

Use and Supply on Premises

Postponement of Section 8(d) and Introduction of Anti-social Behaviour Legislation

1: Introduction:

Section 1 of the Anti-social Behaviour Bill, placed before Parliament on the 27th March 2003, proposes new legislation to close and seal premises where the use or supply of Class A drugs is taking place. The Legislation has been produced at the end of long and sustained criticism of the Government's previous attempt to address this problem, notably the ill-advised amendment to Section 8(d) of the Misuse Of Drugs Act by Section 38 of the Police and Criminal Justice Act 2001.

This paper is intended to ensure that organisations are up-to-date with the current policy and legal situation, and look at what is likely to happen in the future.

2: What is the Anti-social Behaviour Bill?

It is a new piece of legislation prepared by the Home Office and put before Parliament on the 27th March 2003. The Bill contains a number of measures intended to address "anti-social" behaviour, and contains specific measures intended to address drug-related activities on premises.

3: Has the Bill come in to force yet?

No. The Bill still needs to be debated in Parliament. The substance of the legislation could be changed radically during its passage through Parliament, and the final outcome may be different to what is discussed here.

4: What measures does the Bill propose?

When the Police were concerned that the use or supply of class A drugs was taking place on premises **and** was causing disorder or serious nuisance, then the police can issue, after consultation with the local authority, a **Closure Notice**. This document would be served on the premises, and would inform those connected with the premises that an application is being made to close the premises, say when and where the closure hearing would take place, and restrict access to the building to the owner of the building or people who normally stay there.

Once a closure notice has been issued, the Police would seek a **Closure Order** from the Magistrates Court. The court will issue a Closure Order if they believe that the use or supply of Class A drugs has been taking place, that it has been connected to disorder or serious nuisance, and that without issuing a Closure Order, there is likely to be further nuisance or disorder.

A Closure Order means that the Police are now authorised to secure the premises, in the first instance for up to three months. Anyone attempting to remain on the premises or attempting to re-enter the premises without authority faces arrest and possibly imprisonment.

The legislation would work as follows:

- A Police Officer (superintendent or above) authorises the issue of a closure notice.
- A constable serves the closure notice on the property.
- The police apply to a magistrate's court for the making of a closure order.
- Once a closure order is made, the closure order will be enforced by the police.
- Breaches of the Closure Order will be an arrestable offence.
- Where needed the Closure Order may be extended to a maximum of six months.
- There is provision for appeals, reimbursement of police costs and grounds for compensation.

5: What is going to happen now to the amendment to Section 8(d) of the Misuse of Drugs Act 1971?

Section 8(d) has not been repealed and remains on the Statute Book awaiting a Commencement Order.

The Home Office has announced that they are not going to implement the changes to Section 8(d) of the Misuse of Drugs Act 1971 at this time. They are going to see how effective the powers proposed in the Anti-social Behaviour Bill are before reaching a decision on Section 8(d).

The change to Section 8(d) would have meant that occupiers and managers of premises would have been legally obliged to stop the use of all unlawfully held controlled drugs on their premises.

We would hope that this situation would be firmly resolved by a decision to repeal Section 8(d) to prevent commencement at a later date.

6: What am I currently LEGALLY obliged to do under Section 8?

You are still **legally** obliged under Section 8 to prevent the following activities taking place on your premises if you are aware that they are taking place:

- a) production or attempted production of controlled drugs;
- b) supply, attempted to supply or offers to supply a controlled drug;
- c) preparing opium for smoking.

There is some discussion about the current status of (d) which used to say "smoking cannabis or prepared opium," and was replaced with the amended clause which extended it to all controlled drugs unlawfully held.

The new clause related to the use of controlled drugs unlawfully held is **definitely** not in force. The old clause *may* no longer be enforceable and we are seeking clarification of this point.

In the meantime, it is probably safest for organisations to do what they reasonably can to prevent the use of cannabis on premises, but bear in mind that local police forces are likely to treat offences relating to use of cannabis on premises as a low priority.

It is important to stress that you will still be LEGALLY obliged to stop SUPPLY taking place on premises and failure to do so would still leave organisations exposed to risk of prosecution.

7: How is proposal in the Anti-social Behaviour Bill different from Section 8 of the Misuse of Drugs Act 1971?

This legislation is very different. Section 8 of the MDA 1971 creates **legal** obligations on the occupiers or managers of premises and compels them to do everything that they reasonably can to prevent the production, supply and use of Controlled Drugs on premises. Where an organisation failed in its efforts to do this, they ran the risk of prosecution and imprisonment.

The proposed legislation in the Anti-social behaviour Bill doesn't create the same **legal** obligations for organisations. It creates a model where if use or supply is going on and if it is causing nuisance, then the Police can seek and order to close and seal the property.

In practice this would work as follows, assuming that Section 8(d) was not in force. A housing provider could legally work with situations where ongoing use of controlled drugs was taking place, and would not be committing an offence under Section 8(d).

However, if this use caused nuisance or disorder, the Police could issue a Closure Notice. Before doing this, the Police would need to consult with the local authority. The housing provider would be able to attend the court hearing and, if necessary, argue why a Closure Order was not appropriate.

8: Is the Home Office planning to exempt anyone from the legislation?

The Home Office have written provision in to the legislation so that the Home Secretary can, if he chooses, exempt organisations or types of provision from the legislation. This is a very welcome inclusion. No examples of this have been given yet.

9: Under the proposals could we allow people to inject heroin in their rooms in hostels?

Provided that Section 8(d) remains dormant, the answer to this is a cautious 'yes'. You would need to ensure that such use did not put other residents at risk of harm or nuisance. This would be a breach of your organisations health and safety policy, and a breach of your duty of care to other residents.

If the activity started to cause nuisance to the public, you would run the risk that the police

would seek a closure order. However, there would be scope for the organisation to seek other routes to resolve the problem other than facing closure.

10: Will the same thing apply if we know supply of controlled drugs is taking place?

No. Legally you must still do everything that you reasonably can to stop supply taking place. If you do not, you could face prosecution under Section 8(b) and a closure order.

11: What is going to happen next?

The Bill will make its way through Parliament, and we will need to be watchful to ensure that no unhelpful amendments are attached to the legislation during this process. Then the Legislation will come in to force.

Organisations that are currently using policy frameworks that reflect the information on the KFx website or previous resources from Release can continue to do so legally. Organisations who are seeking to develop more flexible, non-exclusionary policies can continue to do so.

When the Bill has become law, we will announce details of what it contains, and how it affects provision. At this point, all the other literature relating to use and supply of drugs on the KFx website will be revised to reflect this change.

We will also issue an urgent bulletin if any further changes to Section 8(d) are announced, but, in lieu of such bulletins, it should be assumed that the amendment to 8(d) is currently suspended.

12: Where can I get further information?

You can download the Anti-social Behaviour Bill at:

<http://www.publications.parliament.uk/pa/cm200203/cmbills/083/2003083.pdf>

Explanatory notes relating to the Bill can be viewed at:

<http://www.publications.parliament.uk/pa/cm200203/cmbills/083/en/03083x--.htm>

Resources and information relating to Section 8 and other issues are posted at www.ixion.demon.co.uk

You can email kfx@ixion.demon.co.uk for further information, and to register for updates.

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