### Resource Description

This is a detailed set of notes to explain the Act and the Advisory Council’s role regarding the Misuse of Drugs.

### National Curriculum

- Key Stage 3/Citizenship
- Key Stage 3/PSHE
The Misuse of Drugs Act

The Advisory Council on Misuse of Drugs

This was set up by the Secretary of State and includes Doctors, Dentists, Pharmacists, Vets, representatives from the pharmaceutical industry and Police Service.

Functions of the Advisory Council:

- To review the situation in the U.K. in respect of
  a) drugs that are being misused or b) appear likely to be misused, where misuse is having or being capable of having, harmful social effects.
- Also to advise Ministers on measures for prevention of misuse, i.e. restricting supplies, education and research.

Misuse of Drugs Act 1971

Section 2 Controlled Drugs and their Classification

These are all listed in Schedule 2 of the Act. It is important to note that possession of certain drugs listed in Class C do not amount to an offence under Section 5 (2) of MDA. References should be made to which schedule they are listed under.

Section 3 Import and Export

Prohibits the import and export of controlled drugs, other than those exempted under the Regulations, or by persons licensed by the Secretary of State.

This section in itself does not create an offence, but merely places a prohibition on the import and export of controlled drugs. An offence would be under Sections 50, 68 and 170 of the Customs and Excise Management Act 1979, namely the evasion of the prohibition placed on the importation and exportation of controlled drugs.

In practice any offences of this nature should be referred to H. M. Customs and Excise via the Force Drug Squad.

Section 4 Production and Supply of Controlled Drugs

Section 4 (2) Subject to Section 28 defence it is an offence to –

UNLAWFULLY PRODUCE A CONTROLLED DRUG
OR
TO BE CONCERNED IN THE PRODUCTION OF A CONTROLLED DRUG
THIS IS A SERIOUS ARRESTABLE OFFENCE
The Misuse of Drugs Act

Definitions:

Unlawfully

The only production that is lawful is that which is authorised by regulations, e.g. drug manufacturers, registered chemists, research institutions.

Produce - (defined by 37 of the Act)

To produce by manufacture, cultivation or any other method.

viz:

Manufacture - for example would include making a drug by use of chemicals in a laboratory.

Cultivation - for example producing a drug by growing cannabis or opium poppy or other plants producing drugs.

Concerned in the Production by Another

Covers a person not directly producing a drug but assisting in some way, i.e. purchasing or ordering chemicals for another to produce. (It is wider than assistance and provided a person has some interest in the prohibited activity he will be concerned in it).

Unlawful Supply

Section 4 (3)

It is an offence for a person to –

UNLAWFULLY TO SUPPLY A CONTROLLED DRUG TO ANOTHER
OR
TO BE CONCERNED IN THE SUPPLYING OF SUCH A DRUG TO ANOTHER
OR
TO OFFER TO SUPPLY A CONTROLLED DRUG TO ANOTHER
OR
TO BE CONCERNED IN THE MAKING TO ANOTHER OF AN OFFER TO SUPPLY SUCH A DRUG

THIS IS A SERIOUS ARRESTABLE OFFENCE
The Misuse of Drugs Act

Unlawfully

The only supply that is lawful is that which is authorised by regulations, e.g. prescriptions from doctors, hospitals, etc.

Supply

Is defined in Section 37 of the MDA 1971 and states that "supplying includes distributing" and really means the parting of possession of a drug from one person to another. Thus where a person buys drugs on behalf of himself and his friends and then hands the drugs out to his friends, this is supply.

A person cannot supply drugs to another if that other already possesses the drugs, for example, if a person injects an addict with the addicts' drugs he is not "supplying" because the addict already possesses them. However, if the drug injected had not been in the addict's possession, this would constitute a supply.

Offer to Supply

To constitute an offence of offering to supply, it is necessary to prove that the substance offered is a controlled drug.

The offence is complete when the offer is made. This would include an offer in a letter, a verbal offer and also for example a poster at a pop festival advertising cannabis for sale.

Concerned in the supplying

This again is wider than assistance. It covers a situation where someone helps to supply drugs to another in some way but does not directly supply them himself.

Example: A tells B to go and see C who will supply him with drugs. C then supplies B with drugs.

Concerned in the Making to another of an offer to supply

Example: This would cover where there is a letter to containing an offer to supply drugs and a person has knowledge of the contents and posts the letter on behalf of the sender.

The important difference between the b and c is that in c there must be an actual supply made by an accused, whereas in b the accused need only be concerned in making an offer to supply.

Again in respect of both b and c the word "knowingly" does not appear since both offences are subject to Section 28 (Statutory Defence).
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POSSESSION

GENERAL AUTHORITY TO POSSESS CONTROLLED DRUGS

MISUSE OF DRUGS REGULATIONS 2001 -REGULATIONS 6 – 9

Any of the following persons may, not withstanding the provisions of Section 5 (1) (Prohibition on possession of controlled drugs) have a controlled drug in his possession, that is to say: -

- Constable when acting in the course of his duty as such.
- Person engaged in the business of a carrier when acting in the course of that business.
- Person engaged in the business of the Post Office when acting in the course of that business.
- An officer of the Customs and Excise when acting in the course of his duty as such.
- Persons engaged in the work of any laboratory to which the drug has been sent for forensic examination when acting in the course of his duty as a person so engaged.
- Person engaged in conveying the drug to a person authorised by these Regulations to have it in his possession.

The Regulations also permit practitioners, pharmacists, retail pharmacists and persons licensed by the Secretary of State to manufacture or compound controlled drugs as specified in the schedules to the Regulations.

Not withstanding the provisions of section 4(1)(b) of the Act, any of the following persons, that is to say

- a practitioner (includes Veterinary Surgeon and Dentist)
- a pharmacist
- a person lawfully conducting a Retail Pharmacist business
- a person in charge or acting person in charge of a hospital or nursing home which is wholly or mainly maintained by the public authority out of public funds, or by a charity or by voluntary subscriptions.
- in the case of such a drug supplied to her by a person responsible for the dispensing and supply of medicines at the hospital or nursing home, the Sister or acting sister for the time being in charge of a ward, theatre or other department in such a hospital or nursing home as aforesaid.
- a person who is in charge of a laboratory the recognised activities of which consist in, or include, the conduct of scientific education or research and which is attached to a university, university college or such a hospital as aforesaid or to any other institution approved for the purpose under this sub-paragraph by the Secretary of state.
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- a public analyst appointed under section 27 of the Food Safety Act 1990
- a sampling officer within the meaning of schedule 3 to the Medicines Act 1968
- a person employed or engaged in connection with a scheme for testing the quality or amount of the drugs, preparations, and appliances supplied under the National health Service Act 1977, or the National health Service (Scotland) Act 1978 and the regulations made there under:
- a person authorised by the Pharmaceutical Society of Great Britain for the purposes of section 108 or 109 of the Medicines Act 1968

may when acting in his / her capacity as such, supply or offer to supply any drug specified in Schedule 2 or 5 to any person who may lawfully have that drug in his possession, except that nothing in this paragraph authorizes.

The Regulations also permit the supply, offer to supply and the administration of specified controlled drugs, in other circumstances, e. g. by masters of ships, not carrying a doctor or managers of off-shore establishments.

In all cases where a person is authorised to supply, etc., certain controlled drugs, he is also authorised to possess the same drug, and if he is authorised to possess the drug he may also supply the drug to any person lawfully entitled to possess it

i. the person in charge or acting in charge of a hospital or nursing home, having a pharmacist responsible for the dispensing and supply of medicines, to supply or offer to supply any drug or

ii. a sister or acting sister for the time being in charge of a ward, theatre or other department to supply any drug other than in administration to a patient in that ward, theatre or department in accordance with the directions of a doctor or dentist.
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Section 5 (2)

IT IS AN OFFENCE FOR A PERSON UNLAWFULLY TO HAVE A CONTROLLED DRUG IN HIS POSSESSION

Meaning of Possession - Defined in Section 37(3)

"For the purpose of the Act the things which a person has in his possession shall be taken to include anything subject to his control which is in the custody of another".

This suggests the important factor in possession is control. If a person has control over a thing, then he is in possession of it, whether it is in his custody or not.

Thus if a person is arrested and in his possession is a key to a locked shed situated several miles away and that shed contains a controlled drug that he has knowledge of, he would be in possession of the drug. The factor being that he has a degree of control over it.

Mere proximity to a drug will not suffice. Example, if several persons are sat at a pub table and cannabis is found near to the feet of one of them, this without other evidence, would not be sufficient to prove possession.

What must be proven –

i. the item must be in the physical custody or control of the accused.
ii. the accused must know, or at least could reasonably have known of the existence of the item.
iii. the item must be a controlled drug.

Defence to Unlawful Possession Section 5 (4)

In any proceedings for an offence under Section 5(2) in which it is proved that the accused has a controlled drug in his possession, it shall be a defence for him to prove –

a. That knowing or suspecting it to be a controlled drug he took possession of it for the purpose of preventing another from committing or continuing to commit an offence in connection with that drug, and that as soon as possible after taking possession of it he took all such steps as were reasonably open to him to destroy the drug or deliver it into the custody of a person lawfully entitled to take custody of it.

or

b. That having or suspecting it to be a controlled drug, he took possession of it for the purpose of delivering it into custody of a person lawfully entitled to take custody of it and that as soon as possible after taking possession of it he took all such steps as were reasonably open to him to deliver it into the custody of such a person.
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Example (a) would cover a parent, teacher or probation officer, who discovers a controlled drug in possession of a person under his care or supervision. Providing that as soon as possible after taking possession he destroys it or delivers it to a person lawfully entitled to take possession of it, then he will have a defence to a charge of unlawful possession.

Example (b) would cover a person when he finds a controlled drug in the street and picks it up. Providing as soon as possible he takes it to a person lawfully entitled to take possession of it then he will have a defence to a charge of unlawful possession.

Destroy

Physical fragmentation of a drug will not constitute its destruction. It still retains its utility as a drug. Personal consumption would not be destruction.

Burning or by some other method changing its character which robs it of its "property of a controlled drug" would be destruction.

These defences only apply to unlawful possession contrary to Section 5(2) of the Act.

Section 5(3)

It is an offence for a person -

TO HAVE A CONTROLLED DRUG IN HIS POSSESSION WHETHER LAWFULLY OR NOT WITH INTENT TO SUPPLY IT UNLAWFULLY TO ANOTHER

The onus of proving unlawful possession is always with the prosecution. This section can be distinguished from Section 5(2) in two ways –

1. Irrelevant whether the possession is lawful and unlawful
2. An unlawful supply must be intended to another

Examples:

A person is supplied controlled drugs by a doctor and then intends to unlawfully supply to another. A doctor has controlled drugs lawfully in his possession in the course of his duty, but intends to supply them unlawfully to another.

Apart from any admissions a suspect may make in relation to his intentions to supply, it is necessary to look at the evidence available to suggest an intent to supply, e.g. the amount of drugs in his possession (more than for personal use or wrapped ready to supply, in possession of weigh scales and plastic bags or cling film for wrapping drugs) but possibly not including money. (R v. Batt 1994).

THIS IS A SERIOUS ARRESTABLE OFFENCE
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Section 6(2)

Cultivation of Cannabis

It is an offence to -

UNLAWFULLY CULTIVATE ANY PLANT OF THE GENUS CANNABIS

Unlawfully

To lawfully cultivate cannabis plants a person must obtain a licence from the Secretary of State (Reg. 12 of the Misuse of Drugs Regulations). The Police are not exempt from this requirement; therefore, if they wish to cultivate a plant they should obtain such a licence, e.g. to keep an exhibit for court or instructional purposes.

Cannabis is defined by Section 37(1). "Any plant of the genus cannabis or any part of any such plant (by whatever name designated) except that it does not include cannabis resin or any of the following products after separation from the rest of the plant, namely;

a. mature stalk of any such plant
b. fibre produced from mature stalk of any such plant
   and
c. seed of any such plant".

Cultivate

Although not defined by the statute, the dictionary definition includes "to bestow labour and attention upon (land) in order to raise crops".

It seems that a positive act is required, e.g. planting or watering. Mere omission to destroy a cannabis plant by another will not be sufficient.

The accused does not have to know the plant he cultivated was in fact cannabis. Although this offence is still included in the Act, on advice from the Advisory Council on the Misuse of Drugs it is very rarely to be used.

Originally only the flowering and fruiting types of the plant were controlled by the MDA 1971 and hence the probable reason why Section 6 was included. Now that the entire plant is a controlled drug there is no good reason why the cultivation of a cannabis plant should not be an offence under Section 4(2) (unlawful production). This section is to be preferred because whilst it is an offence for a person to unlawfully cultivate a plant of the genus cannabis it is not an offence under Section 6 to be concerned in its cultivation.
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Section 8

Use of Premises; A person commits an offence if being the –

OCCUPIER OR CONCERNED IN THE MANAGEMENT OF ANY PREMISES HE KNOWINGLY PERMITS OR SUFFERS ANY OF THESE ACTIVITIES TO TAKE PLACE ON THE PREMISES

a. UNLAWFULLY PRODUCING OR ATTEMPTING TO PRODUCE A CONTROLLED DRUG
b. UNLAWFULLY SUPPLYING OR ATTEMPTING TO SUPPLY A CONTROLLED DRUG TO ANOTHER OR OFFERING A CONTROLLED DRUG UNLAWFULLY TO ANOTHER
c. PREPARING OPIUM FOR SMOKING
d. SMOKING CANNABIS, CANNABIS RESIN OF PREPARED OPIUM

Occupier

The term occupier is not defined in the Act but decided cases give some guidance. The occupier is someone in occupation so as to have control over activities committed on the premises. R v Tao (1976). For example, a person who rents a house or flat, the owner -occupier of the house.

It has been held that two girls aged 20 and 15 years, living on premises in the absence of their parents who were on holiday, were not occupiers. (R v Mogford 1970). However in R v Campbell 1982 where two sons held a party whilst their mother slept elsewhere were held to be occupiers.

Concerned in the Management

The term "concerned in the management" is not defined in the Act. However, "management" relates not to the management of premises as premises but management of activities on the premises.

It is unnecessary that the accused should have any legal title to be on the premises. If he is managing the premises in the sense of running them, organising them and planning them, then the fact that he has no legal right to the premises and is a mere squatter or trespasser does not prevent him from coming within the terms of Section 8. (R v. Josephs (1977).

Of Any Premises

The term "premises" is not defined in the Act and there are no decided cases under the MDA 1971 as to the meaning of the term. The normal meaning of premises includes buildings and their grounds.
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Knowingly

This is not limited to actual knowledge of the elements of a prohibited activity but also includes "wilful blindness" (i.e. deliberately avoiding finding what one believes may exist). However, mere suspicion is not sufficient. For example, if a person neglects to make enquiries as a reasonable and prudent person would make, he cannot be said to "know" what is occurring.

Permits or Suffers

The Court of Appeal have stated that these two words mean the same thing, i.e. actual knowledge that the premises were being so used or knowledge of circumstances such that he could be said to have shut his eyes to the obvious or allowed matters to go on without caring. If a person is in a position to prevent a thing without committing a legal wrong and does not do so, then a person permits/ suffers that thing.

Section 9

Offences Relating to Opium

It is an offence for a person to –

a. Smoke or otherwise use prepared opium
   or
b. Frequent a place used for the purpose of smoking opium
   or
c. Possess any pipes or utensils used in the smoking of opium or in the preparation of opium for smoking.

Prepared Opium

Section 37(1) Misuse of Drugs Act 1971 "Prepared opium" means opium prepared for smoking and includes dross and any other residues remaining after opium has been smoked.

Section 28 Defence applies to Section 9.

Section 9a - Prohibition of supply, etc. of articles for administering or prepared controlled drugs.

1. A person who supplies or offers to supply any article which may be used or adapted to be used (whether by itself or in combination with another article or articles) in the administration by any person of a controlled drug to himself or another believing that the article (or the article adapted) is to be so used in circumstances where the administration is unlawful, is guilty of an offence.
2. It is not an offence under Sub-section (1) above to supply or offer to supply a hypodermic syringe, or any part of one.
3. A person who supplies or offers to supply any article which may be used to prepare a controlled drug for administration by any person to himself or another believing that the article is to be used in circumstances where the administration is unlawful, is guilty of an offence.

4. For the purposes of this section, any administration of a controlled drug is unlawful except:
   a. the administration by any person of a controlled drug to another in circumstances where the administration of the drug is not unlawful under Section 4(1) of this Act.
   or
   b. the administration by any person of a controlled drug to himself in circumstances where having the controlled drug in his possession is not unlawful under Section 5(1) of this Act.

5. In this section, reference to administration by any person of a controlled drug to himself include a reference to his administering it to himself with the assistance of another.

Section 28

Statutory Defences

There are three defences which apply to the following offences under the Act: Section 4 (2) Unlawful production Section 4 (3) Unlawful supply Section 5 (2) Unlawful possession Section 5 (3) Possession with intent to supply Section 6 (2) Unlawful cultivation of cannabis Section 9 Offence in relation to opium

The three defences may be dealt with under the following headings:

1. Lack of knowledge of fact alleged
2. Lack of knowledge of controlled drug
3. Belief that it was a drug he was entitled to produce, supply, possess etc.

In all these defences the prosecution must first establish a prima facie case against the defendant. One then need the defendant show that on the balance of probabilities he was not at fault in accordance with Section 28.

Knowledge

1. Lack of Knowledge of Act Alleged -Section 28 (2)

Subject to sub-section (3) below, in any proceedings for an offence to which this section applies, it shall be a defence for the accused to prove that he neither knew of, nor suspected nor had
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reason to suspect the existence of some fact alleged by the prosecution which it is necessary for the prosecution to prove if he is to be convicted of the offence charged.

For the accused to avail himself of this defence he must show three things:

a. He did not know the existence of some fact alleged, and
b. He did not suspect the existence of that fact, and
c. He had no reason to suspect the existence of that fact

The "fact" must be one that it is necessary for the prosecution to prove. This defence could be open to Sawyer in the following circumstances - Jones and Sawyer are walking together in High Street when they are approached by a constable. Jones is carrying a small packet of cannabis and to avoid being found in possession of it he slips the packet into Sawyer's pocket without his knowledge.

Sawyer would have a defence to unlawful possession of cannabis because he could show that he did not know he was carrying the cannabis, he did not suspect he was, nor did he have reason to suspect that he was. "Knowledge" is a "fact" that the prosecution have to prove for an offence of unlawful possession.

2. Lack of Knowledge of Controlled Drug Section 28 (3)

Where in any proceedings for an offence to which this section applies it is necessary, if the accused is to be convicted of the offence charged, for the prosecution to prove that some substance or product involved in the alleged offence was the controlled drug which the prosecution alleges it to have been, and it is proved that the substance or product in question was that controlled drug, the accused:

a. shall not be acquitted of the offence charged by reason only of proving that he neither knew nor suspected, nor had reason to suspect that the substance of product in question was the particular controlled drug alleged.

This means that if the accused thought it was one controlled drug and the prosecution proved it was a different controlled drug, then the accused has no defence.

For example, Brown is found in possession of an amphetamine. He states that he thought it was cocaine. Brown cannot use this as a defence.

However, Section 28(3) (b) (i) states:

"But shall be acquitted thereof if he proves that he neither believes nor suspected nor had reason to suspect that the substance in question was a controlled drug".
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For the accused to avail himself of this defence, he must show three things:

a. He did not believe it was a controlled drug, and
b. He did not suspect it was a controlled drug, and
c. He had no reason to suspect that it was a controlled drug

Wilson, for example, gives Hayward, his employee, a package to deliver in the normal course of his employment. He tells Hayward that it contains tobacco. The package is found to contain cannabis. Hayward would have a defence because he could show that he did not know it was cannabis, did not suspect it was, and had no reason to suspect it was.

3. (b) (ii). Belief that it was a Drug that he was entitled to Produce, Supply, Possess, etc.
Section 28(3)

But shall be acquitted thereof if he proves that he believed the substance or product in question to be a controlled drug, or a controlled drug of a description, such that, if it had in fact been that controlled drug or a controlled drug of that description, he would not at the material time have been committing any offence to which this section applies.

To avail himself of this defence the accused must show two things: -

a. He believed it was a controlled drug, or a particular controlled drug, and
b. He believed that had it been that controlled drug, or a particular controlled drug, he would have committed no offence.

Thomas, a registered drug addict, goes to a chemist with a prescription for 5 ml. of heroin but the chemist makes a mistake and gives him 5 ml. of physeptone. Thomas is now in unlawful possession of the physeptone but he would have a defence because he could show that he thought it was heroin, a drug he is allowed to possess as a registered drug addict.

POWERS TO SEARCH AND OBTAIN EVIDENCE

ENTRY TO PREMISES

Section 23 (1)

A police constable has power to enter the premises of a person carrying on the business of a producer or supplier of controlled drugs to inspect stocks, and demand the production for inspection of any books or documents relating thereto.

This is the power of the police to enter retail chemists to inspect their Controlled Drugs Register.
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STOP, SEARCH AND DETAIN

Section 23(2)

If a police constable has reasonable grounds to suspect that any person is in possession of controlled drugs in contravention of the Act or any regulations thereunder, he may:

i. Search that person; and detain him for the purpose of searching him

ii. Search any vehicle or vessel in which the constable suspects drugs may be found; and for the purpose require the person in control of the vehicle or vessel to stop it.

iii. Seize and detain, for the purpose of the proceedings under the Act, ANYTHING which appears to be evidence of any offence under the Act.

In this sub-section "vessel" includes "hovercraft" and this section does not effect or prejudice other powers.

This sub-section appears to give the police a restricted power to detain suspects for the purpose of searching them for drugs. At first glance it was thought to be a power which fell short of taking the suspect away, e.g. to the police station. However, in Farrow and Tunnicliffe (1976) CR. LR 126 it was held that the power was to operate parallel to arrest and it was obviously right that a suspect could be taken to a police station to be searched. It is difficult, therefore, now to distinguish detention under those circumstances, to an actual arrest on suspicion.

Searches requiring reasonable grounds for suspicion.

Reasonable grounds for suspicion depend on the circumstances in each case. There must be an objective basis for the suspicion based upon facts, information, and/or intelligence which are relevant to the likelihood of finding an article of a certain kind or in the case of searches under section 43 of the Terrorism Act 2000, to the likelihood that the person is a terrorist. Reasonable suspicion can never be supported on the basis of personal factors alone without reliable supporting intelligence or information or some specific behaviour by the person concerned. For example, a person's race, age, appearance, or the fact that the person is known to have a previous conviction, cannot be used alone or in combination with each other as the reason for searching that person. Reasonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity.

SEARCH WARRANT

Section 23(3)

If a Justice of the Peace (or in Scotland a Justice of the Peace, a Magistrate or a Sheriff) is satisfied by information on oath that there is reasonable ground for suspecting:
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a. That any controlled drugs are, in contravention of this Act or of any regulations made thereunder, in the possession of a person on any premises, or

b. That a document directly or indirectly relating to, or connected with, a transaction or dealing which was, or an intended transaction or dealing which would, if carried out, be an offence under this Act, or in the case of a transaction or dealing carried out or intended to be carried out in a place outside the United Kingdom, an offence against the provisions of a corresponding law in force in that place, is in the possession of a person on any premises.

he may grant a warrant, which gives the police the following powers:

i. Can be executed by an police constable
ii. Can be executed only ONCE within one month of it being granted
iii. Can enter by force if necessary
iv. Any controlled drugs or documents relating thereto which appear to be evident of an offence under the Act may be seized and detained.

The Codes of Practice under Police and Criminal Evidence Act 1984 have made a number of changes to all statutory powers of search:

No application for a warrant be made on uncorroborated anonymous information and the officer making an application must ascertain as much detail as possible about the occupier and the nature of the premises, including whether previously searched and how recently.

No application may be made without the approval of an officer of at least the rank of Inspector except in a case of urgency. If there is reason to believe that a search might have an adverse effect on relations between the police and the community then the local police community race relations officer/local Race Equality Council representative shall be consulted before it takes place. In urgent cases, the local police community race relations officer/local Race Equality Council representative, shall be informed of the search as soon as practicable after it has been made. The local police / community consultative group, where it exists, or its equivalent, should be informed as soon as practicable after a search has taken place where there is reason to believe that it might have had an adverse effect on relations between the police and the community.

Should an application be refused then no further application is permitted without additional grounds. The execution of the warrant must take place at a "reasonable hour" unless this would frustrate its purpose and the officer so executing must produce his warrant card if not in uniform, produce a warrant to the occupant of the premises and supply him with a copy of it.
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OBSTRUCTION

Section 23(4)

A person commits an offence if he: -

INTENTIONALLY OBSTRUCTS A PERSON EXERCISING HIS POWERS UNDER THIS SECTION

POWERS OF ARREST

All offences under the Act are "arrestable" as defined by the P. A. C. E. Act 1984, except:

i. Possession of Class "C" Drugs -Section 5(2)
ii. Obstruction -Section 23(4)
iii. Offences Against the Regulations -Section 18
iv. Incitement to Commit (i) to (iii) -Section 19

Under the P. A. C. E. Act 1984, the "general power" of arrest exists in respect of those excepted offences and relies upon the offender failing to provide adequate details of himself or his address, or the prevention of harm or damage.

SERIOUS ARRESTABLE OFFENCES

The following arrestable offences are always serious arrestable offences - any of the offences mentioned in paragraphs (a) to (f) of section 1(3) of the Drug Trafficking Act 1994.

1(3)(a) to (f) says: In this Act 'drug trafficking offence' means any of the following –

a. an offence under section 4(2) or (3) or 5(3) of the Misuse of Drugs Act 1971 (production, supply and possession for supply of controlled drugs);

b. an offence under section 20 of that Act (assisting in or inducing commission outside United Kingdom of offence punishable under a corresponding law);

c. an offence under -
   i. section 50(2) or (3) of the Customs and Excise Management Act 1979 (improper importation),
   ii. section 68(2) of that Act (exportation), or
   iii. section 170 of that Act (fraudulent evasion),

in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 3 of the Misuse of Drugs Act 1971;
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d. an offence under section 12 of the Criminal Justice (International Co-operation) Act 1990 (manufacture or supply of substance specified in Schedule 2 to that Act);

e. an offence under section 19 of that Act (using ship for illicit traffic in controlled drugs);

f. an offence under section 49, section 50 or section 51 of this Act or section 14 of the Criminal Justice (International Co-operation) Act 1990 (which makes, in relation to Scotland and Northern Ireland, provision corresponding to section 49 of this Act);

POWER OF COURT TO ORDER FORFEITURE SECTION 27 (1)

Subject to sub-section (2) below, the court by or before which a person is convicted of an offence under this Act (or a drug trafficking offence, as defined in Section 38 (1) of the Drug Trafficking Offences Act, 1986), may order anything shown to the satisfaction of the court to relate to the offence, to be forfeited and either destroyed or dealt with in such other manner as the court may order.

Section 28(2)

The court shall not order anything to be forfeited under this section, where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless the opportunity has been given to him to show cause why the order should not be made.

The court before which a person is convicted of an offence under the Act may order anything shown to the satisfaction of the court to relate to the offence to be forfeited; and either destroyed or dealt with in a manner as they may order.

An order under Section 27 must be made within 28 days after passing sentence and cannot be varied or rescinded or made after that period.

Any application under this section should be considered in conjunction with other confiscation orders available under the Drug Trafficking Offences Act.