Legislation and Government Guidance relevant to Drugs-Related Litter

This section lists current, relevant legislation, the powers that are available to local authorities and their responsibilities under the legislation.

This document can only serve as a guide to, and synopsis of, the law and relevant guidance relating to drugs-related litter. It does not constitute legal advice. It may not be comprehensive and it may be misleading if relied upon as a complete explanation of the legal issues involved. If any matter is to be acted upon, the full texts of all the Acts and relevant statutory instruments must be consulted.

Environmental Protection Act (EPA) 1990 Part IV – Provisions relating to litter
Part IV of the Environmental Protection Act 1990 contains powers and duties to enable certain bodies to manage litter and associated environmental issues on the land for which they are responsible.

Under this Act, both duty bodies and citizens are given rights to take legal action to get areas cleaned up.

What are the litter laws?
It is a criminal offence to drop litter. The police, through the Crown Prosecution Service, or the local authority can prosecute litterers. Local authority officers and/or litter wardens can give an on-the-spot £50 fixed penalty notice for littering. However, the use of enforcement to tackle drugs related litter can be problematic. The Department for Environment, Food and Rural Affairs (Defra) does not recommend handing out fixed penalty notices for littering to drug users for the following reasons:

- At the point at which drug litter is discarded, users are unlikely to be in a suitable state to engage with enforcement officers.
- Approaching a drug user in this state would place enforcement officers at additional risk.
- A substantial proportion of users are unlikely to have the means to pay a fixed penalty or, if prosecuted, a court fine.
- Failure to pay a fixed penalty should normally be followed by court proceedings. However, the decision to take a drug user to court for littering is unlikely to pass the public interest test.
• It is also very unlikely that users would allow themselves to be injecting (and subsequently discarding used needles) in view of those in authority who could enforce the litter laws. For drug litter, unlike other forms of littering, enforcement is best left to the police who can take action within the wider context of their work to tackle the supply of drugs and those dealing and causing harm to communities.¹

Section 87: Offence of Leaving Litter
Section 87 makes dropping, throwing, leaving or depositing litter in a public place and causing defacement a criminal offence, carrying with it a maximum fine of £2,500 (level 4 on the standard scale). It is triable in the magistrates’ court.

Section 88: Fixed Penalty Fine for Littering
The same offence as in section 87 but the perpetrator can be given a fixed penalty fine of £50. The ticket is given ‘on the spot’, with 14 days to pay.

Section 89: Duty to Keep Land and Highways Clear of Litter
This section sets out the legal duty to clear litter and refuse (including dog faeces) from relevant land and highways. The duty is placed upon local authorities, educational institutions, designated statutory undertakers (e.g. transport operators, port authorities and airport authorities) and other duty bodies.

The local authority and other duty bodies have a legal duty to clear refuse and litter from relevant land for which they are responsible, such as streets, parks, playgrounds, tourist beaches and pedestrianised areas. They also have a duty to cleanse highways. Schools, colleges and universities have a legal duty to clear litter and refuse from their own land.

Code of Practice on Litter and Refuse
The stated objective of the Code is: ‘To provide practical guidance on the discharge of the duties under s. 89 (of the EPA) by establishing reasonable and generally acceptable standards of cleanliness which those under the duty should be capable of meeting’.

There is no specific reference to drug litter in the Code, although it does state that ‘where there is an accumulation of material that is potentially hazardous to health... duty bodies should make every effort to remove this within a shorter timescale than set out in the table’. The vast majority of

¹ Drug Related Litter Guidance, Draft Version March 2005, Defra
local authorities have (either informally or formally) far quicker response times for removing drug litter that those set out in the Code.²

The Code of Practice on Litter and Refuse (which applied to England, Wales and Scotland) was first published in January 1991 by the Secretary of State under section 89 of the EPA. It was subsequently reviewed by an Advisory Group and substituted by a Code dated 1 June 1999, published by the Department for the Environment, Transport and the Regions (DETR). For the full document please go to: http://www.defra.gov.uk/environment/localenv/litter/code/index.htm.

The Government in England and the Scottish Executive are currently reviewing this Code. The review may contain specific standards relating to the clearance of drug litter, although this will be subject to full public consultation.³ Revised Codes are likely to be introduced in 2005/06.

**Section 90: Litter Control Areas**
Local authorities can designate as Litter Control Areas certain types of littered land to which the public has access. Persons affected have 21 days to appeal.

**Section 91: Summary Proceedings by Persons Aggrieved by Litter**
This enables members of the public to apply to the magistrates’ court for a Litter Abatement Order to get an area that is under the control of a duty body cleared of litter and refuse. Non-compliance can lead to a maximum fine of up to £2,500, plus a daily fine.

**Section 92: Summary Proceedings by Litter Authorities**
Local authorities can serve a Litter Abatement Notice against owners or occupiers of certain types of relevant land that is defaced by litter, or if defacement is likely to recur.

² Drug Related Litter Guidance
³ Drug Related Litter Guidance
Sections 93 & 94: Street Litter Control Notices

Local authorities can require owners or occupiers of certain types of commercial premises to prevent or remove accumulations of litter or refuse in streets and adjacent open land, where litter is related to their activities.

NB: The legislative route may well be appropriate to use in order to clear land of drug litter, although it should be kept in mind that most landowners and occupiers will be innocent victims. Some local authorities, such as the London Borough of Camden, choose to tackle needles on private land through providing an extended collection service for which a charge is made by agreement with local businesses. A cooperative approach of this type can often be more productive than seeking to use enforcement powers.4

For the full Act go to: http://www.legislation.hmso.gov.uk/acts/acts1990/Ukpga_19900043_en_1.htm

Town and Country Planning Act 1990

Under section 215, if it appears to a local planning authority that the amenity of part of their area or an adjoining one is adversely affected by the condition of land in their area, they may serve a notice on the owner and occupier requiring them to remedy its condition within a certain time.

The owner or occupier may recover any expenses incurred in complying with the notice from anyone who caused or permitted the land to be in the condition that caused service of the notice.

The power could be used to deal with problems of discarded needles on private land, where these fit within the description of adversely affecting amenity. The Office of the Deputy Prime Minister has recently issued guidance on the use of section 215.

For the full Act go to: http://www.hmso.gov.uk/acts/acts1990/Ukpga_19900008_en_1.htm

For the guidance on section 215 go to: http://www.odpm.gov.uk/stellent/groups/odpm_planning/documents/page/odpm_plan_034817.pdf

Public Health Act 1961
Under section 34 the local authority has power to deal with any rubbish which is in the open air and which is seriously detrimental to the amenities of the neighbourhood. The power is effective 28 days after serving a notice on the owner. There is no power for the authority to recover their costs from the owner. Rubbish means rubble, waste paper, crockery, metal and other refuse (including organic matter) but NOT material accumulated in relation to business.

To obtain a copy of this Act please contact book.enquiries@tso.co.uk

Health & Safety at Work Act 1974
Needles and syringes discarded without care can present a real health hazard in the community and for those who have to remove them. Used syringes and needles carry the obvious risk of injury. However, there are also hidden risks, which can have serious effects on a person’s health.

Hepatitis B and hepatitis C and HIV (human immunodeficiency virus) are blood-borne infections. The hepatitis viruses cause liver disease and the HIV affects the body’s immune system and can cause AIDS. These infections can be passed on if a needle, which has been used by an infected person, has blood on it and pierces the skin. Contact with blood and open wounds and broken skin can also cause these infections. Tetanus is a bacterium that lives in the soil and can cause severe damage to the nervous system. Sharing needles that have been in contact with the soil can pass on this infection.

Drug users who share needles are at high risk of developing these diseases. It is important therefore, that a syringe with a needle on it is handled carefully. Under the Health & Safety at Work Act 1974, every employer must conduct a risk assessment to identify potential health and safety hazards. They are then required to act on it to minimise risks to their staff or anyone else at their workplace. Responsibilities under the Act are:

- To make ‘assessments of risk’ to the health and safety of their employees, and to act upon risks they identify, so as to reduce them. (This duty on employers to carry out a risk assessment is likely to be highlighted by personal injury lawyers, to substantiate whether or not the employer has acted reasonably to provide a safe system of work.)
- To appoint competent persons to oversee workplace health and safety.
- To provide employees with information and training on occupational health and safety.
- To operate a written health and safety policy.

For the full Act go to: http://www.healthandsafety.co.uk/haswa.htm
**Personal Protective Equipment (PPE) at Work Regulations 1992**

It is essential that all operatives dealing with drugs-related litter are provided with and are required to wear appropriate and suitable personal protective equipment.

The main provisions of the Regulations require employers to:

- Ensure that suitable personal protective equipment (PPE) is provided 'wherever there are risks to health and safety that cannot be adequately controlled in other ways'. The PPE must be 'suitable' for the risk in question, and include protective face masks and goggles, safety helmets, gloves, air filters, ear defenders, overalls and protective footwear.
- Provide information, training and instruction on the use of this equipment.

There is a requirement to train the users of PPE in the following:

- The use and wearing of PPE.
- The cleaning, maintenance and replacement of PPE.
- The reasons for wearing PPE.
- The consequences of not wearing PPE.


**Control of Substances Hazardous to Health (COSHH) Regulations**

The Health & Safety at Work Act places a legal duty on organisations to ensure a safe working environment for staff, visitors and the general public. Amongst the requirements of the COSHH Regulations is that employers assess the risks to employees and others from clinical waste, control these risks and provide appropriate training and information for employees. The COSHH Regulations are complemented by the Management of Health & Safety at Work Regulations (1999), which require that employers conduct risk assessments, make arrangements for control, planning, organisation, monitoring and review of the precautions.

For the full Regulations go to: [http://www.legislation.hmso.gov.uk/si/si2002/20022677.htm](http://www.legislation.hmso.gov.uk/si/si2002/20022677.htm)
**Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)**

Employers are required to report a wide range of work-related incidents, injuries and diseases to the Health and Safety Executive (HSE), or to the nearest local authority environmental health department. The Regulations require an employer to record in an accident book the date and time of the incident, details of person(s) affected, nature of injury or condition, the person's occupation, the place where the event occurred and a brief note on what happened.

The following injuries or ill health must be reported:

- Death of any person.
- Major injury: including fractures, amputations, eye injury, injury from electric shock, acute illness requiring removal to hospital or immediate medical attention.
- 'Over-three-day' injuries: involving someone off work for more than three days as a result of injury caused by an accident at work.

Specified diseases, including:

- Cramp of the hand or forearm due to repetitive movement;
- Beat knee, from physically demanding work;
- Carpal tunnel syndrome, involving hand-held vibrating tools;
- Hepatitis;
- Tuberculosis;
- Occupational dermatitis.

For the full Regulations go to: [http://www.hmso.gov.uk/si/si1995/Uksi_19953163_en_1.htm](http://www.hmso.gov.uk/si/si1995/Uksi_19953163_en_1.htm)

**Waste Licensing Legislation**

**Hazardous waste**

Waste is hazardous when it contains properties that might make it harmful to health or the environment. The European Commission's directive controlling the management of such waste is defined on the basis of a hazardous waste list; many of these wastes are already regarded as 'special waste' in the UK.

The European Commission has recently revised its list of hazardous waste and incorporated it into the European Waste Catalogue. This revised list includes a number of waste streams not previously considered to be hazardous, for example, fluorescent tubes, television sets, batteries and computer monitors. There is a legal duty to ensure that waste is properly consigned to
authorised management facilities capable of dealing with it. An asterisk identifies hazardous waste in the waste catalogue.

For the full list of hazardous waste go to: www.environment-agency.gov.uk/commondata/acrobat/ewc.pdf

**Controlled Waste Regulations 1992**
These Regulations provide legal definitions of the controlled wastes (household, commercial and industrial wastes). The Regulations also state that certain types of litter and refuse are to be treated as controlled waste. Exemptions from the requirement for licensing under the Environmental Protection Act 1990 are specified.

**Clinical Waste**
Clinical waste is defined in the Controlled Waste Regulations 1992. These Regulations define it as any waste, which consists wholly or partly of:

- Human or animal tissue.
- Blood or bodily fluids.
- Excretions.
- Medicines or other pharmaceutical products.
- Swabs or dressings.
- Syringes, needles, finger-pricking devices and lancets.

Sharps bins are treated as clinical waste no matter from where they originate. Prior to collection sharps bins must have their closures secured, should be autoclaved if a biological hazard is present and the tops secured with adhesive packaging tape. They are disposed of via incineration with residues going to landfill.

For the full Regulations go to: http://www.hmso.gov.uk/si/si1992/Uksi_19920588_en_1.htm?lang=e
Other legislation and guidance relating to drugs

The Drug Strategy

The drug strategy ‘Tackling Drugs to Build a Better Britain’ was introduced in 1998. Following a review in 2002 it was built on and adapted with the launch of an updated strategy. It links closely with the neighbourhood renewal and anti-social behaviour strategies and sets out a range of policies and interventions to deal with the problem.

The problems of drug misuse are complex and require coordinated delivery of services involving education, intelligence and enforcement, social and economic policy, and health. Tackling drugs requires effective joint working between government departments and agencies at a national and local level.

For more information go to: www.drugs.gov.uk

Misuse of Drugs Act 1971

The Misuse of Drugs Act 1971 is the main piece of legislation covering drugs. The law places drugs into three different categories, known as Class A, B and C. Drugs regulated in this way are known as ‘controlled’ substances, with Class A drugs being considered to be the most harmful.

Under the Misuse of Drugs Act it is an offence to:

- Possess a controlled substance unlawfully.
- Possess a controlled substance with intent to supply it.
- Unlawfully supply a controlled drug (even where no charge is made for the drug).
- Allow premises you occupy or manage to be used for the purpose of drug taking.

Trafficking (supply) attracts the most serious punishment, including life imprisonment for Class A offences.

If a person has controlled drugs in their physical possession - or has control of them - and is not entitled to do so (e.g. does not have a prescription) they could be charged with this offence. The charge may be:

- Possession - i.e. being knowingly in possession of a controlled drug.
- Joint possession - i.e. owning drugs jointly with other people.
- Past possession - i.e. having previously been in possession of a controlled drug.

An offence is committed if the smallest measurable trace of drug is involved, whether or not it is sufficient to cause intoxication.
The key elements of any offence are:

- that the substance is or was in the person's possession or control;
- that it is a controlled drug;
- that the person knew that he or she possessed the drug.

Local authorities are called upon (and expected to) deal with the problem of discarded drugs paraphernalia in their areas on both public and private land. Under the Misuse of Drugs Act officers of the council potentially could find themselves in the situation of being 'In possession' of controlled drugs. Clearly this is not an acceptable situation.

It is therefore important that protocols are established with the police at local level, and also with police specialist drugs teams, so that they are aware of the important and necessary public service role performed by the council. It is probably good practice to agree a formal 'memorandum of understanding' with the police. This should avoid any potentially difficult and embarrassing situations arising.

To obtain a copy of this Act contact: book.enquiries@tso.co.uk

**Medicines Act 1968**

This governs the manufacture and supply of medicines, some of which are also controlled by the Misuse of Drugs Act. The Medicines Act 1968 regulates drugs that are used for medicinal purposes, and again there are three main categories: ‘Prescription Only’, ‘Pharmacy Medicines’ and ‘General’. A pharmacist can sell Prescription Only drugs, but only if they have been prescribed by a doctor. The General category allows the medicines to be sold without a prescription in any shop, and a pharmacist can sell Pharmacy Medicines, without the need for a prescription. Possession of Prescription Only medicines without a prescription is a serious offence. Drugs such as amyl nitrite, GHB and ketamine are regulated under the Medicines Act.

To obtain a copy of this Act contact: book.enquiries@tso.co.uk
**Intoxicating Substances (Supply) Act 1985**

The Intoxicating Substances (Supply) Act 1985 controls the sale and supply of solvents to under 18s in the UK. The Act makes it an offence for a retailer to sell solvents to anyone under the age of 18, knowing that they are being purchased to be abused. It doesn't make it illegal to own or buy solvents.

To obtain a copy of this Act contact: book.enquiries@tso.co.uk

**Customs & Excise Management Act 1979**

This Act penalises the unauthorised import and export of illegal drugs. Customs and Excise use compounding proceedings which mean, in essence, that the offender is allowed to pay a fixed penalty in lieu of prosecution. The Home Office limits the use of compounding in drugs cases to offences involving herbal cannabis or resin not exceeding a total weight of 10 grams. Although details of compounding proceedings are not generally made public, they may be disclosed to an employer if the nature of the offender’s job helped him or her to commit the offence, or if the offender’s job requires a particularly high degree of unimpaired faculties or judgement.

To obtain a copy of this Act contact: book.enquiries@tso.co.uk

**Drug Traffickers Offences Act 1994**

This gives the police power to seize the assets and income of anyone who is found guilty of drugs trafficking, even if that income is not related to the trafficking of drugs. It also makes it illegal to manufacture or sell equipment for the preparation or use of controlled drugs.


**Road Traffic Act 1972**

The Road Traffic Act 1972 makes it an offence to be in charge of a motor vehicle whilst unfit to drive through drink or drugs (including solvents).

To obtain a copy of this Act contact: book.enquiries@tso.co.uk
Crime and Disorder Act 1998

The Crime and Disorder Act 1998 makes it legal to force offenders who are convicted of crime committed in order to fund their drug habit into getting drug treatment. It also allows for them to be tested for drug usage.

For the full Act go to: http://www.legislation.hmso.gov.uk/acts/acts1998/19980037.htm