



**HEDDLU
GOGLEDD CYMRU
NORTH WALES
POLICE**

Response Date: 14/05/2024

2024/410 - Policy and Procedure for the Verification of Prescribed Medical Cannabis

In response to your recent request for information regarding;

1) a copy of the Constabulary's policy or procedure for the verification of the legitimate possession, use, or presence (in saliva, blood, or urine) of THC resulting from prescribed medical cannabis/cannabis-based prescription medicine (CBPM);

North Wales Police do not have a policy in relation to CBPM.

2) if the Constabulary does not have a local policy regarding this, could you please confirm that the Home Office guidance is adhered to by the Constabulary - namely that someone claiming the legitimate possession and/or use of medical cannabis will be expected to produce: the original medication container complete with the pharmacy dispensing label bearing the name of the patient; with either a copy of their FP10 prescription or a letter from the prescribing clinician; and a form of recognised photo ID (such as a passport, driving licence, or a PASS accredited photocard) bearing the same name as displayed on the dispensing label and the copy of the FP10 or clinician's letter;

3) if your Constabulary does not have a policy in response to question 1, could you please provide the Constabulary's policy regarding procedural compliance with the PSED (Public Sector Equality Duty) of the Equality Act 2010, especially with regards to the avoidance of discrimination against disabled people. In the absence of a substantive policy, could you provide a clarification on the procedures in place to prevent the procedural or systemic discrimination against disabled people for the legitimate possession and use of their prescribed medication (through the seizure of prescription medicine or the arrest of the disabled person for their possession of this prescribed medicine);

4) a copy of any internal briefing documents provided to police officers regarding the existence of - and the process for the verification of - prescribed medical cannabis flower or other CBPM's following the Home Office Circular 2018: 'Rescheduling of cannabis-based products for medicinal use in humans' and The Misuse of Drugs (Amendments) (Cannabis and Licence Fees) (England, Wales and Scotland) Regulations 2018 which allowed the prescribing of medical cannabis (CBPM);

Please see previous response 052-24

5) the named lead for the Constabulary for matters pertaining to the verification of prescribed medical cannabis (CBPM's);

Detective Chief Inspector, Central Area, Local Policing Services

6) the Constabulary's policy or position relating specifically to the Constabulary's _recognition_ of unaccredited card schemes such as Cancard, despite an absence of such recognition by the Home Office, if such a policy exists;

Please see previous response 052-24

7) if your Constabulary is responsible for a port of entry or a domestic airport, whether the policies or procedures you specify differ for those departing from the United Kingdom or passing from landside to airside - as the Home Office regulations in this regard apply to the regulations relating to the personal carriage of controlled drugs, but not the procedures that should be followed by patients locally in compliance with these regulations (i.e. in terms of the practical steps that should be followed by patients to comply with these regulations);

In the border we defer to UK Border Force for all controlled drugs and related matters in the first instance.

8) the dates upon which any of the procedures, policies or positions engaged by your response to the above is due for review.

North Wales Police do not have a policy in relation to CBPM.

THIS INFORMATION HAS BEEN PROVIDED IN RESPONSE TO A REQUEST
UNDER THE FREEDOM OF INFORMATION ACT 2000, AND IS CORRECT AS AT 14/05/2024



**HEDDLU
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POLICE**

Response Date: 16/02/2024

2024/052 - Medical Cannabis

In response to your recent request for information regarding;

I am writing to request information under the Freedom of Information Act regarding the training, procedures, and guidance provided to officers in your constabulary concerning individuals using prescription medications, specifically medical cannabis users, who may be stopped while operating a vehicle.

Q1: Please could you provide copies of relevant training documents/excerpts that explain to officers how to manage situations where prescription medication users, generally or medical cannabis-specific, are stopped while operating a vehicle and would test positive, but their driving is not impaired?

Q2: Are alternative sobriety tests ever used, and under what circumstances? If yes, does this take into account the physical difficulties a prescription user may have? Please could you provide any supporting guidance or documentation about this given to front line officers.

Please find attached a previous Freedom of Information response 1056-23.

In line with DVLA guidance, prescribers should give patients advice on driving while using medical cannabis, as they would with any other medication. This advice covers the main point that the patient should not drive if they feel impaired, and sometimes includes more specific guidance to support safe consumption. This means that THC can still be detectable in your blood stream well beyond 28 days. No matter your medication, you should never drive whilst impaired.

Further to the previous response consultants able to prescribe Cannabis are held on the GMC Specialist Register. This can be checked by following this link - The medical register - GMC ([gmc-uk.org](https://www.gmc-uk.org))

Q3: Do your officers have any specific training around the use of prescription cannabis? Please could you provide a copy/excerpt of any relevant training or guidance.

Please find attached.

Please note: the College of Policing material held is not the most current available and therefore it no longer represents the current curriculum.

Medicinal cannabis prescription medication is the same as any other medication that needs a prescription. It is covered by the misuse of drugs act 1971.

Please see some links which may be of interest to you:

[Misuse of Drugs Act 1971 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

[Medical cannabis and road safety \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Q4: Please could you provide excerpts of any guidance provided to front-line officers on procedures around prescription medication, particularly but not exclusively: Under what circumstances confiscation of prescription medication is reasonable Under what circumstances arrest of a prescription medication holder is reasonable What actions a police officer should take to verify if a prescription is genuine What actions a police officer should take when a member of the public raises legislation they are unfamiliar with?

Please find attached.

THIS INFORMATION HAS BEEN PROVIDED IN RESPONSE TO A REQUEST
UNDER THE FREEDOM OF INFORMATION ACT 2000, AND IS CORRECT AS AT 05/02/2024



Response Date: 12/10/2023

2023/1056 - Medical cannabis

In response to your recent request for information regarding;

Please, can you provide me with:-

- **Legislation in regard to medicinal cannabis.**
- **Resources made available to officers in regard to how to deal with medicinal cannabis.**
- **Information on how officers are trained in dealing with medicinal cannabis, such as training programmes and initiatives.**

If someone has a prescription for Cannabis they will be able to tell you the name of their consultant and which clinic they are registered to. This can then be checked with a phone call directly to the clinic.

- All consultants able to prescribe Cannabis are held on the GMC Specialist Register.
- The three main clinics in the UK are the Lyphe Group, Curaleaf and My Access Clinics.
- Patients are required to carry their NHSFP10PCD prescription form if they have Cannabis on them – This will include the name of the drug, amount prescribed per dose and total quantity provided in words and figures – without this information it is NOT a legal prescription
- Medicinal Cannabis will either be consumed as an oil, a soft-gel capsule or using a vaporiser pen. It should not be rolled into a spliff and smoked as this is not a medically recognised consumption method. Other methods being trialled include pessaries, oral wafers and suppositories.
- Medicinal Cannabis will be carried by the patient in recognisable medication packaging – common varieties are NOIDEC T14 and ALTHEA T18. It will not be in a snap bag covered in smiley faces!
- A patient can only possess one month's personal supply at one time.
- There are no medicinal edible Cannabis products legally available in the UK.
- Reporting being a medicinal cannabis patient to the DVLA is the patient's responsibility, not the clinics.

We do not currently teach anything specific to medicinal cannabis as it would be classed the same as any other prescribed drug.

THIS INFORMATION HAS BEEN PROVIDED IN RESPONSE TO A REQUEST
UNDER THE FREEDOM OF INFORMATION ACT 2000, AND IS CORRECT AS AT 11/10/2023

Cancard

Information for police officers

From November 2020 there will be approximately 30 thousand Cancard registered medicinal cannabis patients in the UK who legally qualify for a private prescription, but are unable to afford to purchase one. In the UK there are currently 1.1 million people who would be eligible to register so this number is likely to increase.

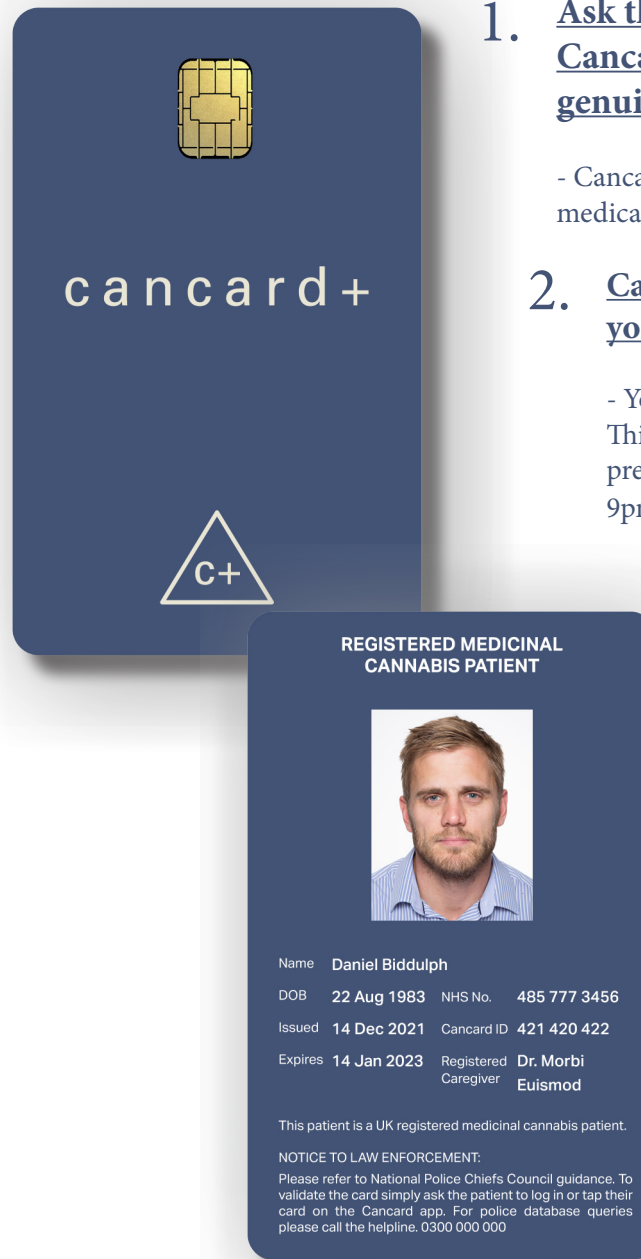
In order to help police identify these genuine medicinal consumers, an ID card project has been launched with the assistance of policing organisations and doctors. Cancard exists to assist front-line police officers when dealing with medicinal possession cases which do not fit into the scope for diversion or arrest, and where the officer may be considering the use of discretion. Cancard verifies genuine medical patients, so that you don't have to.

Fact sheet

- Private prescriptions currently cost upwards of £1500 per month.
- Approximately 90 prescriptions are written daily for cannabis flower in the UK for those who can afford it.
- Cancard holders medically and legally qualify for a private prescription and the ID is proof that they should be accessing one. The simple fact that they cannot afford to pay for a private prescription can place them in a position where they are in conflict with the law.
- In a recent poll 93% of patients (who are vulnerable and live with life long serious health conditions) said that they would like to not live in fear of the police simply for taking their medicine.

Cancard is a collaborative project. With thanks to:

DCC Jason Harwin - National Police Chiefs Council.
Simon Kempton - Police Federation.
t/DCI Jason Kew - Thames Valley police.
Rick Muir - Police Foundation.
PC Gary Carroll - drug expert witness.
PC Graham Walsh - drug expert Scotland.
Chief Superintendent Paul Griffiths - Police Superintendents Association.



1. Ask the patient to tap/log in to the Cancard app to verify that their card is genuine.

- Cancard patients have gone through thorough extensive medical checks to ensure the patient is eligible.

2. Call the policing help line on the card if you are still unsure of the validity.

- You will find the number on the back of the card. This also provides a back-up service if the patient presents without a phone. This will operate 9am-9pm daily.

3. Use this information as part of your National Decision Model

- We would hope that there would be no further need for action if you are satisfied that the patient is presenting a genuine registration card.
- Cancard patients have access to a unique helpline which will have all of their medical verification documents to support their eligibility for a private prescription.
- Patients will often prioritise their medicine over basic living expenses as it keeps their symptoms at bay. We would encourage you to be mindful of this when considering destruction over discretion.

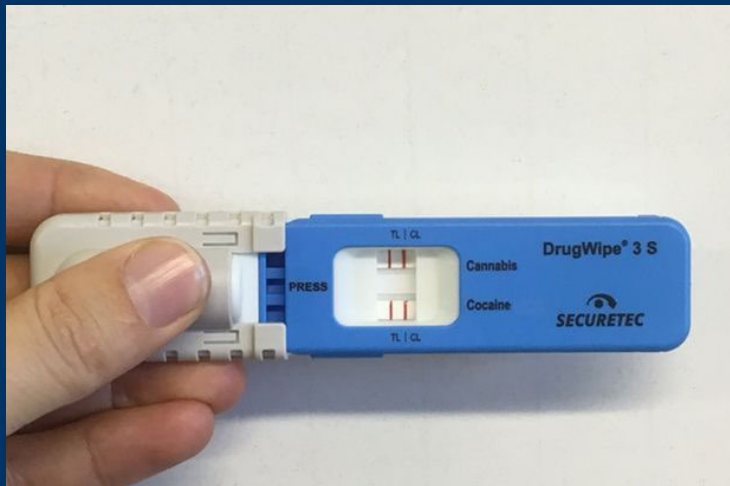
College of Policing curriculum learning outcomes

1. Misuse of Drugs Act 1971
2. Psychoactive SUBSTANCES Act 2016
3. Recognising impact factors that could increase the level of threat or risk e.g. drugs, alcohol, stress, anxiety, medical conditions such as Acute Behavioural Disturbance (ABD)
4. Drink/drug driving offences under the Fatal Four
5. 3.2 Key considerations where driving impairment or excess use of alcohol or drugs is suspected:
 - Likely indicators of driving whilst under the influence of drink or drugs e.g. driving manner, general demeanour etc.
 - Causing death by careless driving when under the influence of drink or drugs
 - Prescribed limit of alcohol in breath, blood, and urine
 - Drugs which have specified limits in blood
 - How evidence of impairment can be provided e.g. Preliminary Impairment Test (PIT) (Field Impairment Test) for alcohol and/or drugs and relevant documentation to be completed
 - Knowledge of the powers and processes for administering preliminary tests in accordance with relevant legislation
6. 4.3 Additional offences associated with the roads environment, for example:
 - No protective headgear when driving/riding motorcycles, carrying of passengers (including defences/exemptions)
 - Dangerous, careless and inconsiderate driving (including close passing of cyclists etc.)
 - Dangerous/careless and inconsiderate cycling, including cycling under the influence of drink or drugs
 - Electrically assisted pedal cycles and E-Scooters
7. 6.3 Seizure and management of material found at a scene or during a search e.g. digital devices, drugs, weapons, cash or stolen property, including forensic considerations
8. 2.13 Seizure and management of material found at a scene or during a search e.g. digital devices, drugs, weapons, cash or stolen property, including forensic considerations



Drug Driving

Sec 4 and Sec 5 (a) Drug Driving





Impairment

For Driving whilst unfit through drink or drugs, you will need to provide some evidence of impairment

What is impairment and how should we document this?

Conversation (slurred speech, smell of alcohol or not, context of conversation)

Gait – unsteady on their feet, hand eye coordination, ability to drive



Impairment

To prove a driver was impaired and unfit to drive through either drink or drugs, they do not have to be over the prescribed limit.





Evidence



Any level of impairment must be documented as this is evidence to support your case

Storm, witnesses, RTC

Record it at the time in your PNB, MG DD/F or MGDD/A



Section 5 (a)

March 2015
the new Sec
5 (a),
driving
whilst over
the
prescribed
drug limit

Drugs and driving

(1) After section 5 of the Road Traffic Act 1988 ("the 1988 Act") insert—

"5A Driving or being in charge of a motor vehicle with concentration of specified controlled drug above specified limit

(1) This section applies where a person ("D")—

(a) drives or attempts to drive a motor vehicle on a road or other public place, or

(b) is in charge of a motor vehicle on a road or other public place,

and there is in D's body a specified controlled drug.

(2) D is guilty of an offence if the proportion of the drug in D's blood exceeds the specified limit for that drug.

(3) It is a defence for a person ("D") charged with an offence under this section to show that—

(a) the specified controlled drug had been prescribed or supplied to D for medical or dental purposes,

(b) D took the drug in accordance with any directions given by the person by whom the drug was prescribed or supplied, and with any accompanying instructions (so far as consistent with any such directions) given by the manufacturer or distributor of the drug, and

(c) D's possession of the drug immediately before taking it was not unlawful under section 5(1) of the Misuse of Drugs Act 1971 (restriction of possession of controlled drugs) because of an exemption in regulations made under section 7 of that Act (authorisation of activities otherwise unlawful under foregoing provisions).



Powers to request sample

Sec 6 RTA, A, B and C Driving or attempting to Drive





Prescribed limits

There are
16
specified
Drugs
which are
tested in
BLOOD
only

Controlled Drug ¹	Limit - µg (microgrammes) per litre of blood
Benzoylcegonine [the primary metabolite of cocaine]	50
Clonazepam [commonly prescribed for anxiety and epilepsy. Causes drowsiness and enhances the effects of alcohol]	50
Cocaine	10
Delta-9-Tetrahydrocannabinol [known also as THC, the main psychoactive ingredient in cannabis]	2
Diazepam [commonly prescribed for anxiety and epilepsy. Also used to manage alcohol withdrawal]	550
Flunitrazepam [also known as Rohypnol (a 'date rape' drug), a hypnotic drug commonly prescribed for insomnia]	300
Ketamine [commonly used in veterinary medicine. It has anesthetic and psychedelic properties]	20
Lorazepam [prescribed for anxiety and insomnia]	100
Lysergic Acid Diethylamide [LSD]	1
Methadone	500
Methylamphetamine [usually known as amphetamine]	10
Methylenedioxymethamphetamine [usually known as MDMA and ecstasy]	10
6-Monoacetylmorphine [a metabolite of diamorphine/heroin]	5
Morphine	80
Oxazepam [prescribed for anxiety and also a metabolite of Diazepam and Temazepam]	300
Temazepam [commonly prescribed for insomnia and also a metabolite of Diazepam]	1,000
¹ . Information taken from the Joint Formulary Committee, <i>British National Formulary (BNF) 68</i> and K. Wolff <i>et alii</i> , <i>Driving Under The Influence Of Drugs: Report from the Expert Panel on Drug Driving</i> .	



Procedure when dealing with Drug Drivers

Roadside

As with Drink Drive, we should always screen for alcohol first, regardless if you suspect drugs

If you suspect impairment, use Sec 4 or 5(a) if Drug Wipe available

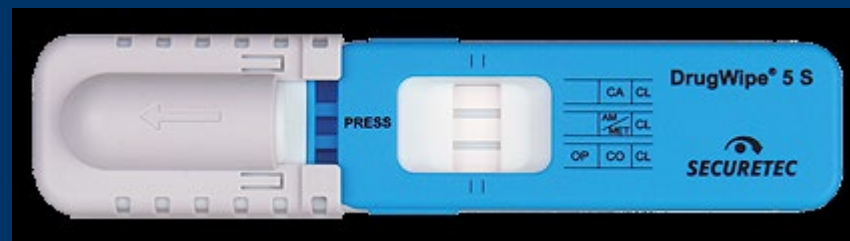
Field Impairment Test





Procedures

Drug Wipe





Drug Wipe



Drug Wipes are produced by Securetec through D Tec International Ltd

This is a roadside screening system that tests for cannabis and cocaine, newer versions can test also for Ketamine



Drug Wipe

Drug Wipes work by the driver providing saliva onto two contact pads in the Wipe System, those pads are exposed to chemicals inside the device and will produce a pass or fail reading

At the moment only RPU Officers are issued the Wipes, each Wipe is single use and has to be discarded, it is non evidential and costs £18 each

Failure to comply with a Drug Wipe screening test can result in an arrest for Fail to Provide.



Drug Wipe

As with the SL500, the Drug Screener can be used at the roadside or at a Police Station

If positive it can result in an arrest for 'Suspicion of driving whilst over the prescribed drug limit'

Blood samples will need to be taken at a Police Station or Hospital if a RTC.

Urine cannot be taken for Sec 5 (a) but can for Sec 4 Unfit (evidence of unfit must accompany all Unfit cases)



Drug Drive

There will be occasions when a Drug Wipe will come back negative, however if you have evidence of impairment, remember Sec 4??

If there is ANY evidence of impairment, consider arrest for Sec 4 along with Sec 5



Field Impairment Tests

Field Impairment Test (FIT)

FIT can only be carried out by trained officers. This is a test than can be done at the roadside or in a Police Station

FIT is good evidence for impairment and adds valuable weight to cases should the driver fail the test. Refusal may result in an arrest for failing to provide





SEC 4 and 5 (a)

Blood can be taken for Sec 5 (a) for analysis by a Force Medical Examiner (FME) Doctor

Blood can also be taken by a Health Care Professional (HCP) Nurse

Urine CANNOT be taken for Sec 5(a) Drug Driving, but can for Sec 4 Impairment as supporting evidence.

In essence Sec 5 (a) blood results will give the quantity of drug in that sample and state if over the limit, Urine result will state which type of drug is in the sample, but not the quantity and will say if it can cause impairment



Drug Drive

Samples

Blood and Urine samples will be sealed in the correct packaging and must be refrigerated ASAP, changes are coming in where they may need to be stored for transportation under chilled conditions.





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Misuse Of Drugs Offences

gwneud Gogledd Cymru'r lle **mwyaaf dlogel** yn y DU
making North Wales the **safest** place in the UK



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Misuse of Drugs Act 1971

Section 5 – Possession Of A Controlled Drug

Section 4 (3) – Supplying / Concerned In Supply / Offering To Supply
Controlled Drugs

Section 5 (3) – Possession With Intent To Supply

Section 4 (2) – Producing Controlled Drugs

Section 6 – Cultivation Of Cannabis

Section 8 – Controlled Drugs On Premises

Section 23 – Powers Of Search





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Classification Misuse Of Drugs Act 1971

CLASSIFICATION

Schedule 2 of the MDA 1971 lists controlled drugs to which the Act pertains. The principal purpose of having 3 classes of controlled drugs is to identify the level of sentence for offences involving them

Class A – includes heroin – methadone – cocaine – LSD – ‘Ecstasy’ MDMA and ‘crystal meth’

Class B – includes cannabis – cannabis resin – codeine – ketamine and Ritalin

Class C – includes Valium (diazepam) – khat - GHB



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Possession Of A Controlled Drug

Section 5 Misuse Of Drugs Act
1971

DEFINITION



It is an offence for any person to:
Unlawfully have a controlled drug in
their possession

Indictable Offence – Triable Either
Way

Class A - 7 years imprisonment on
Indictment

6 months Summarily

Class B - 5 years imprisonment
on Indictment

3 months Summarily

Class C - 2 years imprisonment on
Indictment

3 months Summarily



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Possession

Misuse Of Drugs Act 1971

POSSESSION

‘Possession’ is a neutral concept – not implying any kind of fault - blame or guilt of key importance to recognise in relation to ANY offence



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Possession

Misuse Of Drugs Act 1971

Physical Possession & Control

There are 2 elements to possession

- The physical element
- The mental element

R v Lambert 2002



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Possession

Misuse Of Drugs Act 1971

Physical Element

Involves proof that the substance is in the defendant's custody or under their control

Unlawful physical possession (custody)

OR

A lack of physical possession but unlawful control
of a substance

PLUS



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Possession

Misuse Of Drugs Act 1971

Mental Element

Involves proof that the defendant knows (subjective awareness) that they are in possession (custody or control) of a substance

They need not know what the substance is – but as long as they know the substance (whatever it is) is under their control – then it is in their possession



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Possession

Misuse Of Drugs Act 1971

Physical Possession & Control

Examples – A gives B their drugs for safekeeping – both A (in control) and B (in physical possession) will be guilty of ‘possession’

If A slips a substance into B’s pocket without their knowledge – then B will not attract criminal liability – as they will lack knowledge of their ‘possession’

Warner v MPC 1969



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Possession

Misuse Of Drugs Act 1971

Lack Of Knowledge Of Possession

If the quantity of the substance is so miniscule that the defendant could not possibly have been aware of it's presence – there will be no possession

The quantity must be 'visible, tangible and measurable'
R v Boyesen 1982



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Possession

Misuse Of Drugs Act 1971

Proving Possession

Once 'possession' has been proved as above –
then it is necessary to prove that the substance
the defendant 'possesses' was in fact a
controlled drug





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Possession

Misuse Of Drugs Act 1971

Lack Of Knowledge – As To The Nature Of The Substance In Their Possession

It is not necessary to prove the accused knew the substance in their possession or under their control was a controlled drug

A mistake or lack of knowledge as to the quality or nature of the substance will not prevent them being in possession of it

Therefore – in proving possession – it is irrelevant if the accused thought they were in possession of a different substance

If possession is established – and the substance turns out to be a controlled drug – the offence is complete



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Possession Of A Controlled Drug

Section 5 Misuse Of Drugs Act
1971

DEFENCES

To Unlawful Possession

Section 5 MDA 1971 provides 2 special
defences to unlawful possession only

Defence 1 - To prevent another from
committing an offence

Defence 2 - To deliver the drugs to a person lawfully
entitled to take custody



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Possession Of A Controlled Drug

Section 5 (4)(a)
Misuse Of Drugs Act
1971

Defence 1 – Section 5 (4)(a) MDA 1971

To Prevent Another From Committing An Offence
Either:

Knowing or Suspecting it to be a controlled drug

They took possession of the drug to prevent another from committing an offence (in the future) or continue to commit an offence in connection with that drug

OR



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Possession Of A Controlled Drug

Section 5 (4)(a)
Misuse Of Drugs Act
1971

Defence 1 – Section 5 (4)(a) MDA 1971

...ASAP after taking possession of the drug they took all reasonable steps to either:

Destroy the drugs or Deliver the drugs to a person lawfully entitled to take custody of them



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Possession Of A Controlled Drug

Section 5 (4)(b)
Misuse Of Drugs Act
1971

Defence 2 – Section 5 (4)(b) MDA 1971

To Deliver The drugs To A Person Lawfully Entitled To Take Custody

Either: Knowing or Suspecting to be a controlled drug

They took possession of the drug solely for the purpose of delivering it into the custody of a person lawfully entitled to take custody of the drugs

OR



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Possession Of A Controlled Drug

Section 5 (4)(b)
Misuse Of Drugs Act
1971

Defence 2 – Section 5 (4)(b) MDA 1971

...ASAP after taking possession of the drug they took all reasonable steps to deliver the drugs to a person lawfully entitled to take custody of them



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Possession Of A Controlled Drug

Section 5 Misuse Of Drugs Act
1971

Note the differing purposes of taking possession of the drugs –

Delivery – delivery only

Prevention of another committing an offence – prevent offending only

Action To Be Taken Once In Possession

If your defence is delivery – your only option is to deliver the drugs to a person lawfully entitled to possess

You cannot rely on the defence of innocent possession if you then destroy the drug

Whereas the prevention of another committing an offence defence the person taking possession has the option of either

Destroying OR Delivering



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Possession Of A Controlled Drug

Section 5 Misuse Of Drugs Act
1971

Timing Of Destruction

Any destruction of drugs must be with immediate effect

Example Of Taking Possession To Prevent Offending

A parent comes home to find their child smoking cannabis

They could take possession of the cannabis and would have a defence if they ASAP after taking possession either flushed it down the toilet to destroy it or delivered it to a police officer

If instead they locked it in a cupboard and returned at a later time to destroy the drugs – they would have no defence – as they will not have taken the action ASAP



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Section 28 Misuse Of Drugs Act 1971

Defences

The 'possession' element may seem harsh as the Mens Rea relates to knowledge of possession of the item, rather than knowledge that it was a drug.

Luckily, Section 28 provides a defence for certain Drug Act offences, including possession.

This section can be read in full at [Misuse of Drugs Act 1971 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1971/38/section/28)

the accused shall be acquitted thereof—

- (i) if he proves that he neither believed nor suspected nor had reason to suspect that the substance or product in question was a controlled drug; or
- (ii) if he proves that he believed the substance or product in question to be a controlled drug, or a controlled drug of a description, such that, if it had in fact been that controlled drug or a controlled drug of that description, he would not at the material time have been committing any offence to which this section applies.



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Supplying Controlled Drugs

Section 4(3) Misuse Of Drugs Act
1971

SUPPLYING CONTROLLED DRUGS

Section 4(3) Misuse Of Drugs Act 1971



It is an offence to either:

Supply

Be concerned in the supply

Offer to supply

Be concerned in making an offer to supply...

...a controlled drug

Indictable Offence – Triable Either
Way

Class A – Life imprisonment on
Indictment

6 months Summarily

Class B - 14 years imprisonment
on Indictment

3 months Summarily

Class C - 5 years imprisonment on
Indictment

3 months Summarily



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Supplying Controlled Drugs

Section 4(3) Misuse Of Drugs Act
1971

SUPPLYING

‘Supply’ involves more than a mere transfer of physical control of the substance from one person to another – but involves a further concept – ‘enabling the recipient derive some benefit from being given the drug’

An act of supplying involves 3 elements:

Transferring control of the drug

The recipient deriving some benefit from being given the drug

Knowledge by the accused that the actions involved supply of a controlled drug



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Supplying Controlled Drugs

Section 4(3) Misuse Of Drugs Act
1971

SUPPLYING

Most obvious example is a straightforward sale of drugs from one person to another

However – payment is not a necessary element – the key point is that the recipient can do as they please with the drugs and derive a benefit from receiving them



Exam Trip Ups

Persons Looking After Drugs

Watch out for situations where a person (A) gives drugs to another (B) purely for B to look after them for A as a favour for safekeeping

If all B is doing is looking after them as a favour – A will not have supplied B – as B derived no benefit from receiving the drugs

R v Dempsey 1986



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Supplying Controlled Drugs

Section 4(3) Misuse Of Drugs Act
1971

Exam Trip Up

What If Person Looking After Drugs Derives A Benefit?

If the person holding onto the drugs as a favour derives a benefit – e.g. payment or a cut of the drugs – then there will have been an act of supplying – R v Maginnis 1986

Therefore – if A gave B a reward for looking after the drugs – B will now have derived a benefit and A will have supplied B

Also – if A permitted B to use some of the drugs handed over as way of a thank you – then B will also have derived a benefit and A will have supplied B



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Supplying Controlled Drugs

Section 4(3) Misuse Of Drugs Act
1971

What Happens When Recipient Hands Drugs Back After Looking After Them?

When the recipient who looked after the drugs (B) hands the drugs back to the owner (A) – at this point B will have supplied A – as A now derives a benefit (the ability to use the drugs)

Also – whilst looking after the drugs on behalf of A – B would also be committing the offences of unlawful possession of controlled drugs and possession with intent to supply



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Injecting Others With Controlled Drugs

A injecting B with B's own controlled drug is NOT an act of supplying

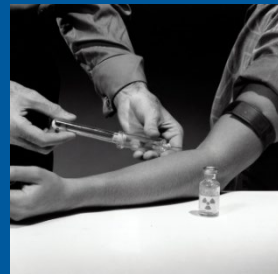
R v Harris 1968

(it may however amount to an offence of Poisoning)

Dividing Up Joint Purchases

The division of jointly purchased controlled drugs IS an act of supplying

R v Buckley 1979





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OFFERING TO SUPPLY

The offence of Offering To Supply involves only 2 elements:

An offer to supply is made (by words or conduct)

Knowledge by the accused that the actions involved the offer to supply a controlled drug





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Note

It is not necessary to have either:

The ability to actually supply the controlled drug offered OR The intention to carry out the offer

Merely making the offer itself is sufficient – provided it is accompanied by the knowledge that they were making an offer
R v Goddard 1992

If the substance offered is not actually a controlled drug (e.g. talcum powder) – the offence of offering to supply is still complete once the offer is made

This is the case even if the person offered knows they are being offered talcum powder
R v Goddard 1992



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CONCERNED IN SUPPLY

To establish that a person is concerned in supplying – it is necessary to establish 3 elements:

Element 1 – an act of either: Supplying OR Offering To Supply (by someone)

Element 2 – Participation of the defendant

Element 3 – Guilty knowledge of the defendant

NOTE – To be concerned in the supplying – the defendant must play an active part
R v Hughes 1985



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Possession With Intent To Supply

Section 5(3) Misuse Of Drugs Act
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POSSESSION WITH INTENT TO SUPPLY

Section 5(3) Misuse Of Drugs Act 1971

It is an offence for a person to have a controlled drug in
their possession either:

Lawfully (e.g. a doctor) OR Unlawfully...

Offence Complete



... with intent to unlawfully supply it to another



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Possession With Intent To Supply

Section 5(3) Misuse Of Drugs Act
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Indictable Offence – Triable Either Way

Class A – Life imprisonment on Indictment

- 6 months Summarily

Class B - 14 years imprisonment on
Indictment

3 months Summarily

Class C - 14 years imprisonment on
Indictment

3 months Summarily



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Possession With Intent To Supply

Section 5(3) Misuse Of Drugs Act
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Do not focus on the lawfulness of the actual possession – this is irrelevant

Focus upon the lawfulness of the intended supply

Example - a doctor or vet may be in lawful possession of drugs or tranquilisers by virtue of their profession

They would not commit the offence if they intended to lawfully supply the substance via prescription to a patient

They would commit this offence if they formed the intent to unlawfully supply the substance to a drug user / friend / another without a prescription

Likewise – a police officer may be in lawful possession of a controlled drug – but they will commit this offence if they form the intent to unlawfully supply the



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Possession With Intent To Supply

Section 5(3) Misuse Of Drugs Act
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When is the offence complete?

When the intent is formed to supply another by the person who has possession of the controlled drugs (whether lawfully or unlawfully)

There is no need for the actual result of the unlawful supply to take place

The intent must be for who to supply?

The person who has possession must have formed the intent to supply the drugs themselves

If the person in possession forms the intent for another 3rd party to supply the drugs - no offence will be committed - as the intent must be to supply the drugs themselves



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Possession With Intent To Supply

Section 5(3) Misuse Of Drugs Act
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Mistakes As To The Nature Of The Drugs They Intend To Supply

It is irrelevant if the person who formed the intent to supply the drugs was mistaken as to the nature of the drug

The very fact of possession of any controlled drug PLUS the intent to supply any controlled drug will make the offence complete

R v Leeson 2000

Example – offence still committed whereby a person intends to supply heroin but mistakenly had cocaine in their possession at the time of forming the intent



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Possession With Intent To Supply

Section 5(3) Misuse Of Drugs Act
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Checklist – Possession With Intent To Supply

Step 1

Was the accused in possession of a
controlled drug either lawfully or unlawfully?

No – No offence

Yes – proceed to step 2

Step 2

Did the accused form the intent to supply the controlled drug to
another themselves
(No need for the result of supplying)

No – No offence

Yes – Offence complete as soon as the intention to supply is
formed





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Producing Controlled Drugs

Section 4(2) Misuse Of Drugs Act
1971

PRODUCING CONTROLLED DRUGS

Section 4(2) Misuse Of Drugs Act 1971

It is an offence to either:

Produce (i.e. manufacture – cultivate - harvest) OR

Be concerned in the production of...

... a controlled drug



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Producing Controlled Drugs

Section 4(2) Misuse Of Drugs Act
1971

- Indictable Offence – Triable Either Way
- Class A – Life imprisonment on Indictment
 - 6 months Summarily

Class B - 14 years imprisonment on
Indictment

3 months Summarily

Class C - 5 years imprisonment on
Indictment

3 months Summarily



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Producing Controlled Drugs

Section 37 Misuse Of Drugs Act
1971

Section 37 Misuse Of Drugs Act 1971 states:

‘Produce’ – means producing by manufacture, cultivation or
any other method

‘Production’ – a corresponding meaning as above





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Producing Controlled Drugs

Section 4(2) Misuse Of Drugs Act
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'Converting' is production

Converting one type of Class A drug into another type of Class A drug amounts to the 'production' of a controlled drug

R v Russell 1992

Harvesting, cutting and stripping a cannabis plant is also 'production'

R v Harris 1996

Adding bulking agents is production

R v Williams 2011



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Cultivation Of Cannabis

Section 9 Misuse Of Drugs Act
1971

CULTIVATION OF CANNABIS

Section 9 Misuse Of Drugs Act 1971

It is an offence to unlawfully cultivate cannabis
(i.e. give attention to the plant) by either:



Watering

Feeding



Indictable Offence -
Triable Either Way

14 years
imprisonment on
Indictment

6 months Summarily

Artificial lighting etc



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Cultivation Of Cannabis

Section 9 Misuse Of Drugs Act
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Note

It is irrelevant whether the accused knew the plant
was in fact cannabis

R v Champ 1981





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Cultivation Of Cannabis

Section 9 Misuse Of Drugs Act
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Checklist

Step 1

Was the plant cannabis?

No – No offence

Yes – proceed to step 2

Step 2

Was the cannabis cultivated unlawfully (fed – watered etc)

No – No offence

Yes – Offence complete





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Cannabis Cards

Trainer – refer to the Cannabis Card Handouts in the Misuse of Drugs Folder



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Controlled Drugs On Premises

Section 8 Misuse Of Drugs Act
1971

CONTROLLED DRUGS ON PREMISES

Section 8 Misuse Of Drugs Act 1971

An offence will be committed by either:

The occupier of premises OR A person concerned in the management of premises who knowingly (subjective awareness) either:

Permits or Suffers either the:

Production (or attempted production) of a controlled drug

Smoking Cannabis or prepared opium

Supply (or attempted supply) of a controlled drug

Preparing opium for smoking



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Controlled Drugs On Premises

Section 8 Misuse Of Drugs Act
1971

Indictable Offence – Triable Either Way

Class A - 14 years imprisonment on Indictment
6 months Summarily

Class B - 14 years imprisonment on Indictment
6 months Summarily

Class C - 14 years imprisonment on Indictment
3 months Summarily



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Power To Search, Enter & Seize

Section 23 Misuse Of Drugs Act
1971

Section 23 Misuse Of Drugs Act 1971 states:

If a constable has reasonable grounds to suspect that a person is in possession of a controlled drug they may:

Detain and Search any person

Stop – detain and search any Vehicle or Vessel (boat etc)

Seize any evidence found during such searches

Note – Stop searches under this legislation are still subject to
PACE provisions – GOWISELY etc



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Obstruction

Section 23(4) Misuse Of Drugs Act
1971

A person commits an offence if they either:

Intentionally obstruct a person exercising their powers

Intentionally conceal from a person exercising their powers any:

Books – Documents – Stocks – Drugs

Without reasonable excuse – fail to produce books or documents where their production is demanded



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Misuse Of Drugs

Misuse Of Drugs Act
1971



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