



ACPO GUIDANCE ON CANNABIS POSSESSION FOR PERSONAL USE

REVISED INTERVENTION FRAMEWORK

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**On behalf of the
Association of Chief Police Officers**

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Part 1

INTRODUCTION AND CONTEXT

Members will be aware that cannabis will be a Class B drug from 26th January 2009, and maximum penalties for possession will be changed accordingly.

This intervention framework has been developed to recommend to Chief Constables a consistent national approach to policing the possession of cannabis as a Class B Drug. **It applies to cannabis possession for personal use only.**

This framework will replace all previously published guidance.

This intervention framework will:

- Assist officers to decide a justifiable and proportionate response to dealing with people found in possession of cannabis, which can be seen to be ethical and non-discriminatory by the public.
- Outline a three-point escalation approach to policing cannabis possession offences for adults.
- Re-emphasise a strategy of enforcement and prosecution that delivers the national message that cannabis is **harmful** and **remains illegal**.

This report also provides a comprehensive list of frequently asked questions that will answer many of the issues that may be raised by practitioners and the wider community.

The police approach is based on a policy of escalation. As part of this approach, the government has introduced a Penalty Notice for Disorder (PND) as a further option for dealing with cannabis possession offences.

It is important that, in applying this escalation policy, officers retain their operational discretion albeit arrest should remain the first presumption, taking into account all relevant circumstances.

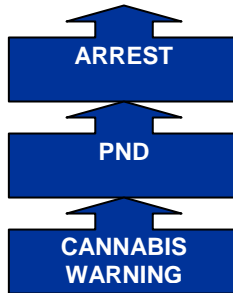
If a Warning or PND is issued, however, offenders must be made aware of the fact that they cannot continue to re-offend and receive multiple Cannabis Warnings or PNDs. Forces should take steps to ensure that appropriate systems are in place to emphasise this message once an offender has received a Cannabis Warning.

Part 2

GUIDANCE, ADVICE AND PROCEDURES

2.1 Options Available

In dealing with an offence of possession of cannabis, an officer will have three options:



The options are listed in the order of escalation that would be expected, taking into account all of the aggravating factors detailed below.

Clearly, if none of the aggravating factors are present, the expectation is that a Cannabis Warning will be issued.

If one or more are present, the discretion of the officer and local circumstances will determine the appropriate response. This could include any of the three options.

2.2 Aggravating Factors

The term 'Aggravating Factors' has been used in previous ACPO guidance and these factors are still valid when considering necessity factors for arrest or escalation of response to an offence of possession of cannabis.

Additionally, the new Ministry of Justice guidance document on Penalty Notices for Disorder provides further guidance for the general issue of PNDs. This should be read in conjunction with this report, especially in relation to the retention of exhibits.

To assist understanding, the aggravating factors for cannabis possession adopted by ACPO are listed below, together with an example of when they may be relevant.

2.2.1 Public Place or View

The smoking of cannabis in a public place or view is unacceptable and risks undermining the illegal status of possession of a controlled drug.

There is no requirement to have received a complaint from a member of the public before taking any action against someone smoking cannabis in public.

Examples of smoking in public view would include use at a football match, on public transport, in a park, in the street or in or near a public house, club, cinema, betting office or in the locality of a school, youth club or play areas.

2.2.2 Locally Identified Policing Problem

There may be circumstances which are causing a local policing problem or community concern, such as the fear of anti social behaviour associated with the use of cannabis.

This may include a disorder 'hotspot' in an area (public park, local shops, public house, near schools or where young people frequent) that generates frequent calls for service to deal with anti-social behaviour.

In such circumstances the local Commander may sanction officers to arrest all offenders found in possession of cannabis in or near these areas as part of a documented intervention strategy.

This could be restricted to particular times of the day, or days of the week, depending on the nature of the problem.

2.2.3 Protecting Young People

There may be occasions where the possession of cannabis by others may create a particular risk to young people.

For instance, where a person is in possession of cannabis inside or in the vicinity of premises frequented by young people, such as schools, youth clubs or play areas.

2.2.4 Repeat or Persistent Offenders

The illegal status of cannabis will be undermined where, on a local basis, a police officer is aware of someone who is repeatedly dealt with for a variety of criminal offences or anti-social behaviour.

If a person, who is known locally, continually commits offences and has a complete disregard for the law, they are unlikely to benefit from either a Cannabis Warning or PND. In such cases arrest is the more appropriate option.

2.2.5 Impact On The Offender

Other considerations could include the following:

- What impact will the decision to issue a Cannabis Warning or PND have on the offender?
- Does this person understand the seriousness of this offence?
- Will this person benefit from this course of action?
- Will this person take any heed of a Cannabis Warning or PND Notice?
- Is there any evidence of previous convictions or offending behaviour that may show that they have little regard for the law?

Part 3

ESCALATION FRAMEWORK

3.1 Adult Offenders

Note: This framework should only be considered when all the conditions below are present:

- An adult, aged 18 years or over
- Non-vulnerable
- Capable of understanding the significance of questions put to them or their replies
- Not suspected of being under the influence of drink or drugs at the time that the warning or PND is to be issued
- In possession of a small amount of cannabis, consistent with personal use
- Their personal details have been satisfactorily verified
- They admit the offence - (for Cannabis Warning only)

3.1.1 Cannabis Warning

The Cannabis Warning process remains the same as previous guidance but with the general principle that no more than one warning should be issued and where the following applies:

- No previous record of Cannabis Warning
- No previous record of a PND being issued
- No previous convictions
- Not known to the officer 'locally' as a persistent offender
- No 'aggravating' circumstances
- Compliant with procedure

If the offender has already received a Cannabis Warning on a previous occasion, then a further Warning should not be issued. The officer should escalate action.

Note: Cannabis Warnings issued after 26th January 2009 must be taken into account when deciding a level of intervention, whereas those issued before this date should be considered as part of any previous offending history.

3.1.2 Penalty Notice For Disorder (PND)

If the offender has received a Cannabis Warning since 26th January 2009, the officer should escalate action to issuing a PND or to arrest if appropriate.

If the offender has already received one PND for Cannabis Possession on a previous occasion then the only option should be to arrest.

If the offender has never received a Cannabis Warning, but has been issued with one PND, then the only option should be to arrest. The officer should not de-escalate back to a Cannabis Warning.

An officer may use operational discretion to decide that, although the offender has never received a Cannabis Warning, due to the circumstances they should immediately escalate to the issue of a PND or arrest.

If a non-vulnerable adult does not admit the offence of possession of cannabis then a PND may only be issued if the officer has sufficient evidence that the offence has been committed.

If it is decided that the issue of a PND is appropriate then it will be issued in line with current force policy and procedures and Ministry of Justice guidance.

3.1.3 Arrest

An officer may use operational discretion to decide that although the offender has never received a Cannabis Warning or PND, due to the circumstances they can immediately escalate to arrest.

If an arrest is deemed appropriate then: Section 24 of the Police and Criminal Evidence Act 1984 (PACE) as amended by section 110 of the Serious and Organised Crime and Police Act 2005 (SOCAP) provides a constable with the power of arrest for an offence.

3.2 Offenders Aged 17 Years and Under

Young People aged 17 years of age, or under, cannot be given a Cannabis Warning or a PND for possession of cannabis.

If there are local partnership agreements (Local Education Authority) in place, these will take precedence over these guidelines. The ACPO Guidance for Policing Drugs in Schools - 'Joining Forces' - offers further advice on this aspect of responding to cannabis possession.

3.3 Custody Suite Options

All available case disposal options of Charge, Adult Caution, Conditional Caution, 37(7) or 47(3) Bail, No further Action, and including Cannabis Warning or a PND are available for consideration by the custody officer.

When making a case disposal decision, the custody officer should also consider the offender's behaviour at the scene and any previous offending history.

3.4 Data Requirements

Cannabis Warnings will continue to play an important role and forces will need to ensure accurate and effective local recording which will enable police officers to make informed decisions to reduce the likelihood of multiple warnings.

A Cannabis Warning and PND will both qualify as sanction detections.

PNDs are already recorded on the PNC and will now include those issued for cannabis possession. Note: Work is underway to develop a new database that will provide a single national data sharing system to process all Fixed Penalty Notices and Penalty Notices for Disorder. It is expected that this system will be available within 2 years.

The Home Office expects that each police force in England and Wales will be able to provide data returns of any Cannabis Warning or PND issued, in order to enable performance to be monitored nationally. As such, forces should monitor the use of powers to ensure they are applied in a way that is justifiable, proportionate and non-

discriminatory.

Part 4

CANNABIS GUIDELINES - FREQUENTLY ASKED QUESTIONS

The following frequently asked questions have been compiled to help officers and the public understand the new guidance.

1. Is it legal to carry cannabis but not smoke it?

No. Cannabis is illegal, whether it is being smoked or not.

2. Why is ACPO producing new 2009 guidelines?

It is ACPO policy to periodically review any guidelines. In the case of cannabis recent changes have been made to its classification, and changes have been introduced to the general powers of arrest, which effect how cannabis offences are dealt with.

3. Do these Guidelines cover the whole of the UK?

ACPO provides guidelines for police in England, Wales and Northern Ireland.

However, as The Police Service of Northern Ireland has not adopted Cannabis Warnings or PNDs, this element of the guidance will only apply to England and Wales.

4. Why do the guidelines include 'aggravating factors' ?

Section 24 of PACE, as amended by SOCAP, and the PACE Code of Practice on Arrest (Code G) set out the 'necessity criteria' for arrest.

The term 'aggravating factors' is just another way of determining and applying the necessity criteria.

The circumstances of the offence form part of the consideration in determining whether an arrest can be made and justified

5. Who can give a Cannabis Warning or issue a PND?

Any police officer can give a cannabis warning or PND.

6. What do I do if the subject is obstructive or does not admit to possession?

If the offender disputes the possession of cannabis, the identity of the substance, or will not fully comply with the procedure then it may be considered necessary to arrest them in order to ensure that the offence may be properly investigated.

7. What about if a person has been drinking?

If a person has had a drink or appears to be under the influence of a drug, it does not mean that a warning or PND cannot be used. The essential question is whether they are fully aware of what is happening and capable of understanding the questions you have put to them.

8. What is the suggested wording for a Cannabis Warning?

There is no formal wording, but it is recommended that the following points are included and brought to the attention of the offender:

A record of the Cannabis Warning will be made.

The offence of possession will be recorded, for statistical purposes, as a detected crime.

This procedure does not constitute a criminal record against them.

The outcome of any future cannabis possession offences is likely to be either the issue of a PND or arrest.

9. Can I search premises under Section 18 of PACE following a Cannabis Warning or issue of a PND?

No, in order to use the power under S18 PACE an arrest must be made for an indictable offence.

10. What if I make a mistake and warn when I really should have issued a PND or arrested, or arrested when I should have warned or issued a PND?

Providing the decision made is an honestly held belief that taking that action was both proportionate and necessary in light of what was known at the time, then the action should be justified, even if additional evidence later comes to light.

11. What can I do if the cannabis is only found when the person is being searched following arrest for another offence, or later when being searched in the Custody Suite?

The custody officer must be informed of the circumstances. There is nothing to prevent a Cannabis Warning or PND being given at the police station irrespective of other offences being investigated i.e. shoplifting - providing that they haven't previously received either a PND or a Cannabis Warning, or are a persistent offender.

12. When does possession become possession with intent to supply?

It is up to the officer to have reasonable grounds to suspect possession with intent to supply. This could come from observed behaviour (dealing), responses to questioning or could be inferred where the person has a large amount of cannabis, or cash, in their possession that requires further investigation or has equipment on them associated with drug dealing i.e. small weighing scales

13. Hasn't the Government introduced thresholds for possession?

The Government has previously announced that it was no longer introducing a quantity threshold, so officers must continue to use judgement and experience to assess whether the amount possessed appears reasonable for personal possession only.

14. What if the amount of cannabis is so small it's not worth putting in the evidence bag?

If it is large enough to identify it as cannabis then action needs to be taken.

15. What is 'Cannabis' for the purpose of Cannabis Warnings, PND or Arrest?

Cannabis includes any part of the cannabis plant – leaves, flowers, stalks, roots or cuttings taken from the plant, EXCEPT the mature stalks and seeds, if separated from the plant.

It also includes Cannabis Resin and Cannabis Oil (Hash Oil).

16. Can I give a person who is 17 years old, or under, a Cannabis Warning or a PND?

No. Section 65 of the Crime and Disorder Act 1998 requires that such young people be considered for a reprimand, final warning or prosecution. However, that does not mean officers have to arrest at the time in order to seize the cannabis. The officer could decide to take the young person home to the protection of their parent or guardian. Taking this action would not prevent a later warning or reprimand being given or a prosecution being started, at a later date.

However, if that is not possible and the officer has no reasonable alternative, then the officer should have no difficulty justifying that an arrest is necessary in such cases.

17. Do I still have to arrest a person that is 17 years old or under?

There is no longer a recommendation that such young people must be arrested. The officer will have to justify that an arrest is necessary. However it is recognised that very often an arrest will be necessary to obtain the admission/evidence required for the final warning scheme. If this were necessary the officer would be justified in making an arrest.

18. What if a 17 year old and a 19 year old are smoking cannabis together?

The officer must look at the circumstances of each individual. It must be decided in each individual case that the action taken is both necessary and proportionate. Officers may have to deal with them differently i.e. Arrest one (17 years) and warn the other (19 years)

If the age difference was greater, say a 16 and 21 year old, it could also be decided that the 16 year old has been unduly influenced by the 21 year old, and arrest both.

19. What should I do if called to a school where a pupil is in possession of cannabis?

Separate ACPO guidance is available for dealing with drugs in schools – Joining Forces – published June in 2006.

This guidance states:

“Where a young person is found in possession of a suspected illegal drug on school or college premises and police are involved, the following questions can be asked:

- Is the young person still on school premises or in a place of safety?
- Is the name and address of the young person known?
- Can parents or carers be contacted if appropriate?
- Is there a range of responses available including information, advice and guidance, referral options and/or school or college disciplinary procedures in place?”

If the answers to all these questions are 'YES' then it may not be necessary or proportionate to arrest a young person and take them to a police station.

When considered together, current guidance and practice suggest that a police officer does not have to arrest for minor possession if the school or college can deal with the incident in an alternative way.”

Normally a local protocol will exist between the police and the Local Education Authority. This protocol would take precedence over the advice contained in these guidelines.

20. Why do those with similar amounts of cannabis apparently get arrested in one BCU but are given a Cannabis Warning on the street in the next?

The decision to arrest or deal with by warning is an individual one.

If a BCU has a particular problem area associated with the use of cannabis then this may contribute to the need to make an arrest.

21. Can I put cannabis ‘down a drain’? If so how do I record it?

No, informal disposals would breach force property recording and audit policy. The officer must deal with any cannabis found in line with the guidelines.

22. How many repeat Cannabis Warnings or repeat PNDs will lead to automatic arrest?

There should be no ‘Repeat Cannabis Warnings’.

There should be no ‘Repeat PNDs’.

Arrest will never be ‘automatic’ – an arrest must always comply with the ‘Necessity Criteria’, as per the Serious Organised Crime and Police Act 2005.

If the officer is able to confirm that the suspect has had either one Cannabis Warning or one PND, then to continue to warn or issue a PND would be inappropriate.

In these circumstances the officer should be able to justify that an arrest is necessary for effective investigation of the offence but they must fully explain how they made their decision in the arrest notes.

23. If asked about “treatment for cannabis misuse”, what should I say?

In the first instance anyone can find useful information on the Government’s website www.talktofrank.com or call the FRANK Helpline free on 0800 77 66 00. In addition they could be put in touch with the local Drug Action Team or Community Drug and Alcohol Team or suggest they speak to their own doctor.

24. What does it mean to be an ‘expert’ in identifying cannabis?

This generally means that the officer should have considerable experience in handling cannabis and be trained to recognise the physical appearance, texture and smell of cannabis, and say that it is cannabis, without any doubt, based on that experience and training.

If the officer hasn’t yet got that experience then they must ask someone who has to verify that it is cannabis before they can give a cannabis warning or issue a PND.

25. What do we do about Cannabis Warnings or PNDs and occupations such as a person who is a PSV driver, or a teacher?

Just because someone does a particular job, does not in itself justify an arrest. Every case should be treated on its merits but local and national procedures on sharing intelligence on people working in high-risk areas or occupations that are subject to vetting procedures must be followed.

26. Can I tell partners in other agencies that someone has received a Cannabis Warning?

Sharing intelligence is key to effective partnership working. However all staff must comply with Data Protection Law. Any sharing of intelligence must only be carried out within the confines of agreed partnership protocols and for a specific purpose.

27. Why are Cannabis Warnings not recorded on PNC?

A Cannabis Warning is neither a conviction nor a criminal record. At present recording of Cannabis Warnings is confined to local intelligence or other local systems. However work is underway to achieve a nationally accessible system.

28. Can I arrest someone if I believe they are under the influence of Cannabis whilst driving or being in charge of a vehicle?

Driving a motor vehicle whilst impaired through drugs is an offence under The Road Traffic Act 1988. It is a serious offence and providing there is sufficient evidence of impairment, it should be dealt with in the same way as those who drive whilst impaired through alcohol.

29. What about finding a small amount of cannabis in a house or other premises when executing a search warrant?

The intention of this ACPO guidance, following the 2009 reclassification, is usually not to arrest non-vulnerable adults for a first or second possession of cannabis offence, where there are no 'Aggravating Factors'.

It is not intended that Cannabis Warnings (or PNDs) are either repeatedly issued, or issued to people who have demonstrated a flagrant disregard for the law, and would not benefit from this course of action.

General Warrants

For example - a warrant was issued under the Theft Act to search an address for stolen property. During the search a small quantity of cannabis was found.

The occupier, a non-vulnerable adult, admits possession, and states that it is only for their personal use.

Providing that there was no other evidence to support any other drug offences, then a Cannabis Warning (or PND) for the possession of the cannabis may be appropriate in this case. (If never previously issued).

However, your decision should also take into account any offending history of the person, which may be applicable - i.e. what was the evidence that led to the application of the Search Warrant in the first place? (This is particularly relevant if stolen property was found at the address during the search).

In this case an arrest may be more appropriate.

Misuse of Drugs Act 1971 Warrants

If the warrant had been issued under the auspices of the Misuse of Drugs Act 1971, then an arrest may be more appropriate, in any case, as any drugs found will supplement or support the other evidence that lead to the issue of the Misuse of Drugs Act warrant – i.e. it establishes a knowledge or involvement with illicit drugs.

30. What about Cannabis Cultivation or Production?

The growing, cultivation or production of cannabis is completely outside the remit of this ACPO Guidance. This includes a single small plant (cutting) being grown, by a non-vulnerable adult, for personal use.

Neither a Cannabis Warning nor PND can be issued for this offence, in any circumstances.