteer information it can be used against you.

There are limited circumstances when the police can interview a suspect prior to being taken to the police station and denied the right to have a solicitor present. For example, in situations where unreasonable delay could lead to interference with or harm of evidence; delay could lead to physical harm of

others; delay would alert someone suspected of committing an offence who has not been arrested yet; or delay would hinder the recovery of property that is the subject of the offence. Regardless, the police must still caution the suspect prior to the interview, but adverse inferences cannot be drawn if the suspect refuses to answer questions posed.

If a suspect has not been arrested but is cautioned, he/she must be told that they are free to leave whenever they want.

Right to silence

A suspect does not have to say anything to the police but if they are later charged with a crime and have not mentioned, when questioned, something that they later rely on in court, then this may be taken into account when deciding if they are guilty.

There may be good reason why a suspect does not wish to say anything to the police, and should not be intimidated into answering questions. A suspect should get a solicitor to see them in the police station as soon as possible.

- There may be times when if you give an innocent explanation for what you have done, the police may leave you alone.

- It is wise not to discuss the case with the police until you have consulted privately with a solicitor.

- If the police are about to arrest you or have already arrested you, there is no such thing as a 'friendly chat' to sort things out. Anything you say can later be used against you. Think before you talk.

The rights of a volunteer interviewee at the police station

Sometimes the police will invite a suspect to attend the police station. He/she will be attending the police station as a volunteer. This is done just to make things easier and convenient for both sides. The police can allow them to remain at the police station as a volunteer, but they are entitled to leave anytime they wish.

However, suspects should not be surprised if they are arrested when they get to the police station, or arrested if they fail to co-operate. Being invited to attend at the police station as a volunteer gives a suspect the chance to contact a solicitor and ask them to attend with them.

THE SOLICITOR AND LEGAL ADVICE

One of the first questions suspects will be asked by the custody officer is whether they wish to have a solicitor present. It is in the suspect's interest to ask for a solicitor. They can ask for a solicitor who is known to them. Alternatively, they can ask for the duty solicitor. The duty solicitor is independent of the police and is available 24 hours a day. She/he is an expert in dealing with criminal cases and is approved by the Criminal Defence Service. This role can also be undertaken by an accredited Police Station representative. Suspects should not become frustrated by the wait as it is in their long term interest to see a solicitor. If it is practicable, suspects should be allowed to speak to their solicitor or the duty solicitor by telephone. However, everyone should remember that the calls may not be confidential.

When the solicitor attends, she/he will speak to the custody officer and the investigating officer, to find out what the case is about. They will then speak to the suspect in private. The solicitor should:

- Advise the suspect about the strength of the police case.
- Advise the suspect about the rules and procedures governing their detention, including special procedures such as identification and samples.
- Advise the suspect on the legal elements of the offence for which they have been arrested.
- Help them decide whether to answer police questions or whether to remain silent. She/he will be able to explain the meaning and significance of the caution.
- Advise a suspect about the likelihood of their being charged and subsequently bailed.

Except in exceptional circumstances everything you tell your solicitor is in confidence. However, if you tell your solicitor that you have committed a criminal offence but you intend to actively deny it, she/he cannot collude with you and will not be able to represent you. You may have to get another solicitor.

Young and vulnerable suspects

A young person under the age of 17, and a mentally vulnerable person, will be accompanied by an Appropriate Adult. Their job is to ensure that the interview is conducted fairly, and assist with the communication between the suspect and the police. The appropriate adult might be a relative, a friend or a professional such as a social worker. The job is different from the solicitor's job. What a suspect tells them is not in confidence. The young or vulnerable suspect should see their solicitor in private at least for some of the time, without the appropriate adult being present.

AFTER THE POLICE INTERVIEW

After the interview, the investigating officer will report to the custody officer, who will then make the decision about what is to happen next. Solicitors can make representations to the custody officer. After the interview, a suspect should always take time to speak to the solicitor in private to discuss the interview.

After considering the evidence, the custody officer can:

- Release the suspect without charge, without any further obligation. The suspect can only be rearrested if further evidence comes to light.
- Order continued detention, subject to the overall time limits on detention, so that the investigation can continue (please see the earlier section on detention times for further detail).
- Release the suspect on police bail whilst the police carry out further inquiries or seek advice about whether or not the suspect should be charged.
- Offer to caution a suspect (in the case of young person, offer a reprimand or final warning)

POLICE CAUTIONS

Police cautions are used to dispose of minor offences where the person detained admits that they are guilty of an offence. Before accepting a caution you should get legal advice as a caution forms part of a criminal record and, therefore, can impact on employment, education and travel (please see Chapter 5 for further details).

There are two types of caution, a simple caution and an conditional caution.

Simple cautions

A simple caution is a non statutory disposal for adult offenders. It is usually issued for first time low level offences, but it may be issued where a second offence has occurred and that offence is a minor offence, or two years have elapsed since the original caution was issued. A simple caution can only be issued if:

- There is evidence of the offender's guilt;
- The offender is eighteen years of age or over;
- The offender admits they committed the offence;
- The offender agrees to be given a caution. Refusal of a caution is likely to lead to a charge.

A simple caution is recorded on the Police National Computer and will form part of a criminal record.

Conditional cautions

A conditional caution is a statutory caution that can be offered by police as an alternative to court proceedings. It can only be given if all of the following conditions are satisfied:

- There is evidence that the offender has committed the offence; and
- The relevant prosecutor (usually the CPS) decides that there is sufficient evidence to charge the offender and that a conditional caution should be given; and
- The offender admits that he/she committed the offence;
- The effect of the conditional caution has been explained to the offender and the offender has been warned that failure to comply with the conditions may result in prosecution of the original offence; and

- The offender has signed a document containing:
 - (a) details of the offence
 - (b) the admission that he/she has committed the offence
 - (c) His consent to the conditional caution
 - (d) the conditions attached to the caution

Conditions

The conditions that can be attached to a conditional caution are set out in the Government's 'Code of Practice for Conditional Cautioning'. Conditions fall into two categories, namely rehabilitation and reparation.

Rehabilitation conditions

Examples of rehabilitation conditions include:

- Drug treatment
- Alcohol treatment
- Anger management courses
- Driving rectification classes

These are only examples and other types of conditions can be given, if it is appropriate to do so.

Reparation conditions

Examples of reparation conditions include:

- Repairing damage caused to property
- Restoring stolen goods
- Paying modest financial compensation
- Apologising to the victim

All conditions should be proportionate to the offence committed. They must also be achievable and appropriate for the offender.

Drug-related, rehabilitative conditions

This type of condition will require that the offender attends a 'Drug Assessment, Awareness and Referral Programme'.

This will require the offender to:

- Attend an initial assessment with a drugs worker; and
- Attend a presentation on drugs and drug related issues; and
- Attend a post course review to consider a care plan and be offered referral to a specialist drug treatment agency if appropriate.

Any follow up treatment will be voluntary.

The legal impact of cautions

As stated, a caution, both simple and conditional, is recorded on the Police National Computer (PNC) and forms part of a criminal record. It will be included in both standard and enhanced criminal record searches carried out by the Criminal Records Bureau (CRB).

CHARGE

The facts will usually be relayed to a charging lawyer of the Crown Prosecution Service and if they advise that there is sufficient evidence and it is in the public interest for your case to go to court, you will be charged. This means that the charge will be read to you; you will be cautioned and be asked if you have anything to say. You should discuss this with your solicitor. You will be asked to sign the charge sheet. You will be photographed and fingerprinted. In many cases the police will also take a sample of your DNA. The police are entitled to do this. You will also be asked for further personal information, for example about your background, employment and income/ outgoings. You do not have to answer these questions, although in many cases, you might not have any objection. You should discuss this with your solicitor.

WHEN THE POLICE GET IT WRONG

If you want to challenge anything the police have done, then get the names and addresses of any witnesses and the name or number of the police officer/s, and make a written record as soon as possible after the incident. This should be witnessed, dated and signed. If you are injured, or property is damaged, then take photographs or video recordings as soon as possible and have physical injuries medically examined.

If you have been treated unfairly, then complain to the Independent Police Complaints Commission (www.ipcc.gov.uk), and contact a civil liberties group like Release or a Citizen's Advice Bureau or a solicitor about any possible legal action.

SEARCHES

The police are authorised to carry out searches of people and property in specific circumstances only.

Powers to authorise entry and search of premises

PACE is the main piece of legislation which dictates in what circumstances a property or person may be searched. Under section 8 of PACE the police can apply to the Magistrates' court for a search warrant. The court will grant a warrant if there are reasonable grounds for believing that:

- An indictable offence has been committed; and
- There is material on the premises which is likely to be of substantial value to the investigations; and
- The material is likely to be relevant evidence; and
- It is not subject to legal privilege, excluded material, special procedure material; and
- Any of the following conditions below apply:
 - (a) That it is not practicable to communicate with any person who is legally entitled to grant access to the premises;
 - (b) That it is practicable to communicate with a person entitled to grant entry but not practicable to communicate with the person entitled to grant access to the evidence;
 - (c) That entry will not be granted unless a warrant is produced;

- (d) That the purpose of a search may be frustrated or seriously prejudiced unless the police arriving at the premises can secure immediate entry.

The police may seize and retain anything for which a search warrant has been authorised. An entry under a search warrant is unlawful unless it meets the following criteria:

- A warrant shall specify:
 - (a) The name of the applicant
 - (b) The date on which it is issued
 - (c) The enactment under which it is issued
 - (d) The premises to be searched; and
- Shall identify, so far as practicable the articles or persons to be sought.

A warrant may authorise multiple entries and searches of a premises if a justice of the peace is satisfied that it is necessary in order to achieve the purpose for which the warrant is issued.

Execution of warrants

A Warrant shall be executable by any police constable:

- It may authorise persons to accompany the police and such person/s may have the equivalent powers in terms of execution of the warrant and the seizure of items related to the warrant. However, this power may only be exercised in the company and under the supervision of the police.
- Entry and search must be within three months from date of issue.
- Search must be conducted at a reasonable hour unless it appears that the purpose of the search may be frustrated.
- If the occupier is present at the time, the police:
 - (a) Shall identify himself and, if not in uniform, produce documentary evidence;
 - (b) Shall produce the warrant; and
 - (c) Shall furnish the occupants with a copy of the warrant.
- If the occupier is not present but some other person appears to be in charge of the premises then to do as above.
- If no one is present the police should leave a copy of the warrant in a prominent place.

- The police may only search to the extent required for the purpose for which the warrant was issued.
- The warrant must be endorsed as to whether articles or persons were found and if articles were seized other than those sought.

Entry & search of premises without a search warrant

The police may enter & search any premises for the purpose of:

- Executing:
 - (a) A warrant of arrest issued in connection with or arising out of criminal proceedings; or
 - (b) A warrant of committal issued under section 76 of the Magistrates and Courts Act 1980.
- Arresting a person for an indictable offence
- Arresting a person for a number of specific offences as outlined in s17 PACE
- Recapturing any person who is, or is deemed for any purpose to be, unlawfully at large while liable to be detained in prison, remand centre, youth offender institution or secure training centre
- Recapturing a person who is unlawfully at large and whom he is pursuing; or
- Saving life & limb or preventing serious damage to property.

Section 66 Serious Organised Crime and Police Act 2005

Where it appears to the Director of Public Prosecutions or the Director of HM Revenue and Customs that there are reasonable grounds for suspecting that a criminal 'lifestyle' offence under Schedule 2 of the Proceeds of Crime Act 2002 (for example drug-trafficking) has been committed, and that an individual might have some relevant documentation about it and that it is, on reasonable grounds, likely to contain information of substantial importance, then a disclosure notice can be issued to that individual via a constable or other appropriate person. Such a notice can require an individual to provide documents and information and answer questions in relation to the suspected offence. This power also relates to various terrorism offences and offences of defrauding the revenue, for example, money laundering and evasion of duty.

The failure to comply with a disclosure notice, without reasonable excuse, is an offence that can carry 51 weeks custody. Wilfully or recklessly misleading the authorities in relation to material information requested under a disclosure notice is an offence that can carry 2 years custody.

Where an individual does not comply with a disclosure notice or it is not practicable to give a disclosure notice, or it would seriously prejudice the investigation to do so, a warrant may be issued. Such a warrant can authorise the entering and searching of premises with reasonable force, to require information and assistance from any person on those premises, and to take possession of documents, including their electronic storage devices (i.e. computers, USB sticks) and to make steps to safeguard the premises so that there is no interference with the information. A warrant under this power must be produced and allowed to be inspected if the occupier or owner of the premises requests. It is, however, an offence, giving rise to up to 51 weeks imprisonment, to wilfully obstruct the execution of such a warrant.

Section 18 PACE- Entry and search of premises after arrest

The police may enter and search premises occupied or controlled by a person who is under arrest for an indictable offence. If the police have reasonable grounds for suspecting that there is on the premises, evidence other than items subject to legal privilege, that relates to the offence for which the person is under arrest or to some other indictable offence, which is connected with or similar to that offence. They may seize and retain anything material discovered in the search. The search must only be undertaken to the extent that is necessary for the discovery of the evidence presupposed.

Entry and search on arrest must usually be authorised in writing by an Inspector; however, where it is necessary for the effective investigation of the offence, a search can be conducted before the person is taken to a police station and authorisation can be obtained retrospectively.

A record of the search must be made as soon as practicable and, if the person is arrested afterwards, it must be included in the custody record.

Section 32 PACE - Search of persons after arrest

Where the police have reasonable grounds for believing that an arrested person may present a danger to himself or others, they have the power to search him and seize and retain anything found that they have reasonable grounds to believe might be used to cause physical injury to himself or to any other person.

Where a constable has reasonable grounds to believe that he/she would find upon an arrested person anything which could be used to escape or any evidence relating to the offence for which he/she has been arrested, the constable may search for and seize from the person such items.

A constable can enter any premises in which the arrested person had been when arrested or immediately prior to being arrested and search it for evidence. Again, reasonable grounds to believe that such evidence would be found are required. Where more than one premises falls into this category, more than one premises can be searched.

Section 54 PACE - Searches of detained persons

Whenever a person is detained, the custody officer should ascertain and record a person's belongings on their custody record.

The custody officer may search a detained person where it is necessary for him to do so to complete the custody record but the detained person should always be searched by an officer of the same sex.

Clothes and personal effects can only be seized from the detained person where the custody officer believes that they may be used to: cause physical injury to himself or others; damage property; interfere with evidence; assist escape; or may be evidence in relation to an offence. The detained person should be told why his property has been seized unless the custody officer believes that he/she is violent or likely to become violent or is incapable of understanding what is said to him. This power does not authorise an intimate search.

Section 54A PACE - Searches & examination to ascertain identity

A detained person may be searched or examined by an officer of the same sex to ascertain his identity or to ascertain any mark that would tend to identify him as a person involved in the commission of an offence. Such a search should either be done with the consent of the individual, or where that consent is refused or not practicable to obtain or where the police have reasonable grounds for suspecting the individual is not who he/she claims to be, with the authorisation of an inspector.

Photographs can be taken of any mark found, for example, features and injuries. Photographs should be taken with the consent of the individual, but again an inspector can authorise the photographs if consent is not forthcoming or is not practicable to obtain. Such photographs may be used by or disclosed to any person related to the prevention or detection of crime, the investigation of an offence or for the conduct of the prosecution and may be retained for related purposes.

Section 55 PACE - Intimate searches

An officer of at least the rank of inspector may authorise an intimate search if he/she has reasonable grounds for believing that an arrested and detained person may have concealed on him anything which he/she could use to cause physical injury to himself and/or others and which he/she might use while in police detention or in the custody of the court. An intimate search can also be carried out where the suspect might have a concealed Class A drug in his possession.

Intimate searches may only be undertaken if there are reasonable grounds for believing that the item anticipated may not be found without conducting an intimate search.

Intimate searches for Class A drugs should be conducted by a suitably qualified person (that is a registered medical practitioner or nurse). Intimate searches relating to concealed items which might be used to cause injury can be carried out by a police officer when authorised by an inspector.

All intimate searches, however, should always be carried out by an officer of the same sex and may only take place in a hospital, registered medical practitioner's surgery or some other place used for medical purposes where the search is for a Class A drug, or at a police station where the search is for other items. Intimate searches should be recorded as soon as practicable

after the search has taken place and detail which part of the body was searched and why.

Anything found that the custody officer believes may be evidence relating to an offence or that the searched person may have used to cause physical injury to himself or another, damage property, interfere with evidence, or assist escape may be seized and retained. The searched person should be told the reason for this seizure unless he/she is incapable of understanding, violent or likely to become violent.

In relation to searches for Class A drugs, consent must be obtained from the detained person. However, failure to give consent can result in adverse inferences being drawn at any subsequent court proceedings.

SEIZURE OF PROPERTY ETC.

Sections 19 & 20 PACE - Power of seizure

Where a constable is lawfully on a premises (for example, he or she has permission to be there, has a warrant or had a power of entry as previously discussed) he or she has the following powers of seizure:

- A constable may seize anything on the premises which he/she has reasonable grounds for believing was obtained in consequence of the commission of an offence and that it is necessary to seize to prevent it from being concealed, lost, damaged, altered or destroyed.
- A constable may seize anything on the premises which he/she has reasonable grounds for believing is evidence in relation to an offence and that it is necessary to seize to prevent it from being concealed, lost, damaged, altered or destroyed.
- A constable may seize any information which is contained in a computer and is accessible from the premises to be produced in a visible, legible form which can be taken away and which he/she has reasonable grounds for believing is evidence in relation to an offence.

None of the above powers allow the seizure of anything which may be the subject of legal privilege.

Warrants under the Drug Trafficking Act 1994

Where a circuit judge is satisfied that there are reasonable grounds that a specified person has carried out or has benefited from drug trafficking, and that material that would be of substantial value to the investigation and is not subject to legal privilege is in his possession or on his property, and that it would be in the public interest, the judge may make an order that the material be produced or that access to it should be given.

Section 56 of the Drug Trafficking Act 1994 also allows for the application of a warrant to search premises. The application must be made to a circuit judge.

GOING TO COURT

- INSTRUCTING SOLICITORS
- LEGAL AID
- ARRIVING AT THE MAGISTRATES' COURT - FIRST APPEARANCE
- BAIL
- PLEA BEFORE VENUE
- COMMITTAL PROCEEDINGS
- SENTENCING
- MAXIMUM PENALTIES FOR DRUG OFFENCES
- PROCEEDS OF CRIME ACT 2005

INSTRUCTING SOLICITORS

Where an individual has been arrested for an offence and taken to the police station for questioning or to be charged they are entitled to free legal advice. There is a short period between being charged at the police station and the first appearance at court. Often the solicitor who represented the person at the police station will ensure that a representative from the same firm will be at court for the first appearance. However, a different solicitor can be instructed easily at any time before legal aid is granted. Once legal aid has been granted this becomes more difficult.

Attending Magistrates' court can be a confusing and sometimes a frightening experience so if at all possible a solicitor should be seen before the first hearing, at the very least you should arrange for a solicitor to attend court. If no solicitor attends at the first appearance, ask to see the duty solicitor at court.

LEGAL AID

Those charged with a criminal offence may be entitled to legal aid if they meet the requirements. This is a two staged test: the person applying for legal aid must pass both the Interests of Justice Test (sometimes referred to as a 'merits test') and a means test.

The Interests of Justice test determines whether legal aid should be received based on the merits of the case.

The means test will establish whether a person is financially eligible for legal aid. The assessment considers income and outgoings - capital is not taken into consideration. Forms will be provided by the solicitor instructed to handle the case and assistance is normally provided in completing the forms.

The following automatically qualify for criminal legal aid:

- A person in receipt of Income Support, income-based Job Seeker's Allowance or a guaranteed State Pension credit;
- A person under the age of 16;
- A person under 18 and in full-time education;
- A person who has been charged with an "indictable only" offence which will be sent directly to the Crown court after a preliminary hearing at the Magistrates court, or a case committed to the Crown court for sentence, because cases in the Crown court are currently not means tested.

Those in receipt of contribution-based Job Seeker's Allowance, Incapacity benefit, or those on a low income may also qualify for legal aid.

The LSC have an online calculator which can work out whether a person is eligible: www.legalservices.gov.uk/criminal/getting_legal_aid/self_assessment.asp.

If a person qualifies for legal aid they will receive legal advice, assistance and representation from a qualified solicitor without having to pay privately. In order to receive legal aid individuals must see a solicitor approved by the Criminal Defence Service, as they specialise in criminal cases. A local list can be obtained from a library or Citizen's Advice Bureau (CAB).

The Law Society Website (<http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law>) also provides a list of local solicitors.

In order to assist the solicitor, you should take all proof of income to either your first meeting with the solicitor or your first appearance at court. This should include wage-slips, proof of benefits, tax returns and your national insurance number and details of housing costs if over £500 per month

ARRIVING AT THE MAGISTRATES' COURT - THE FIRST APPEARANCE

It is important when attending court for any hearing that defendants arrive early. A person charged at the police station receives a bail sheet which specifies what time to arrive at court for the first appearance. Defendants should arrive at least 15 minutes before the time stated on the bail sheet. If a defendant is late or fails to attend without reasonable excuse they are committing a separate criminal offence under the Bail Act 1976. It is likely that, where a defendant fails to attend a hearing, the court will issue a warrant directing the police to arrest the defendant and keep them in custody until they can be brought before the court. In these circumstances, the court may refuse to grant bail and keep a person on remand as a result of their earlier failure to attend.

On arrival at court, details of all defendants will be listed either at the main reception or on a general notice board. This will also indicate which courtroom a defendant should attend. Defendants should then attend the necessary courtroom and advise the usher of their attendance; the usher will make a note of this information. They may also ask whether the defendant intends to plead guilty or not guilty, and will ascertain if they have a solicitor. The usher will not be able to advise defendants on any aspect of the case; it is their job to ensure proceedings run smoothly, not to get involved in the details of each individual case.

If you are prevented from attending court by some emergency, you should contact both the court and your solicitor immediately, explain the circumstances and surrender yourself to the court as soon as practicable thereafter. Once the emergency expires, so does the reasonable excuse defence for non attendance as defined in the Bail Act and it is essential to retain supporting documentation if there is any, of the emergency.

Arriving at court without a solicitor

If legal representation has not already been arranged then it is important to seek the assistance of the duty solicitor. The usher will be able to organise for a defendant to see the duty solicitor. The duty solicitor is independent and is not connected with the court or the police, the duty solicitors are drawn up from a rota of the local firms with criminal contracts. They are approved by the Criminal Defence Service, and specialise in criminal cases. Their service is provided free of charge. They can discuss cases with defendants and give legal advice. They can liaise and negotiate with the Crown Prosecution Service (CPS), who are responsible for the prosecutions of the case on behalf of the State. If appropriate, they can represent defendants before the court. However, it is important to note that solicitors are only there to advise, it is essentially up to the defendant to decide whether to plead guilty or not guilty.

First appearance before the court

First appearances will always be before the Magistrates court. There has recently been the introduction of "Simple, Speedy, Summary Justice" (CJSSS) in the Magistrates court. This aims to progress cases faster than before, and means that magistrates are much more reluctant to grant adjournments to allow for the grant of legal aid, although this is still possible. As such, often a first appearance at court where there is a guilty plea will now also be the last, because the magistrates will want to deal immediately with the matter in its entirety. It is now far rarer

that the court will consider adjourning before taking a plea; however, this may still be feasible in individual circumstances.

Pleas will almost always be demanded by the court, even where essential evidence such as CCTV footage is outstanding. This means that at this first appearance, the Crown Prosecution Service should make disclosure of their initial evidence. The defendant's legal representative will go through that evidence with the defendant, take instructions and advise on the persuasiveness of the evidence, the relevant law, the process involved in pleading and the potential sentence.

The court will expect to hear plea, and deal with mode of trial if relevant (see below). If the plea is guilty, the matter can proceed directly to sentence. If the plea is not guilty and the matter is straightforward, under the new CJSSS scheme, the matter can proceed to a case management hearing where the court will ask the defendant to disclose the basis of the defence and any defence witnesses to be relied on. Cases under CJSSS should then be listed for trial in the Magistrates' court within 6 weeks. It is therefore important to fully prepare any defence as soon as possible and underlines the importance of early contact with a solicitor, ideally from the point of arrest.

BAIL

If a defendant appears before the court in custody, having been charged and refused bail at the police station, a bail application may be made. In court, the solicitor for the CPS will outline why bail should not be granted, this is known as "objections to bail". The defendant's solicitor will then have an opportunity to put forward a case for being granted bail, which is known as a "bail application". The key objections to bail are that the court has substantial grounds for believing that, if granted bail, a defendant would:

- Fail to surrender to custody; and/or
- Commit further offences whilst on bail; and/or
- Interfere with witnesses or otherwise pervert the course of justice.

The court may take into account the seriousness of the offence with which the defendant has been charged and any relevant previous convictions the defendant has.

If the CPS objects to bail, the defence solicitor should consider offering the court a number of conditions that could be attached to bail in order to counteract their objections. Examples of conditions that could be attached include:

- **Residence:** a specific address is given and the defendant agrees to remain at this address whilst on bail.
- **Surety:** a person offers money to the court that will be forfeited if the defendant absconds. The court will make enquiries to ensure that the person acting as surety has some kind of moral authority over the defendant; thus the defendant is less likely to abscond. The court makes enquiries about the nature of the relationship between the surety and the defendant and the means of the surety. The court will also always check the legitimate provenance of the money (undocumented cash is rarely acceptable). For example, an old lady who offers her documented life savings of £300 and is the grandmother of the defendant is more likely to be accepted as a surety than a multi-millionaire who offers thousands of pounds but can afford to lose it.
- **Security:** this is the sum of money the defendant pays into the court on his/her own behalf. This does not mean that a defendant can buy bail, but if the loss of savings means the defendant will no longer have the means to abscond, for example, then this may be an effective offer.
- **Reporting to a specified police station at specific intervals:** this ensures that the defendant does not leave the area. The police can monitor the defendant's attendance, remind them when they are next due in court and inform the court if there is a failure to attend.
- **Surrender Passport:** a person seeking bail can offer to surrender their passport. This is a helpful condition if the defendant has connections overseas or uncertain immigration status.
- **Curfew:** this imposes strict time limits on when a person is required to return and remain at their place of residence. This is often imposed where there is a fear that the defendant may commit further offences while on bail. Curfews are often electronically monitored.

- Ban on going to a particular place/locality: the court may impose this condition if they are concerned the defendant may approach the victim or witnesses.
- An order that the defendant is not to contact any witnesses directly or indirectly; this condition will almost always be imposed in certain cases, such as those involving allegations of domestic violence of any sort.

The defendant has two opportunities to make applications for bail in the Magistrates' court unless a change of circumstances can be shown. If these are not successful then one Crown court bail application can be made, which should be prepared in advance by a solicitor. Further applications may be made in the Crown court if there is any change of circumstance in the case. This will depend on individual cases.

Can bail be granted if the defendant is absent from court?

The answer is yes, if there is a reasonable excuse for the non-attendance. This is called 'enlarging' bail. If a person has already been granted bail by the Magistrates, they can further enlarge (grant) bail if the defendant is unable to attend by reason of illness or accident. Documentary evidence will be required to prove reason for non attendance - failure to provide this could result in a charge being brought under The Bail Act.

Breach of Bail

Although it is not a criminal offence to breach bail conditions, if a breach is proved then the court may review the position on bail. Failing to surrender to the court or police station at the appointed time, however, is in itself a criminal offence and may be punishable by a custodial sentence. Apart from this, the only available punishment for breach of bail is to make the bail conditions more onerous (for example, changing a door step curfew to an electronically tagged curfew), or to revoke bail, thus remanding the defendant into custody pending the outcome of the case.

On arrest for breach of bail, a defendant must be brought before the Magistrates' court as soon as practicable and at least within 24 hours.

The hearing that follows will determine whether a breach

has taken place and whether it is safe to readmit the defendant to bail - that is, would they abscond or breach again?

PLEA BEFORE VENUE

Summary offences

Summary offences are minor criminal offences which will only be heard by the Magistrates' court. Types of summary offences include some road traffic offences and many of the public order offences. A defendant before a Magistrates' court will not have to concern themselves with a mode of trial hearing, as the matter will be disposed of at that court.

Indictable offences

Indictable offences are offences considered so serious they can only be dealt with at Crown court. Types of indictable offences include murder, rape, kidnapping and offences committed under the new terror laws.

Either way offences

In between summary and indictable offences are a number of offences, such as assaults resulting in injury, theft and other offences of dishonesty and burglary, which may be tried in either the Magistrates' court or the Crown court. These offences are referred to as 'either way offences'. In either way offences, a somewhat complex procedure, known as plea before venue, takes place in the Magistrates' court. First, a defendant will indicate how they intend to plead to each of the charges laid against them. If they enter a guilty plea, then the Magistrates' court goes on to consider sentence, but may still decide to commit the defendant to the Crown court if they believe their sentencing powers are not powerful enough. The maximum sentence that a Magistrates' court may impose is 6 months custody, unless a defendant has been convicted of two or more either-way offences, at which point the sentencing powers are increased to 12 months custody. The maximum penalty in the Crown court will depend on the particular offence(s).

Before making this decision the defendant is entitled to know what the charge against them is. In most cases, particularly those dealing with drugs offences, a written

outline of the case will be provided; this is called the Advance Disclosure or Information, commonly called "AI". The usher should be able to advise where a copy of the Advance Disclosure can be obtained. If not, the defendant's legal representative should be able to obtain a copy.

The court will want to deal with cases as quickly as possible and will want a good reason to grant an adjournment. It should be noted that adjournments are now rare in most simple criminal cases.

The court cannot make a defendant enter a plea; however, if the defendant refuses to enter a plea the court will enter a not guilty plea on their behalf. If a guilty plea is entered, the court will hear the outline of the case against the defendant; this will include details of any previous convictions that the defendant may have. The court may decide to deal with the case immediately, for example, by imposing a financial penalty.

When imposing a financial penalty the court will need details of the defendant's income and outgoings. For this purpose, a means form is usually completed in advance of any hearing at which a defendant intends to plead guilty or may stand to be convicted. Means forms are available from the ushers or on stands outside the courtroom.

Even if you have made up your mind to plead guilty, it is important to obtain a copy of the Advance Disclosure and read it thoroughly, as it will be read out to the court when your case is called. If you accept that you are guilty of the charge, but you do not agree with everything written in the Advance Disclosure, then you should nevertheless plead guilty, but point out to the court the parts with which you disagree. The prosecutor may agree to a basis of plea being drafted to incorporate the disputed elements. Otherwise, the court will consider whether the disputed facts would affect sentence. If they consider it would affect sentence, the matter will be listed for a Newton Hearing. This is a trial-type hearing where the prosecution has to prove that the disputed facts occurred beyond a reasonable doubt. It should be noted this process can affect credit for plea (see opposite for further details).

Generally, you will be allowed time to pay any financial penalty; so think about how much you can afford to pay each week/month. Make a sensible and reasonable offer; otherwise the court will impose one on you. If you are on benefits, your fines may be paid by directly deducting a fortnightly amount from your benefit payments. Although certain benefits do not permit such automatic deductions.

If the court cannot deal with a case immediately or considers the offence suitable for a community penalty, it may adjourn for a Pre-Sentence Probation Report. The court will inform the Probation service of how serious they consider the case to be. The standard time for preparation of reports is 3 weeks but they may be done sooner in certain circumstances, even on the same day. These are known as "Fast Delivery Reports". It is important the defendant co-operates fully with the probation service and attends the appointment given to him or her. Failure to co-operate resulting in the reports not being ready for the next hearing can lead to the court imposing heavier conditions on bail, remanding the defendant in custody to ensure that reports are prepared, or proceeding to sentence without a report. Sentencing without a report greatly limits the court's options and may well increase the likelihood of a custodial sentence.

If the Magistrates' court believes that the case is very serious, they can in some circumstances refer the matter to the Crown court for sentence. This is known as "committing for sentence". This is because they believe their own powers of sentencing are insufficient.

If a defendant pleads not guilty to an offence the case will be adjourned until a trial can be arranged. If a defendant intends to plead guilty, then they should do so at the first possible opportunity. The court should give credit for an early guilty plea, which means that a guilty plea at an early stage will receive a lesser sentence. It is important though that any decision to plead be discussed with a solicitor, and is made without coercion.

Where a defendant pleads guilty, the court will hear some more details of the case and can then either:

- Send the case to the Crown court for sentence;
- Adjourn for a pre-sentence report; or
- Sentence the defendant immediately.

The solicitor representing the defendant can make representations to the court about their sentencing powers in the light of the circumstances outlined and of previous convictions (if any). If the court decides to send the case to the Crown court, there will be a short adjournment before the next hearing at the Crown court.

If the court decides that it can deal with the case, and if the defendant has pleaded not guilty, or indicated no plea, the defendant is given the choice of where they want the matter to be dealt with, either at the Magistrates' court or at the Crown court. This is often referred to as the right to elect. If they plead guilty, then they lose that right, and the Magistrates will have the choice only as regards sentencing.

Should you plead guilty or not guilty?

Your solicitor will explain the elements of the offence with which you have been charged and whether you have a defence in law. He or she will then advise on the merits of your defence being successful. If the evidence against you is strong and a conviction is highly likely, your solicitor will test your instructions against the evidence carefully to determine whether you have a fighting chance of running a successful defence. If you are self-representing, the legal advisor to the court should provide the above advice, but will do so in open court.

There are occasions when you might enter a not guilty plea for tactical reasons. You may choose to do this where there is a question mark about whether a witness will attend court to give evidence, although you should be aware that witnesses may be summonsed to court and that there are increasing incentives for the police and CPS to have successful prosecutions, especially in cases of domestic violence. Because of this, new provisions have been put in place for evidence to be given in the absence of relevant witnesses. Nonetheless, if a key witness does not attend the trial, the chances of being convicted fall significantly.

It is imperative that you understand that you will lose the credit of an early guilty plea if you hold out and enter a later guilty plea.

Credit for plea

A lesser sentence should be given if a defendant pleads guilty at the first opportunity. The general rule is that a plea at the first opportunity attracts one third off any sentence, but the law has recently changed in this area. See page 96 for further details.

Advantages and disadvantages of choosing a Crown court trial

Rates of acquittal on not guilty pleas are significantly higher in jury trials, and many defendants feel they receive a fairer hearing before a jury than before magistrates, who may often seem biased towards the prosecution. This is especially evident when challenging police officer's evidence, as magistrates are more likely to believe the police than they are the defendant. Another example of a legal difficulty where there is no jury could be arguing for the exclusion of evidence which may be inadmissible, as the magistrates will hear this anyway.

Jury trials, however, involve significant delays and greater defence costs, toward which a defendant may have to contribute if they are paying privately, or greater prosecution costs if convicted and ordered to pay at the end of the case. However, there is still no means test for legal aid in the Crown court. Crucially, it is important to remember that in the event of a conviction the Crown court has greater sentencing powers. The choice may not be straightforward, and it is important that the advice of a solicitor is obtained.

In the Youth court, the defendant does not have the right to elect the mode of trial. All cases involving young people are dealt with by the Youth court; the exception to this rule is where a matter may be transferred to the Crown court if the offence is considered extremely serious known as a grave crime. However, the defence solicitor will have the chance to persuade the court not to send the case to the Crown court.

COMMITTAL PROCEEDINGS

If the defendant pleads not guilty or declines to indicate a plea at the Magistrates' court, a mode of trial hearing will take place. If the magistrates transfer the matter to the Crown or the defendant elects to be tried at the Crown court, the case will be adjourned for committal proceedings. The standard adjournment is for 6 weeks and the committal hearing will take place in the Magistrates' court.

Committal proceedings will be in one of two forms, depending on whether the defendant wishes to challenge the strength of the evidence at the committal stage. In order for a case to be committed to the Crown court, the defence must be satisfied that the prosecution has provided sufficient evidence that there is a "prima facie" or basic case to answer.

Where there is a challenge to the strength of the evidence, the Magistrates (sitting as examining justices) will consider the statements and exhibits tendered by the prosecution. There will be no oral evidence from either side, and the defence is not entitled to present any evidence at all, documentary or otherwise. However, if possible, it is good practice for defence solicitors to provide the court in advance with what is called a "skeleton argument" (meaning an outline of an argument) as to why the case should not be committed.

After considering the evidence, which is read out, and hearing submissions from both parties, the court will decide whether there is sufficient evidence to show a case to answer. If the court finds that there is sufficient evidence, the case will be committed to the Crown court. If the court finds that there is not sufficient evidence the case will be dismissed.

If there is no challenge to the evidence at the committal stage, a "paper" committal ensues. This is known as a "6(2) committal", after the relevant section of the Magistrates court Act. The original signed statements (or a copy of the signed statements) are served on the court at the hearing. The evidence is not read to the court. The defence will also be served with the committal papers, and will have an opportunity to go through the papers in detail.

Newton hearings

Where a factual dispute between the prosecution and the defence version of events is so different it is likely to have an impact on sentence, the court must hear evidence on the disputed points. Such hearings are referred to as "Newton hearings".

Newton hearings are similar in form to a mini trial. The prosecution is first required to call evidence in relation to the matters in dispute, and the defence will then call evidence to support their version of the facts. The burden of proof lies upon the prosecution, who must prove their assertions of fact beyond reasonable doubt.

Where an extraneous issue in mitigation is raised, which the prosecution are not in a position to refute because it is wholly within the knowledge of the defendant (for example, the defendant's state of mind when the offence was committed), this issue will not usually be in conflict with the prosecution evidence. It is therefore not appropriate for these matters to be raised as part of a Newton hearing. In such a situation, a defendant may choose to support his assertion by calling evidence on oath or trying to agree a basis of plea with the prosecution. The burden of satisfying the court in such a case lies upon the defendant.

SENTENCING

Sentencing before the Magistrates' court or Crown court will occur after a guilty plea or conviction after trial. The Criminal Justice Act 2003 (CJA 2003) and the Powers of the Criminal courts (Sentencing) Act 2000 (PCC(S)A 2000) govern the sentencing laws. Sentencing laws are very complex and the advice of a solicitor should always be sought. The following is general information regarding sentencing laws.

What is the aim of sentencing?

The Criminal Justice Act 2003 adopted the fundamental sentencing principle - a sentence should not be more severe than the seriousness of the offence warrants. In considering the seriousness of the offence, Section 143 of the CJA provides that the court consider the offenders culpability in committing the offence and any harm the offence caused, was intended to cause, or foreseeably would have caused.

Section 142 of the CJA 2003 states that a court must also consider the following when sentencing an adult offender:

- Punishment of the offender;
- Reduction in crime, including by deterrence;
- Reform and rehabilitation of the offender;
- Protection of the public; and
- Reparation to those affected by the offences.

No one factor is more important than any other. Any aggravating and mitigating factors will also be considered at the time of sentencing.

When those aged under 18 years are to be sentenced, however, the principal aim when sentencing is to prevent the young person from further offending.

The courts have laid down various guidelines in relation to sentencing for drugs offences. The following are issues that can be determinative of seriousness: scale of offending; position in criminal structure, e.g. wholesaler, retailer, producer; weight, purity, or value of the drug; sophistication of the offending; social supply vs. commercial supply; previous offending; the degree of involvement; co-operation with police; stage of plea/conviction; and the circumstances of the individual offender.

Types of sentencing

Courts can impose various types of sentences, including:

- Custodial sentences: which can be immediate, intermittent or suspended;
- Community Sentences: which can combine terms or requirements such as unpaid work, curfew, programme requirement, drug treatment and testing requirement, and/or residence requirement;
- Fines and compensation orders;
- Discharge: This can be conditional or absolute.

Various combinations of the above may also be imposed.

In addition, depending on the type of offence, a court may be required to order an endorsement of a driving license or disqualification from driving, destruction or confiscation of criminal property, or seizure of criminal assets. Thus, given the wide range of sentencing options available to a court and

the fact that each sentence is fact-specific, obtaining the advice of a solicitor is best.

If you plead guilty or are convicted of an offence following trial, you will usually be ordered to pay the prosecution's costs of bringing the case against you, even if you are on legal aid. These vary depending on the court and the offence. The costs are usually significantly lower when an early guilty plea is entered, rather than when there has been a conviction following a trial. Trials in the Magistrates' court should attract lower costs than those in the Crown court, and this is another consideration where plea before venue is concerned. The court has discretion to order a lower amount of costs if you are not a person of means.

Custodial sentences

Section 152(2) CJA 2003 states that a custodial sentence should only be imposed if the offence is so serious that neither a fine or community sentence can be justified. In passing a custodial sentence, the court must state in open court the reasons for the sentence, considering the seriousness of the offence and that no other sentence is justified.

With the exception of certain dangerous offenders, generally an offender serving a sentence of 12 months or more must serve that time in full, but half the sentence may be served on licence in the community. Whilst on licence, an offender must abide by certain terms and conditions to prevent re-offending and to protect the public. Such a term could include drug testing. A breach of the terms will result in the offender being recalled to prison.

Intermittent custody is when a person serves his time intermittently or in blocks, such as on the weekends. This type of sentence is currently a piloted programme. This form of custodial sentence allows the offender to maintain contact with the community, family, education or employment.

Suspended sentences are governed by section 189 CJA 2003. These are custodial sentences that are imposed but suspended or not activated for a period ranging between 6 months to 2 years. A Suspended Sentence Order can oblige the offender to undertake requirements in the community during the supervision period. The list of requirements is the same as that of a community order. If the offender fails to comply with the requirements, or commits another offence during the supervision period, the presumption will be that the suspended sentence will become activated.

Community sentences and community orders

Community Orders were introduced as part of a new sentencing regime on 4 April 2005. They can be made up of several different requirements, which should suit the needs of the offender as well as reflecting the seriousness of the offence.

Community sentences are served in the community and can be very onerous and strictly enforced. A community sentence can only be imposed if the underlying offence is serious enough to warrant such a sentence.

Pursuant to section 177 CJA 2003, the following are requirements that could be imposed under the sentence:

- Unpaid work, such as community work;
- Activity requirement, such as education or skills training;
- Programme requirement which has been accredited by the Secretary of State, such as Drink Impaired Drivers Programme;
- Prohibited activity requirement, such as prohibition from certain places or driving;
- Curfew requirement;
- Exclusion requirement prohibiting the offender from a place or area;
- Residence requirement, such as a hostel or institution;
- Mental health requirement for offender to undergo treatment;
- Drug rehabilitation requirement (discussed in detail below);
- Alcohol treatment requirement;

- Supervision requirement, such as attending appointment with probation office;
- If an offender is under 25 years old, an attendance centre requirement.

There are a different range of sentencing options available in the Youth court.

Whilst subject to a community order, if an offender fails to comply with a requirement or commits another offence he/she will be in breach of the order. The probation officer will normally issue a single warning about a failure to comply. Thereafter, if another breach is committed then breach proceedings will commence before the court. The court can then impose more onerous requirements or revoke the order and re-sentence the offender for the original offence. Thus, if the court finds the offender repeatedly and deliberately breaches the community sentence, the offender would most likely be sent to prison.

Even being a few minutes late for appointments can give rise to breach proceedings, so if you are unwell or running late, always telephone your probation officer and let them know in advance, and try to document why you are running late.

Drug rehabilitation requirements (DRRs) - What is a DRR?

A DRR is a requirement which may be imposed by a court as part of a Community Order or as part of a Suspended Sentence Order.

DRRs replace Drug Testing and Treatment Orders (DTTOs). However, DTTOs still apply to offences committed before 4 April 2005 and to 16 and 17 year olds, although the Criminal Justice and Immigration Act 2008 will see changes to the sentencing regime applied to children and young people including the creation of a Youth Rehabilitation Order (YRO) to include DRRs. These changes are not yet in force please contact Release for up to date information. DTTOs should not be confused with DTOs in the Youth court, which are "Detention and Training Orders", meaning a sentence of youth custody. DTTOs are discussed in more detail below.

A separate report will be prepared by the Probation Service as to a defendant's suitability for a DRR. It is therefore important to inform your solicitor or the court before Pre Sentence Reports are ordered if you think that this sentence might be suitable for you.

When will a DRR be imposed?

All of the following factors must be present before the court will impose a DRR:

- The court is satisfied:
 - (a) That the offender is dependent on, or has a propensity to misuse, drugs; and
 - (b) That his dependency or propensity is such as requires and may be susceptible to treatment; and
 - (c) That arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he/she is required to submit to treatment as a resident); and
- The requirement has been recommended to the court as being suitable for the offender:
 - (a) In the case of an offender aged 18 or over, by an officer of a local probation board; or
 - (b) In the case of an offender aged under 18, either by an officer of a local probation board or by a member of a youth offending team; and
- The offender expresses his willingness to comply with the requirement.

What will be the terms of a DRR?

A DRR will require the offender to agree to a specified period of drug treatment and testing. The offender will be required to engage in treatment and will be required to undergo testing throughout the duration of the order.

The terms of a DRR will vary to reflect the needs of the offender and the seriousness of the offence. There are three possible levels of contact: low offence seriousness, medium

offence seriousness and high offence seriousness, based on the concept of low, medium and high seriousness as identified by the Sentencing Advisory Council, who issued guidance on Community Orders in general. There are, however, certain minimum and maximum requirements.

Period for treatment and testing

Where a DRR is part of a Community Order, the minimum period for treatment and testing is six months and the maximum period is three years.

Where a DRR is part of a Suspended Sentence Order, the minimum period for treatment and testing will be six months and the maximum period will be 2 years. The terms of the Suspended Sentence Order should be less restrictive in these circumstances, as the sanction will be more serious in cases of non-compliance.

Amount of contact

During the first 16 weeks of a DRR, the amount of contact an offender should have in relation to his Community Order will be determined by the seriousness of the offence committed, as follows:

- Low offence seriousness: minimum of one contact per week (no minimum hours specified)
- Medium offence seriousness: minimum 8 hours a week
- High offence seriousness: minimum 15 hours a week

The number of contact hours relates to the whole of the Community Order or Suspended Sentence Order and not just to the DRR.

After 16 weeks, the level of contact will be determined by the offender manager, although there is a basic requirement that contact should occur at least once every 4 weeks.

Frequency of testing

A low offence seriousness DRR will require that the offender is tested only once a week throughout the period of the DRR. Offenders who are subject to medium and high offence seriousness bands will be tested twice a week for the first sixteen weeks of the requirement. After sixteen weeks there is discretion to reduce testing to once a week. Generally though courts will order a minimum of 2 tests per week.

Procedure for testing

Testing will be carried out by either the National Offender Management Service (NOMS) or the relevant treatment service. Refusal without reasonable excuse to provide a sample could amount to a failure to comply with the DRR.

DRR reviews

A DRR may be subject to periodic reviews. If the DRR is for more than 12 months then it must be subject to a review at court. The conditions for reviews are that:

- Reviews are to take place at intervals of no less than 1 month.
- The offender must attend each review hearing.
- Submission of a report detailing the offender's progress is to be provided by the probation manager. The report will include the results of the tests and views of the treatment provider.

At the review hearing, the court may amend the order if the offender agrees to the proposed amendments.

If, at a review hearing, the court is of the view that the offender is making reasonable progress, then subsequent reviews can be arranged without the need for a hearing.

Legal aid does not cover review hearings unless the offender is in breach, so individuals should prepare to represent themselves.

What happens if the DRR is breached?

If the offender has failed to comply with the requirements of a Community Order, their offender manager must issue a warning. A warning does not have to be given if:

- The offender has received a warning in the past 12 months for failing to comply with the present order; or
- The failure to comply is put before the court.

The warning must:

- Describe the circumstances of the failure;
- State that the failure is unacceptable; and
- Advise the offender that if another warning is given within the next 12 months, he/she may be brought before the court for breach of the Community Order.

If the offender has already received a warning and commits a further breach without reasonable excuse, information about the breach must be presented to the court. Where the court is satisfied that the offender has breached the Community Order they must take action. In these circumstances, the court may:

- Amend the Community Order to make it more burdensome; or
- Deal with the offender in the manner that the court would have originally done had the order not been imposed; or
- If the original offence was one which would not have attracted a custodial sentence and the offender has wilfully and persistently failed to comply with the Community Order, the court may impose a custodial sentence of up to 51 weeks.

If the offender fails to comply with the DRR as part of a suspended sentence, or commits a further offence during the supervision period, the Crown court has the power to activate the suspended sentence, generally a term of at least 28 weeks but no more than 51 weeks.

Revocation of a DRR

In some cases, a DRR may be revoked if the court thinks it is appropriate to do so in the interests of justice. An application can be made by either the offender or the offender manager to have the order revoked. Alternatively, the court may choose of its

own volition to revoke an order and deal with the offender in some other way.

Circumstances which may result in an order being revoked include the offender making good progress. The court should take into account how well the offender has complied with the order.

What other powers does the court have in relation to DRRs?

The requirements of a DRR can be amended on application by the offender or the offender manager.

For example, DRRs may be amended by reason of change of address, allowing the court to transfer the order to the new address. If the offender would have difficulty complying with certain requirements of the order due to a change of address, the court should cancel those requirements, or replace them with requirements which the offender would be able to meet.

Drug Treatment and Testing Orders (DTTOs)

- What is the difference between a DTTO and a DRR?

DRRs have replaced DTTOs. A DTTO is a stand alone community sentence, whereas a DRR can be part of a number of requirements which make up a Community Order. DTTOs are still available for offences committed before 4 April 2005, and for 16 and 17 year olds until the new provisions under the Criminal Justice and Immigration Act 2008 come into force.

DRRs have a wider application, as they can be applied to offences ranging from low seriousness to high seriousness.

What is a DTTO?

A DTTO is a community sentence that may be imposed on persons aged 16 years and over who have been convicted of an offence. In the case of those aged 18 years and over the offence must have been committed before 4 April 2005. A DTTO is similar to a DRR. It has the following principal characteristics:

- It must last for between 6 months and 3 years;
- The person subject to the order must submit to a treatment and testing programme;
- The order may involve supervision or periodic reviews.

The court must be satisfied that the offender is dependent on, or has a propensity to misuse drugs and that he/she requires and may be susceptible to treatment. There must be a willingness on the part of the individual to accept the order. Requirements included in a DTTO will be:

- Required treatment (including residential).
- Regular testing for the presence of drugs.
- Supervision of a probation officer.
- Regular review hearings at which the DTTO may be amended.

When deciding whether a DTTO is appropriate, the court shall take into account all available information on the circumstances of the offence or the offences associated with it, including any aggravating or mitigating circumstances, and a pre-sentence report.

What happens if the DTTO is breached?

In the event of breach, the offender should appear before the court responsible for the Order. If it is proved to the satisfaction of the court that the offender has failed without reasonable excuse to comply with any requirements of the DTTO, the court may:

- Impose a fine not exceeding £1,000; or
- Make a community service order requiring the offender to work a total of not more than 60 hours; or
- Deal with the offender as it would have done originally, had the order not been imposed.

Fines and compensation orders

Fines are frequently imposed by the courts. Under sections 162(1) and 164(2) CJA 2003, courts must take into consideration the offender's financial circumstances before imposition of a fine and the fine must reflect the seriousness of the offence. A fine may be the entire sentence or in combination with another type of sentence, such as a community order.

Compensation orders are governed by section 130 PCC(S)A 2000, and the purpose is to compensate the victim of a crime for any injury, loss or damage suffered. courts must also take into

consideration the offender's finances prior to imposing a compensation order.

Fines and compensation orders may be paid in instalments and can be organised as a deduction from benefits or attachment to earnings.

Conditional or Absolute Discharge

Conditional discharges are governed by section 12 PCC(S)A 2000. Conditional discharges are common in Magistrates' courts and may be imposed in Crown courts. Conditional discharges are common for first-time non-serious offences. The conditional discharge can last for as long as three years and there is no minimum term.

If the offender has not re-offended during the term of the conditional discharge, he/she will not be punished for the offence. But if the offender is convicted of another offence, the conditional discharge can be revoked and the offender re-sentenced.

An absolute discharge may be imposed under section 12 PCC(S)A 2000. Whilst there are no conditions placed on the offender, this will be recorded against the offender on the Police National Computer and may appear in future printouts in the same way as a caution administered at the police station. However, like a caution an absolute discharge is not a conviction. Section 14 of the PSS(S)A 2000 states that where someone is convicted of an offence and sentenced to an absolute or conditional discharge, the conviction is only considered a conviction for the purpose of making a discharge and for resentencing if another offence is committed during the specified period. It is not considered a conviction for any other purpose.

Magistrates' courts sentencing powers

The maximum custodial sentence that a magistrates' court can pass is six months upon conviction on a summary matter. If the offender is convicted of two or more summary matters on the same occasion, the maximum is still 6 months.

If an offender is sentenced for two or more either-way matters, the 6 month maximum rises to a maximum custodial sentence of 12 months, where consecutive prison sentences are imposed.

However, magistrates' courts sentencing powers are due to increase under CJA 2003. Section 154 of CJA 2003 would increase the maximum custodial sentence that a Magistrates' court could pass from 6 to 12 months for any offence, and to 65 weeks for

two more offences served consecutively. The Act confers upon the Home Secretary the power to amend these limits to maximum of 18 months and 24 months respectively. As of the date of publication, the implementation of this provision has been postponed indefinitely due to concerns over resources for prison and probation services for serious offenders.

However, where an individual indicates a not guilty plea to an either way offence, the court will proceed to determine the mode of trial having regard to whether their sentencing powers are sufficient, the nature and seriousness of the case, and any other relevant circumstances. The defendant has a right to elect Crown court trial irrespective of these considerations. At this stage, however, the court does not look at a defendant's previous convictions and also, during the course of a trial, an offence may appear more serious than previously, so the Magistrates still have the power to commit the case for sentence to the Crown court if a defendant is found guilty; this opens up the possibility of a custodial sentence greater than 6 months.

The maximum fine or compensation order that a magistrates' court can impose for most offences is £5,000 for each offence.

Crown courts sentencing powers

Crown courts sentencing powers are far greater than Magistrates' courts. The maximum sentence is defined by the statutory offence or law. Thus Crown courts often possess a discretionary element with regard to the sentence imposed, keeping the aims of sentencing in mind. However, there has been a trend in recent years toward removing this discretionary element. For example, Section 110 PCC(S)A 2000 requires a minimum sentence of seven years for a third conviction of Class A drug trafficking. However, the court need not impose the minimum term if it is unjust to do so, and may go below the minimum term to grant a discount for a timely guilty plea. The Crown court's power to impose a fine or compensation order is unlimited.

Discounted sentences

A timely or early entry of a guilty plea will often lead to a discounted sentence. Timely guilty pleas save costs and court time. Thus, if a guilty plea is entered at the first reasonable opportunity, an offender will likely receive a larger sentence reduction than a guilty plea after a trial date has been set or on the eve of trial.

There is a definitive sentencing guideline issued by the Sentencing Guidelines Council in relation to credit for plea which is followed by the courts and is available at www.sentencing-guidelines.gov.uk/docs/Reduction%20in%20Sentence-final.pdf

Maximum credit can mean up to a third off a sentence, so that 3 months custody would be reduced to 2 months custody. It can even mean a community penalty becomes available rather than a custodial sentence if the defendant indicates their willingness to plead guilty at the first reasonable opportunity.

Type of drug	Possession	Supply and production offences	Cultivation and section 8 offences
Class A	7 years imprisonment, a fine or both	Life imprisonment, a fine or both	14 years imprisonment, a fine or both
Class B	5 years imprisonment, a fine or both	14 years imprisonment, a fine or both	14 years imprisonment, a fine or both
Class C	2 years imprisonment, a fine or both	14 years imprisonment, a fine or both	14 years imprisonment, a fine or both

This can mean whilst under interview at the police station, but is still often taken to be the first plea hearing in court. The credit goes down to a quarter off a sentence where a trial date has been set, and is again reduced to one tenth off a sentence if a defendant pleads guilty on the day of trial.

Amendments to the law in 2007 now mean that if there is a very strong case against a defendant, the court may only give a reduction of 20% for an early guilty plea rather than the usual one third. A court has to state its reasons for doing this.

Sentencing discounts are not available for compensation orders or the minimum periods of disqualification, mandatory penalty points, or any mandatory minimum sentences laid down by Parliament.

MAXIMUM PENALTIES FOR DRUG OFFENCES

The severity of the penalty applied in relation to drugs offences will depend on the individual circumstances of the case. However, maximum penalties are determined by the class of the drug and the offence involved, as set out in the following table. Please note these are the maximum sentences only, and in most cases will not be reflective of the sentence given.

Also, under s110 Powers of Criminal Courts (Sentencing) Act 2000, a minimum sentence of 7 years in custody will be imposed where an offender aged 18 or over is convicted for the third time of a class A drug trafficking offence, unless the court is persuaded that it would be unjust to do so.

PROCEEDS OF CRIME ACT 2002

The Proceeds of Crime Act 2002 (POCA 2002) was enacted to provide comprehensive legislation to deal with the recovery of proceeds of crime through a confiscation scheme. POCA 2002 replaced the Drug Trafficking Act 1994.

Asset recovery is an increasingly complex area of law. Only a very brief synopsis is given here of the powers available in relation to the making of confiscation orders and civil recovery.

POCA 2002 provides that assets which have been obtained through criminal behaviour can be seized after a defendant has been charged or convicted. Assets can also be seized in the absence of any criminal conviction. This is referred to as civil recovery.

The drugs offences in general that will trigger the possibility of a confiscation order are listed under Schedule 2 of the Proceeds of Crime Act 2002 and include production, supply and possession with intent to supply. These are known as 'lifestyle' offences.

Gather character references from previous employers, key workers and people from the community. If you are a carer for an elderly parent, ask them to write a letter to the Judge explaining how your incarceration would affect them.

Criminal confiscation orders

The Crown court can make a confiscation order if both of the following two conditions are satisfied.

First condition

The first condition is that the defendant is either:

- Convicted of an offence in proceedings before the Crown court; or
- Committed to Crown court for sentence; or
- Committed to the Crown court under section 70 POCA 2002, for the purpose of allowing the court to consider imposing a confiscation order.

Second condition

The second condition is that either:

- The prosecutor has requested that the court consider pursuing a confiscation order; or
- The court thinks it is appropriate to do so.

The court must decide whether the defendant 'has a criminal lifestyle'. If so, it must decide whether he/she benefited from his 'general criminal conduct'. If the court decides that the defendant does not have a criminal lifestyle, it must decide whether he/she benefited from his 'particular criminal conduct'. All these terms are defined in sections 75 and 76 of POCA 2002.

These matters will determine whether a Confiscation Order is made. The amount recoverable from the defendant should be equal to the amount by which he or she benefited, if that is available for recovery.

A Defendant will be presumed to have a criminal lifestyle if he/she has committed a lifestyle offence, and as such the court will presume that all the assets and monies that he/she has come into the possession of in the previous 8 years are the benefit of criminal conduct and should therefore be confiscated. Anybody who thinks they are facing such a possibility should get their finances in order, gathering together all their PAYE slips, proof of earnings, and any other income. Sworn statements from people who made monetary gifts can help, as can statements in relation to personal items sold.

Civil recovery resulting from unlawful conduct

Part 5 of POCA 2002 provides for the recovery of assets through the civil courts. Under these powers, the courts may recover assets which have been obtained through unlawful conduct or which are intended to be used in unlawful conduct.

'Unlawful conduct' is defined as conduct which is contrary to the criminal law in any part of the UK, or conduct which occurs outside the UK and is unlawful in both that country and the UK.

CRIMINAL RECORDS

- CAUTIONS & THE FINAL WARNING SCHEME
- REHABILITATION OF OFFENDERS ACT 1974
- CRIMINAL RECORDS & EMPLOYMENT
- CRIMINAL RECORDS & TRAVEL

A criminal record is a record of any criminal convictions, cautions or arrests held about an individual on the Police National Computer (PNC). Information contained on the PNC may be consulted in relation to court proceedings. The court will want information on relevant criminal convictions and cautions when determining sentence. The PNC will also be checked when carrying out a search of criminal convictions or cautions in respect of an application for employment. Whether a criminal record has any impact on employment will depend on whether the convictions are spent or on the type of employment sought; this will be discussed further in the section below 'Criminal records & Employment'.

CAUTIONS & THE FINAL WARNING SCHEME

Adult offenders who are dealt with at the police station in respect of an offence to which they have admitted guilt will receive either a simple or conditional caution. A caution is not a criminal conviction. Those under 18 do not receive cautions but are subject to the final warning scheme.

Cautions are discussed in detail in Chapter 3 but to summarize:

- A simple caution is a non statutory disposal for adult offenders. It is usually issued for first time low level offences, but it may be issued where a second offence has occurred and that offence is a minor offence, or two years have elapsed since the original caution was issued.
- A conditional caution is a statutory caution that can be offered by police as an alternative to court proceedings. Conditions fall into two categories, namely rehabilitation and reparation.

Rehabilitation conditions include:

- Drug treatment
- Alcohol treatment
- Anger management courses
- Driving rectification classes

Reparation conditions include:

- Repairing damage caused to property
- Restoring stolen goods
- Paying modest financial compensation
- Apologising to the victim

Consequences of both simple and conditional cautions

Neither type of caution is a criminal conviction, but they will be recorded on the PNC and may be considered in court if you are tried for another offence. The record will remain on the police database along with photographs, fingerprints and any other samples taken at the time.

In respect of conditional cautions, the conditions imposed must be complied with, failure to do so may result in the person being subject to prosecution for the original offence.

The Final Warning Scheme

Young people aged 17 and under are dealt with under the final warning scheme which was introduced by the Crime and Disorder Act 1998. The scheme allows for police to issue reprimands and warnings in respect of offences committed by young people; it is similar to the adult cautioning system.

The decision to issue a reprimand or warning will depend on the seriousness of the offence and whether the young person has received a previous reprimand or warning. Generally, a reprimand is given for a first offence and a warning for a second offence. If a young person has received a final warning and is subsequently arrested for a further offence, they will be charged. The exception to this is where the previous warning was issued more than two years ago and the offence is not so serious to require a charge, in these circumstances a final warning should be issued.

THE REHABILITATION OF OFFENDERS ACT 1974

The Rehabilitation of Offenders Act 1974 ('the 1974 Act') provides a statutory framework for the disclosure of convictions. According to the 1974 Act, if no offences have been committed in a set period of time after a conviction/ caution (called the 'rehabilitation period') and the sentence was less than two and a half years in prison, the conviction becomes 'spent' (forgotten).

Please see the table below for further information on rehabilitation periods. For those aged under eighteen years old at the date of conviction, the rehabilitation periods are halved. For more information about the periods, you could consult a solicitor or contact Release.

Once a conviction is spent it cannot normally be mentioned in court, or referred to in some other circumstances. In general, with some exceptions, it really can be forgotten.

The Act only applies to the United Kingdom. So if, for example, someone was to apply for a visa to visit another country, and was asked to disclose previous convictions, they would be governed by the law of the other country. Many countries have much harsher rules than the UK.

To work out your rehabilitation period, you must know when you were first convicted and what sentence you received. If you received a prison sentence, you need to know how long you were sentenced for. Any new convictions after this date will alter your rehabilitation period. There are different arrangements if you have committed a motoring offence and the matter was not dealt with by a fixed penalty notice (FPN).

Rehabilitation Periods

The Criminal Justice and Immigration Act 2008 has amended the Rehabilitation of Offenders Act to include cautions. The amendments mean that a conditional caution would become spent after a period of three months whilst a simple caution (reprimand or warning for young people) would become spent immediately. These provisions are not yet in force.

Sentence	Rehabilitation Period
Imprisonment, detention in a young offender institution, or youth custody, for more than 6 months but not more than 30 months.	10 years for adults. 5 years for under 18s.
Imprisonment, detention in a young offender institution, or youth custody, of 6 months or less.	7 years for adults. 3 years for under 18s.
Detention and Training Order where person aged at least 15 on conviction.	5 years if order greater than 6 months. 3 years if order less than 6 months.
Detention and Training Order where person aged under 15 on conviction.	1 year after order expires.
A fine.	5 years for adults. 2 years for under 18s.
Community Punishment Order or Community Punishment and Rehabilitation Order.	5 years for adults. 2 years for under 18s.
Community Rehabilitation Order (received prior to 3rd February 1995), bind over to keep the peace or to be of good behaviour, conditional discharge.	The date the order or bind over ceases, or one year, whichever is the longer.

Sentence	Rehabilitation Period
Community Rehabilitation Order (received post 3rd February 1995) or a Community Order under the CJA 2003, s177	5 years for adults. 2 years for under 18s.
Supervision Order	The date the order ceases or one year, whichever is the longer
Attendance Centre Order	1 year after the order expires
Referral Order	When the contract ceases to have effect
Secure Training Order	1 year after the order expires
Hospital Order	5 years from the date of conviction or 2 years after the order expires, whichever is longer
Disqualification and other orders imposing disability, prohibition or other penalty	The date the order ceases to have effect
Absolute Discharge	6 months

The following sentences will never become spent:

- Life imprisonment;
- Imprisonment, detention in a young offender institution, or youth custody for a term exceeding 30 months;
- Detention during Her Majesty's pleasure;
- Detention under section 91 PCC(S)A 2000, for life or for a term exceeding 30 months;
- Custody for life;
- Imprisonment for public protection under the section 225 CJA 2003;
- Section 226 detention for public protection under the CJA 2003;
- Sections 227 or 228 an extended sentence under the CJA 2003.

If you have been given a simple or conditional caution and you are asked if you have any criminal convictions, you should say no as cautions are not considered to be convictions. If you are asked whether you have a criminal record you will normally say yes as simple cautions, reprimands and warnings are part of your criminal record and currently are not subject to the protection of becoming spent under the 1974 Act. This will change when the new provisions under the CJIA 2008 come into force. Although consideration will have to be given to both the rehabilitation periods and the type of job applied for.

What is the guidance from the Association of Chief Police Officers (ACPO)?

Currently, ACPO guidance states that all cautions and convictions can be retained on the PNC for 100 years. This reasoning is based on the laws involving the Data Protection Act 1998. However, the Information Commissioner who is responsible for the execution of this Act has said that it is not lawful to retain this information for prolonged periods if it can be considered no longer relevant. The Commissioner upheld four cases where complainants had stated that to retain their cautions was not lawful under the 1998 Act. All four cases involved individuals who had received cautions for minor offences which had been committed

several years earlier. This decision has been upheld by the Information Tribunal but may be subject to appeal.

CRIMINAL RECORDS & EMPLOYMENT

What impact does a criminal record have on your employment prospects?

Having a criminal record can make it harder to find work. However, the 1974 Act offers protection to people who have been convicted but have not offended again within a certain period of time. As stated earlier, where a rehabilitation period has ended and a conviction has become 'spent' it is no longer necessary to disclose that conviction.

The exception to this is if the employment involved is considered to fall within the exempted professions. Professions falling within this category will always have to disclose convictions or cautions and will be subject to enhanced searches by the Criminal Record Bureau (CRB). The following is a list of exempted professions:

- Medical practitioner
- Barrister (in England and Wales), advocate (in Scotland), solicitor;
- Chartered accountant, certified accountant;
- Dentist, dental hygienist, dental auxiliary;
- Veterinary surgeon;
- Nurse, midwife;
- Ophthalmic optician, dispensing optician;
- Pharmaceutical chemist;
- Registered teacher (in Scotland);
- Any profession to which the Professions Supplementary to Medicine Act 1960 applies and which is undertaken following registration under that Act.
- Chartered psychologist
- Legal executive
- Taxi driver
- Judicial appointment
- Court clerk
- Police officer
- Member of the military
- Prison officer
- Probation officer

Any employment involving work with children or vulnerable adults will also be subject to an enhanced search by the CRB.

If your conviction is spent, you do not have to tell employers about it on application forms or during interviews for most jobs. If your conviction is not spent, you should tell an employer about your record if you are asked.

If you are applying for an 'exempted' job, you must tell the employer about your criminal record, including any spent convictions. This applies to certain jobs involving work with children and vulnerable people, and some other specific professions such as medicine and law. For these jobs you may be required to tell your prospective employer about all convictions, including spent convictions.

If you have to disclose any conviction it may help to give an employer a good reason why you should not be rejected because of it. If the conviction related to a personal problem which has now been sorted out it may help to explain this. Although it is not always the case, some employers are more understanding about criminal convictions than you might expect. It is sometimes advisable to write a disclosure letter to employer when applying for jobs so that you can fully explain the circumstances around your conviction. A sample disclosure letter can be obtained from the Apex Trust (<http://www.apextrust.com/>).

Notifiable Occupations

In some circumstances the police will contact an employer after they have arrested someone for an offence and the person arrested falls within what is known as a notifiable occupation. This process is not governed by legislation but is based on guidance issued by the Home Office.

The general rule is that the police should maintain confidentiality in relation to an arrest/ conviction unless disclosure is justified on the basis of substantial public interest considerations. Those who work with children or vulnerable people are likely to find that their employer would be contacted. For further information about this contact Release.

CRIMINAL RECORDS & TRAVEL

Visa regulations differ depending on the country of destination; it is also likely that the rules around entry can change frequently. The Rehabilitation of Offenders Act 1974 applies in the UK only; consequently, even a spent conviction may have to be disclosed when travelling abroad. In some countries, such as the USA, having been previously arrested for an offence involving drugs requires disclosure as a visa will be required for travel.

Release has contacted a number of embassies about this matter; please contact us for further information.

If you are worried about your application you may want to ring the country's embassy. You are under no obligation to give your name when making such an enquiry.

APPENDIX

The following sentences are maximums only and are not reflective of sentences given in the majority of drug offences. Please note that not all controlled substances are listed here. Consult Release or a solicitor for information on substances not covered here.

2CI is a class A, schedule 1 drug. Possession, supply and production are illegal. Possession carries a maximum sentence of 7 years imprisonment and a fine. Supply and production carry a maximum sentence of life imprisonment and a fine.

2CB is a class A, schedule 1 drug. Possession, supply and production are illegal. Possession carries a maximum sentence of 7 years imprisonment and a fine. Supply and production carry a maximum sentence of life imprisonment and a fine.

Amphetamines (including dexamphetamine) are class B drugs. It is illegal to possess them without a prescription or to supply or produce them without a licence. If prepared for injection they become class A substances. Possession of class B drugs carries a maximum sentence of 5 years imprisonment and a fine. Supply and production carry maximum sentences of 14 years imprisonment and a fine. Possession of class A drugs carries a maximum sentence of 7 years imprisonment and a fine. Supply and production carry a maximum sentence of life imprisonment and a fine.

Anabolic steroids are class C drugs, Schedule 4(ii) drugs. Possession, importation and exportation are lawful as long as the drug is for personal use and is in a medicinal form. Unauthorised supply or production is an offence and carries a maximum of 14 years imprisonment and a fine.

Barbiturates are class B drugs. Possession without a prescription, or supply or production without a licence, is illegal. Possession carries a maximum of 5 years imprisonment and a fine. Supply or production carries a maximum sentence of 14 years imprisonment and a fine.

Benzodiazepines (including diazepam, flunitrazepam and temazepam) are class C drugs. Possession without a prescription, or supply or production without a licence, is illegal. Possession carries a maximum sentence of 2 years imprisonment and a fine. Supply or production carries a maximum sentence of 14 years imprisonment and a fine.

Buprenorphine (including Subutex) is a class C drug. Possession is illegal without prescription and carries a maximum sentence of 2 years imprisonment and a fine. Illegal supply and production carry a maximum sentence of 14 years imprisonment and a fine.

Cannabis is a class C drug. It is illegal to possess, supply or produce this drug. Special police guidelines exist in relation to arrest for possession of cannabis. (Cannabis is due to be reclassified to a Class B drug in January 2009). Possession carries a maximum sentence of 2 years imprisonment and a fine. Supply and production carry a maximum sentence of 14 years imprisonment and a fine.

Cocaine (including crack cocaine) is a class A drug. Possession without a prescription is illegal. It is illegal to supply or produce cocaine. Possession carries a maximum sentence of 7 years imprisonment and a fine. Supply or production carries a maximum sentence of life imprisonment and a fine.

Codeine is a class B drug. If prepared for injection it becomes a class A substance. It is illegal to possess without prescription or to supply or produce without a licence. Illegal possession carries a maximum sentence of 5 years imprisonment and/or a fine. Illegal supply and production carry a maximum sentence of 14 years imprisonment and a fine. Possession of class A drugs carries a maximum sentence of 7 years imprisonment and a fine. Supply and production carry a maximum sentence of life imprisonment and a fine.

Diamorphine. see Heroin.

Dihydrocodeine is a class B drug. If prepared for injection it becomes a class A substance. It is illegal to possess without prescription or to supply or produce without a licence. Possession of class B drugs carries a maximum sentence of 5 years imprisonment and a fine. Illegal supply and production carry a maximum sentence of 14 years imprisonment and a fine. Possession of class A drugs carries a maximum sentence of 7 years imprisonment and a fine. Supply and production carry a maximum sentence of life imprisonment and a fine.

Dipipanone is a class A drug. It is illegal to possess without a prescription, or to supply or produce without a licence. Possession carries a maximum sentence of 7 years imprisonment and a fine. Supply and production carry a maximum sentence of life imprisonment and a fine.

Ecstasy is a class A, schedule 1 drug. Possession, supply and production are illegal. Possession carries a maximum sentence of 7 years imprisonment and a fine. Supply and production carry a maximum sentence of life imprisonment and a fine.

GHB is a class C drug. It is illegal to possess, supply or produce this drug. Possession carries a maximum sentence of 2 years imprisonment and a fine. Supply and production carry a maximum sentence of 14 years imprisonment and a fine.

Hallucinogenic mushrooms. Any fungus which contains psilocin is a class A, schedule 1 drug. Possession carries a maximum of 7 years imprisonment and a fine. Supply of mushrooms carries a maximum of life imprisonment and a fine. No offence is committed if the fungus is growing naturally without being cultivated, and if it has not been picked.

Heroin (diamorphine) is a class A drug. It is illegal to possess without a prescription, or to supply or produce without a licence. Possession carries a maximum sentence of 7 years imprisonment and a fine. Supply and production carry a maximum sentence of life imprisonment and a fine.

Ketamine is a class C drug. It is illegal to possess, supply or produce this drug. Possession carries a maximum sentence of 2 years imprisonment and a fine. Supply and production carry a maximum sentence of 14 years imprisonment and a fine.

LSD is a class A, schedule 1 drug. Possession, supply and production of LSD are offences. Possession carries a maximum sentence of 7 years imprisonment and a fine. Supply and production carry a maximum sentence of life imprisonment and a fine.

Methadone is a class A drug. It is illegal to possess without a prescription, or to supply or produce without a licence. Possession carries a maximum sentence of 7 years imprisonment and a fine. Supply and production carry a maximum sentence of life imprisonment and a fine.

Methylamphetamine is a Class A drug. It is an offence to possess, supply or produce. Possession carries a maximum sentence of 7 years imprisonment and a fine. Supply and production carry a maximum sentence of life imprisonment and a fine.

Morphine is a class A drug. It is illegal to possess without a prescription, or to supply or produce without a licence. Possession carries a maximum sentence of 7 years imprisonment and a fine. Supply and production carry a maximum sentence of life imprisonment and a fine.

Opium is a Class A drug. It is an offence to possess, supply or produce. Possession carries a maximum sentence of 7 years imprisonment and/a fine. Supply and production carry a maximum sentence of life imprisonment and a fine.

Phenethylamines (including MDMA) are class A, schedule 1 drugs. Possession, supply and production are illegal. Possession carries a maximum sentence of 7 years imprisonment and a fine. Supply and production carry a maximum sentence of life imprisonment and a fine.

Solvents and gases. It is not illegal to possess solvents and/or gases. It is illegal for a retailer to supply, or offer to supply, intoxicating substances to someone under the age of 18. It is also an offence for a retailer to supply intoxicating substances to someone he believes is acting on behalf of a person under the age of 18. It is also illegal to sell cigarette lighter refills containing butane to under 18 year-olds.

Subutex. See Buprenorphine.

USEFUL CONTACTS

LEGAL ADVICE

Release

Advice on drug-related legal issues.
www.release.org.uk
0845 450 0215 (office hours only for specialist advice)

Liberty

Advice on civil liberties and promotion of human rights for everyone.
www.liberty-human-rights.org.uk
020 7378 3656

The Law Society of England and Wales

Advice on choosing and using solicitors.
www.lawsociety.org.uk
020 7242 1222

Community Legal Service

Advice on some legal issues and advice on choosing and using solicitors.
www.clsdirect.org.uk
0845 345 4345

Citizens' Advice Bureaux (CAB)

Legal advice, assistance and representation (areas of expertise vary locally).
www.citizensadvice.org.uk
(see phone book for local branches)

Advice UK

Links to advice services across the UK.
www.adviceuk.org.uk

The Law Centres Federation

Information provided on where to access local law centres.
www.lawcentres.org.uk

Office of Public Sector Information

Online access to Acts of Parliaments; statutory instruments etc.
www.opsi.gov.uk

The Apex Trust

Advice provided on employment issues relating to criminal records.
www.apextrust.com
020 7638 5931

Sentencing Advisory Council

Links to sentencing guidelines.
www.sentencing-guidelines.gov.uk

DRUGS ADVICE

Release

Advice on drug-related legal issues.
www.release.org.uk
0845 450 0215 (office hours only for specialist advice)

Frank

Government helpline and website providing 24 hour access to advice.
www.talktofrank.com
0800 77 66 00 (24 hours)

Drugscope

Charity providing advice on information on drug related issues.
www.drugscope.org.uk
020 7940 7500

OTHER RELEASE PUBLICATIONS

Booklets

- Safer Heroin
- Treatment for Heroin users
- Cannabis in depth

Cards

- Bust card
- Sex workers' rights card
- Section 8 card
- Caution card
- Young person's bust card
- Detection card

Online Resources

- Online legal manual

Release

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“Drugs and the Law” outlines: the criminal offences relating to drugs; police powers of stop, search, and entry; rights on arrest and at the police station; drug testing and interventions; police station and court procedure; bail and sentencing. In short, it is hoped that this publication will be a practical guide for those engaged with the criminal law through their drug-use, and also for their families and friends, statutory and voluntary agencies, and other professionals who come into contact with those affected by drugs and the law.

Release is a charity which since 1967 has offered advocacy, education, campaigning and the only free helpline specialising in drug-related legal issues. Our advice is professional and confidential and it is our aim to promote understanding of drug-related issues and to support an often marginalised section of society. We are delighted to be able, with the help of the Nuffield Foundation, to advance these aims by means of this publication.

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