



Crime Reduction and Community Safety Group
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Our Ref
Your Ref
Date ; 30th November 2005

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This letter seeks your views on the quantity of a controlled drug found in a person's possession above which a court will presume that it was held with intent to supply others. It requests a response by 3rd March 2006.

1. Section 2 of the Drugs Act 2005 stipulates that in any proceedings for an offence under section 5(3) of the Misuse of Drugs Act 1971 (possession of a controlled drug with intent to supply it) if it is proved that the accused had an amount of a controlled drug in his possession which is not less than the prescribed amount, the court or jury must assume that he had the drug in his possession with the intent to supply it.
2. The purpose of Section 2 is to
 - Provide firm guidance as to what circumstances merit a charge of possession with intent to supply and thereby achieve a greater level of consistency in charging
 - Clarify the point at which the quantity of drugs in a person's possession becomes above and beyond that which is reasonably held for personal use
 - And increase the success in convicting dealers and disrupting their activity.
3. Section 2 places an evidential presumption rather than legal burden of proof on the defendant. The presumption is rebutted when evidence is adduced (by anyone) which raises an issue or arguable case that the defendant did not intend to supply the drugs in his possession. If such evidence is raised the prosecution will be required to prove beyond all reasonable doubt that the defendant intended to supply the drugs in his possession.

4. The particular level of drug which will give rise to the presumption will vary from drug to drug and will be prescribed in regulations approved by a resolution of both Houses of Parliament.
5. It is our intention to, initially, establish thresholds for the drugs that are recognised as causing most harm or are most used (as evidenced by the British Crime Survey). These drugs are:

Heroin

Cocaine hydrochloride

Crack cocaine

Ecstasy

Amphetamine

Cannabis

6. Being in possession of a lower than prescribed amount of a controlled drug will not prevent prosecution for the offence of intent to supply if other evidence demonstrates that the defendant had the necessary intent, for example the possession of dealing paraphernalia or test purchase evidence.
7. The thresholds set must be proportionate to the offence of possession with intent to supply the controlled drug in question and the penalties that offence attracts in order to ensure compatibility with the European Convention on Human Rights. The current maximum sentences available to courts for the offence of possession with intent to supply Class A, B and C drugs are set out in Annex A.
8. The prescribed amounts which the Government is minded to set are detailed in Annex B. They are based on amounts agreed informally between an English police force and the Crown Prosecution Service locally.
9. However the Government will seriously consider the views of consultees on the prescribed limits in annex B and the advice of the Advisory Council on the Misuse of Drugs before finalising the proposals which it will put before Parliament.
10. Your response, which should reach me no later than 3rd March 2006, should be addressed to me, Trevor Crook, at the following address

The Home Office
6th Floor, Peel Building
2 Marsham Street
London
SW1P 4DF

Alternatively you may email me at
trevor.crook@homeoffice.gsi.gov.uk

11. Please find at Annex C a list of those organisations being consulted.

Your response will be made available to the Advisory Council on the Misuse of Drugs and will be published unless you indicate that you do not wish it to be. The Secretary of State will consider the views expressed in response to this letter and the views of the Advisory Council on the Misuse of Drugs before formulating the Regulations which he will subsequently lay before Parliament.

12. Please accept my thanks in advance for your consideration of these issues.

Yours sincerely

Trevor Crook
Drugs Legislation and Enforcement Unit
Drug Strategy Directorate
Home Office

Annex A

UK Drug Classification and sentencing.

CLASS	DRUGS	Maximum penalty for possession with intent to supply
Class A	Cocaine Crack Cocaine Ecstasy Heroin LSD Magic Mushrooms Any Class B drug when prepared for injection	Life in prison plus unlimited fine.
Class B	Amphetamine Barbiturates Codeine Dihydrocodeine	14 years in prison plus an unlimited fine.
Class C	Cannabis GHB Anabolic Steroids Diazepam (tranquilizers)	14 years in prison plus an unlimited fine.

Draft proposal for prescribed amounts of heroin, crack cocaine, cocaine, ecstasy, amphetamine and cannabis.

The prescribed amounts which the Government is minded to set are detailed below. They are based on amounts agreed informally between an English police force and the Crown Prosecution Service locally.

However the Government will seriously consider the views of consultees on the prescribed limits below and the advice of the Advisory Council on the Misuse of Drugs before finalising the proposals which it will put before Parliament.

Heroin

Bulk quantities – 7 grams
“Wraps” – 10 or more “1 point wraps”

(where a “ 1 point wrap” contains 0.1 grams of heroin.)

Crack Cocaine

Bulk quantities – 7 grams.
Wraps – 10 wraps of 0.1 grams.

Cocaine

Bulk quantities – 7 grams.
Wraps – 10 of 1gm.

Ecstasy

Bulk quantities – 10 tablets

Amphetamine

Bulk quantities – 14grams.
Wraps – 10 times 1gm wraps.

Cannabis

Bulk quantities – Resin – 113 grams or 10 individual pieces/wraps or blocks
- Leaf – 0.5 kilograms or above 20 individual 2” by 2” bags.

Consultees

ACPO England Wales and Northern Ireland
ACPO Scotland
Drugscope
Forensic Science Service
Law Society
Members of the Advisory Council on the Misuse of Drugs
National Treatment Agency
Police Federation
Police Superintendents Association
Scottish Drug Enforcement Agency
Scottish Drugs Forum
The Advocate General
The Bar Council
The British Medical Association
The Criminal Law Solicitors Association
The Director of Public Prosecutions
Turning Point

The consultation letter will also be published on the Home Office Drugs website.