

# **Back to B**

**Revised Guidance on  
Cannabis Law and Policing**

**February 2009**

## **Introduction:**

In January 2009, cannabis was moved from Class C back to Class B within the Misuse of Drugs Act 1971. This reversed the previous decision taken in 2001 to move cannabis from B to C.

As a result of this move back to class B, the penalties for possessing cannabis have once again changed.

As part of the reclassification, new strategies for the policing of cannabis are to be introduced.

This document is written for people who use cannabis, or other people interested in cannabis, so they can understand how the law and policing on cannabis works.

## **Is cannabis legal?**

No! Cannabis remains a controlled drug. The production, possession and supply remain an offence, and could bring a criminal record and a custodial sentence.

## **What does the move from class C to class B mean.**

The main change is that the maximum penalty for possession of cannabis goes up from two years to five years. In practice such a high sentence is not going to be imposed.

The penalties for supply remain at a maximum of fourteen years, and police will continue to have the power of arrest.

## **How is cannabis meant to be policed?**

For people over the age of 18, a "three strikes" approach is going to be implemented for simple cannabis possession. This would mean the following:

**1<sup>st</sup> offence:** you would get a "cannabis warning." This would be recorded, but is not the same as a criminal record or a caution.

**2<sup>nd</sup> offence:** you will receive a Penalty Notice for Disorder, which means you would be required to pay an £80. This would be recorded on the Police National Computer but is still not the same as a Criminal Record.

**3<sup>rd</sup> offence:** arrest and charge. This could result in a court appearance and a criminal record.

## **Have these powers come in to force?**

Apparently so. Initially the decision about introducing Penalty Notices for Disorder in relation to cannabis were suspended to allow for proper consultation. But the Home Office persuaded the House of Lords to pass the required legislation to bring PNDs in to force without consultation because they were in a hurry.

## **Is a “cannabis warning” the same as a caution?**

No. A “cannabis warning” is less formal. It doesn’t count as a criminal record, but it will be recorded on a force-wide basis so it may come up during checks. It may also come up as part of an enhanced CRB check.

## **What happens when you get a “cannabis warning.”**

The guidance says that the police should:

- See if other more serious offences such as supply may be committed
- Seize the cannabis
- Issue a “cannabis warning”
- Explain that this will be recorded and documented but that it does not constitute a criminal record.

## **What is a Penalty Notice for Disorder?**

These are fixed penalties that can be used for certain offences. To get a PND, police would examine your drugs to check it was cannabis, and confirm your identity. This could include using evidence that you had on you to confirm you are who you say you are and to confirm your address.

If the police were unable to confirm your identity or your address, then they would not be able to issue a PND.

A PND for cannabis would be £80 and should be paid or challenged within 21 days. If this doesn’t happen the fine would increase and could ultimately result in court action or a criminal record.

## **Can people under 18 get a “cannabis warning” or a Penalty Notice for cannabis**

No, under 18s cannot get cannabis warnings or PNDs for Cannabis Possession.. So they will continue to be handled under the Crime and Disorder Act. They could end up with a Reprimand, a Final Warning, or being charged and prosecuted for these offences.

## **Will people get arrested for possessing cannabis?**

It depends. The law gives the police the POWER of arrest but they are not OBLIGED to do so. The ACPO guidance says that officers should assess the “necessity of arrest.” Generally, the guidance says that arrest will not be required, but outlines situations where officers may need to arrest. These include

An arrest may be necessary where

- The name and/or address of the suspect are not known or there are reasonable grounds for doubting whether a name given is a real name.
- It is necessary to prevent the offender suffering physical injury or causing injury to someone else, or a person is smoking cannabis in the company or vicinity of other people and arrest is necessary to reduce the harm or risks faced by any individual if intervention is not taken, or a locality has been identified through the National Intelligence Model as one where there is fear of public

disorder associated with the use of cannabis which cannot be effectively dealt with by other means, such as where an open drugs (cannabis) market causes harm to communities.

- It is necessary to protect a child or vulnerable person from the offender  
*e.g. use is taking place near young people*
- It is necessary to allow the prompt and effective investigation of the offence.  
*e.g. there is a more serious offence like supply, or the person has had more than two previous cannabis warnings*

### **Will under 18s be arrested?**

People under 18 will not automatically be arrested for cannabis possession. The guidance now says that the police should consider taking them home, verifying identity and address and then proceed with them under the Crime and Disorder Act. This means that further formal action will be taken.

### **How much can I have on me before it is classed as supply?**

There is no fixed amount. The Government was going to create “threshold quantities” above which you would be assumed to be intending to supply. But they abandoned this approach.

### **What is classed as “supply”?**

Depending what you say or do, even the smallest amount of cannabis could be considered supply. The definition of supply is not based just on quantity, but also on intention and action. So passing a spliff can count as supply, and even supplying a small quantity can count as supply. The maximum penalty for supply of cannabis is fourteen years.

### **Will all police forces work in the same way?**

Not necessarily.

It is important to stress that this is guidance only. Different regional forces may develop their own approaches, and individual officers may interpret the guidance differently.

None of this applies in Scotland at present.

### **Can I still be stopped and searched for if police suspect that I have cannabis on me?**

Yes, you can.

### **How should a person react if stopped and is found to be possession of cannabis:**

- try to remain calm and polite
- remember, you do not have a legal right to possess cannabis; depending on how you act you may walk away without any cannabis but without a criminal record.
- Don't try and argue that the police can't arrest you – they can

- Don't say that the drug is not yours and it belongs to someone else – this could be considered intent to supply
- If you are happy to do so, acknowledge that the drug is cannabis, it is yours for personal consumption and agree to surrender it;
- You will be asked for your name and address; if you refuse to provide this (or the police think it may be a false address) or attempt to leave, the police may choose to arrest.
- You should then, for a first offence, be given a "cannabis warning."

### **How about people who use cannabis for medical reasons?**

They are not exempted from the legislation. At some point, some cannabis-derived medicines will enter the market and these will occupy a different schedule to cannabis and cannabis resin. Possession of these on prescription will be legal. Possession of other forms of cannabis will not be.

### **How does this affect premises?**

As the law stands, it is an offence to allow the use of cannabis on premises that you occupy or manage. This means that if you allow use to take place in your home, workplace, or a leisure venue, you could be prosecuted. Worse still, unless premises legislation is revised, allowing premises to be used for smoking cannabis will remain an arrestable offence and will carry a larger sentence than actually possessing cannabis itself. Organisations and individuals will still be obliged to prevent cannabis use and supply in premises that they occupy and manage.

### **I'm experiencing short-term memory loss; what were the main points again?**

- Cannabis has moved from class C to Class B. It remains an illegal controlled drug.
- The penalty for possession has gone up to a maximum of five years
- The penalty for supply has stayed the same, at a maximum of 14 years
- The police always have the power to arrest
- Police have been advised that generally, people found in possession not be arrested, but the drug should be confiscated and the person given a warning for a first offence
- Second offences could result in a Penalty Notice for Disorder being issued.
- Under 18s may not be arrested, but they will not get a Cannabis Warning and will be handled under the Crime and Disorder legislation.
- Allowing premises to be used for supply or smoking of cannabis remains a serious offence.
- The only source of cannabis will remain in the hands of illegal suppliers and this means that the hoped for separation of cannabis and other controlled drugs will not happen.

## **Where can I find out more:**

**For Home Office information about Cannabis Reclassification go here:**

<http://drugs.homeoffice.gov.uk/drugs-laws/cannabis-reclassifications/>

**For Police Guidance go here**

[http://www.acpo.police.uk/asp/policies/Data/ACPO\\_Cannabis\\_Guidance\\_-\\_28\\_Jan\\_09.doc](http://www.acpo.police.uk/asp/policies/Data/ACPO_Cannabis_Guidance_-_28_Jan_09.doc)

**For updates and information about cannabis from cannabis activists go here:**

<http://www.ukcia.org/>

<http://www.cannaprag.net/>

**For Government-funded information on cannabis go here:**

[www.talktofrank.com](http://www.talktofrank.com)

**For Information on cannabis and dependency go here:**

<http://www.knowcannabis.org.uk/>



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