Injecting Equipment
And
Sharps Bins

Legal and Practice Issues

November 2005

Reviewed and revised with the financial assistance of Shelter.

KFx
Learning of Substance

Copyright and Disclaimer

This brochure was revised November 2005, and replaces previous versions.

The resource was revised with the financial assistance of Shelter. This support should not be interpreted as endorsement of the contents by Shelter.

Contact: kfx@ixion.demon.co.uk www.ixion.demon.co.uk

Injecting Equipment and Sharps Bins

1 Introduction

This paper looks at legal issues relating to the provision of injecting equipment related paraphernalia in a variety of settings. Distribution of injecting and other drug-related paraphernalia has been an ongoing source of confusion for agencies working with drug users, and for users themselves.

This paper is intended to clarify and expand on these issues following amendments to Section 9a of the Misuse of Drugs Act by Statutory Instrument number 1653/2003.

These legislative changes have substantially altered both the legal position relating to the distribution of injecting paraphernalia.

This document is based on our current understanding of the law, and may be subject to amendment or alteration at short notice. Organisations should always therefore seek up-to-date legal advice.

We can take no responsibility for errors or inaccuracies within this document and are not liable for any loss, damage or injury that may arise from them.

2 Relevant Law

Several pieces of legislation have implications for the provision of legal exchange services. These include the Misuse of Drugs Act (1971), the Drug Trafficking Offences Act (1986) and the Medicines Act (1968), Waste Handling Regulations, Health and Safety and Civil law considerations.

3 Supplying Paraphernalia

3.1 Section 9a of the MDA (inserted by Drug Trafficking Offences Act 1986, s.34) created two new summary offences;

(a) supplying or offering to supply articles (other than a hypodermic syringe) for the purpose of administering a controlled drug, where the administration of the drug will be unlawful; and

(b) supplying or offering to supply articles to be used in the preparation of a controlled drug for unlawful administration.

This piece of legislation was amended in August 2003 following recommendations from a large number of agencies and the ACMD. The amendment, Misuse of Drugs (amendment) (No.2) Regulations 2003 (SI No: 1653/2003) states:

(1)…any of the persons specified in paragraph (2) may, when acting in their capacity as such, supply or offer to supply the following articles:

(a) a swab

(b) utensils for the preparation of a controlled drug

(c) citric acid

(d) a filter

(e) ampoules of water for injection, only when supplied or offered for supply in accordance with the Medicines Act 1968 (4) and of any instrument which is in force thereunder.

(2) The persons referred to in Section (1) are:

(a) a practitioner

(b) a pharmacist

(c) a person employed or engaged in the lawful provision of drug treatment services.

Further interpretation of the Amendment is provided by Home Office Circular HOC35/2003; the following interpretations draw on this and correspondence between KFx and the Home Office Drugs Legislation and Enforcement Unit.

3.2 Implications and interpretation:

Prior to its amendment, Section 9a meant that people were be committing an offence if they supplied a range of equipment knowing that it was to be used for the preparation or administering of a controlled drug, where such use would be unlawful. The amendment described above changes this legal situation as follows:

3.3 Who is covered by the amendment?

Circular HOC35/2003 expands on the persons authorised to supply the listed paraphernalia as follows:

(i) Medical practitioners (e.g. doctors, dentists and vets

(ii) Pharmacists; and

(iii) Persons employed or engaged in the lawful provision of drug treatment services (i.e. this should include nurses and employees of needle exchange schemes.

In verbal and written responses to questions from KFx the Home Office Drugs Legislation and Enforcement Unit stated that this list of authorised persons was not a comprehensive list and said that "if housing workers or pharmacy assistants or any other category of workers are engaged in providing drug treatment then they ***should*** be covered." [emphasis added].

However, distribution by people outside these settings would remain an offence and this would include peer-to-peer supply or workers who could not argue that they were to some extent working within a capacity of providing some form of drug treatment.

3.4 Action Points:

- Workers outside of 'typical' drug settings who wish to undertake any form of paraphernalia distribution should be adequately trained and be working within an agreed policy and practice framework;
- Such activity and policy framework could usefully be reported to the local DAT to ensure that they are aware of the provision of such services;
- Clients should not be encouraged to undertake peer-to-peer supply of the listed paraphernalia, and advised that such supply would be illegal

3.5 Paraphernalia covered by the amendment:

Swabs

The provision of swabs by authorised persons is now deemed lawful, although there is some debate as to the usefulness of these items.

Utensils for the preparation of a controlled drug:

Circular 35/2003 attempts to clarify this clause saying "which would include articles such as spoons, bowls, cups, dishes.)

In a written answer the DLEU says *"paragraph 2(b) gives some examples of "utensils" used for the preparation of a controlled drug but it does not exclude other types of equipment which could be described as a utensil."*

So other paraphernalia used in preparation (but presumably NOT consumption) would be considered acceptable in this context.

Citric acid for the preparation of heroin:

The amendment made the distribution of Citric Acid lawful. Originally, this extension did not extend to Ascorbic Acid. However, in October 2005 this situation was resolved via **SI 2005 (2846),** so it is now lawful for both citric and ascorbic acid to be supplied.

Water for Injection

The provision of "water for injection" is no longer restricted by the Misuse of Drugs Act but had remained restricted under the Medicines Act, which classed "Water for Injection" as a Prescription Only Medicine (PoM).

This had meant that agencies could only lawfully distribute "Water for Injection," and this could only be undertaken within a prescribing context. The product "sterile water" did not equate with "water for injection" and so was not lawful for distribution.

This situation was partially resolved as follows through SI 2005 No.1507 The Medicines for Human Use (Prescribing) (Miscellaneous Amendments) Order 2005.

This became law 1st July 2005, and says:

(2) In the table in Part II of Schedule 5 to the POM Order (Exemptions from the restriction on supply), after paragraph 3, insert the following new paragraph -

> 3a: Persons employed or engaged in the provision of lawful drug treatment services.
> 3b: Ampoules of sterile water for injection containing not more than 2 mg of sterile water.
> 3c: The supply shall be only in the course of provision of lawful drug treatment services."

Effectively, this makes the distribution of ampoules of water for injection legal, subject to the above size restrictions. Exchange Supplies offer a 2ml Glass Ampoule which is licensed for injection.

Filters for the filtering of controlled drugs for injection

The distribution of filters by authorised bodies is now deemed lawful.

3.6 Prohibited items:

Items that remain prohibited would include but is not limited to:

- Tourniquets
- Foil used for smoking heroin
- Pipes, bongs etc for smoking cannabis.
- Crack pipes

3.7 Exemptions

Persons are able to distribute hypodermic syringes, as these are explicitly exempt under the terms of the s.9A of the MDA 1971. This is not restricted to the persons specified above, and so peer-to-peer supply of needles is not an offence.

There is no legal restriction on who may supply needles and syringes. However, it is important to ensure that workers undertaking the distribution of injecting equipment are trained and competent to do so. The giving of advice or equipment by untrained staff creates risk both for service users and for staff.

Sharps bins (Sin bins) are not prohibited either as they are not used for either the preparation or administration of substances.

4 Incitement:

Section 19 of the MDA makes it an offence to incite another to commit an offence under any provision of the Act. One would need to be careful not to be seen therefore, to be encouraging or condoning actions that would be an offence under the Act. An example of this would be if a worker explained how to prepare amphetamine powder for injection. This may be interpreted as

"producing a controlled drug," as it is "producing" a class A drug from a class B drug. As such the worker would need to be sure that, while explaining how to do so safely, they did not encourage the process.

5 Possessing Paraphernalia

5.1 The possession of clean, unused paraphernalia is not a criminal offence under the Misuse of Drugs Act 1971. While supplying certain paraphernalia may be an offence, possession is not.

However, when the equipment has been used and has detectable traces of controlled drug on or in it, then this can mean that charges of possession - for the controlled drug, not the paraphernalia, could be brought.

In this context, traces of cannabis in a pipe or traces of heroin in a syringe could constitute "possession." While the latter example is at least theoretically possible, it is generally accepted that it would not be in the public interest to discourage injecting drug users from carrying used needles in a sharps bin, and using needle exchanges, so prosecutions for traces in needles are rarely if ever pursued.

5.2 From a harm reduction perspective, it is desirable that injecting drug users keep an adequate supply of clean injecting equipment where they live. This would reduce the risks of sharing or reusing equipment.

However, housing policy often includes clauses prohibiting possession of paraphernalia on site. In some environments (such as rehabilitation settings) this may well be appropriate. In others, however, it will act against effective harm reduction.

Housing providers should be reassured that allowing people to possess and store drug paraphernalia on site does not put them on the wrong side of the law.

5.3 When encountering paraphernalia on site, workers should assess it from two key perspectives:
a) is this paraphernalia related to activities prohibited under Section 8?

An example of this would be finding a large bong, for smoking cannabis on site. This is probably not associated with use off-site but is more likely to be used on site. This would be contrary to Section 8(d) of the Misuse of Drugs Act 1971 and so would mean further action would be appropriate.

b) does this item present a health and safety risk?

A capped, sterile needle does not present an immediate health and safety risk.

But an uncapped or non-sterile needle does present health and safety issues. An organisation would need to take action where the presence of paraphernalia presented an unacceptable health and safety risk.

5.4 Removing paraphernalia which is legal to possess should be avoided where possible, unless this is done with the service-users consent. The exception to this would be the removal of paraphernalia that created an immediate and unacceptable health and safety risk. So removing a sterile, sealed needle or citric acid from a resident's room would be potentially unlawful and damaging to health. It will rarely be appropriate to take such a course of action.

However, were the user to have left an uncapped needle on a surface, it may well be appropriate to remove it due to the safety risks.

6: Putting sharps bins in buildings

6.1 This is a subject that has become mired in controversy, and this has had the unfortunate consequence of discouraging the siting of sharps bins in buildings.

The dilemma is the extent to which the placing of sharps bins in buildings is tantamount to "condoning" the use of drugs within the building.

We should be clear from the outset that the placing of sharp bins within a building is not illegal. It is not possible for an organisation to be prosecuted solely for placing sharps bins in a building.

On the other hand, organisations are obliged to fulfil their health and safety obligations and meet their duty of care to staff, service users and visitors. Where the presence of contaminated sharps is a foreseeable risk, the organisation is obliged to address this risk; the provision of sharps bins may form one aspect of reducing this risk.

An organisation, aware that such a risk existed but who failed to put reasonable legal measures in place would be at risk of litigation in the event of Needlestick injuries or similar mishaps.

6.2 Section 8 and sharps bins:

There had been widespread concern that changes to Section 8(d) of the Misuse of Drugs Act 1971 by Section 38 of the Criminal Justice and Police Act 2001 would affect the placement of sharps bins in buildings. The amendments extended the obligations on occupiers and managers of premises, obliging them to prevent the use of controlled drugs unlawfully held on premises.

There was concern that the presence of sharps bins in a building could be considered to demonstrate a tolerance - or at least an acceptance - that use was taking place in the building.

The amendment to Section 8 was repealed by the Drugs Act 2005. It is therefore currently not an offence for an organisation to be aware that a person is injecting illegally held controlled drugs on site and there is no barrier to making harm-reduction resources such as sharps bins on site.

- Organisations should make sharps bins available as required.

6.3 Types of bins, placing and labelling

There are many different types of bin that can be fitted and it is important that suitable bins are used in different settings.

Child-proof: All bins should be child proof; where necessary they should be wall mounted out of reach of children. Some personal sharps bins are more easily damaged than others, and a few would allow equipment to fall back out if the box is upended or shaken.

Labelling: for the safety of all service users and staff, sharps bins should be labelled indicating that the bin contains potentially dangerous materials and that the contents should only be handled by appropriately trained ad equipped staff. Instructions relating to discards in or near the sharps bin could usefully be included.

Bins getting broken into:
Bins may get broken into as an act of vandalism or because someone is very short of injecting equipment. The first issue is best dealt with by installing suitably secure bins; a plastic bin bracketed to a bathroom wall is more likely to get broken into than a built-in wall mounted bin with a lock.

The issue of bins getting broken into to retrieve works is a serious issue and suggests a lack of availability of clean injecting equipment locally. Responses should include:

- Ensuring that suitably constructed sharps bins are used;
- Publicizing local needle exchange provision - including information posted beside sharps bins;
- Working with local pharmacies and other exchange providers to ensure that local injecting drug users have ready access to clean injecting equipment.

7 Workers transporting used injecting equipment:

7.1 In theory at least, a worker transporting used sharps would be in possession of the drug traces in the equipment. However, such charges would not be brought for the public interest reasons described above, and also because the worker transporting the bins would typically be transporting the bins for destruction or disposal, and so would be fulfilling requirements of section 5(4)b of the MDA.

7.2 Law

It is an offence to transport controlled waste if you are not a registered carrier. Controlled waste is household, commercial or industrial waste. It can be from a house, school, university, hospital, residential or nursing home, shop, office, factory or any other trade or business. It does not have to be hazardous or toxic to be controlled waste. Failure to register could carry a £5000 fine. Failure to meet your duty of care when transporting waste can carry an unlimited fine.

In order to reduce work in this area, it is desirable that handling of sharps bins be undertaken by needle exchanges. However, where no such arrangements exist, or would be impractical, agencies will need to register as a waster carrier.

Charities and voluntary organisations do not need to be registered as a waste carrier. You must instead be registered in your local environment agency's register of waste transporters. This is free of charge. Otherwise a charge of £114 for the initial three-year period, and £78 for a further three years applies.

The Duty of Care that applies to the carrying of waste is detailed in the leaflet "Waste and Your Duty of Care."
Waste: Duty of Care (Product Code 95EP159)
DETR Free Literature: PO Box 236: Wetherby: LS23 7NB
and
The Registration of Waste Carriers (HO -3/99 - 7k - C- AUVN)
The Environment Agency: Wah Kwong House: 10 Albert Embankment: London: SE1 7SP

8 Handling and disposing of sharps

8.1 The handling and disposal of used needles is potentially dangerous. But the potential risk can be minimised through a confident and planned approach using the correct equipment. Far more dangerous than a visible discarded needle is a hidden or partially hidden needle.

There is a wide range of equipment that could be used to pick up discarded injecting equipment. Using the right equipment at the right time can reduce risk.

Tongs are best used for picking up multiple needles;

Needle-proof gloves are best for hidden and unseen needles
Latex gloves will be appropriate for single, visible needles

Spill kits will be needed and again, these will need to be accessible. These should include a portable sharps box, gloves, rags for cleaning spills, and a COSH approved cleaning agent.

8.2 Multiple needles:

Workers may encounter multiple needles when cleaning abandoned properties or when tenancies have been terminated. They may also be encountered in public spaces.

When picking up a number of discarded needles on the floor, tongs are likely to be the most appropriate tool.

Tongs will reduce the need for bending to pick up needles, and avoid hand contact with the needles.

The needles should be picked up and directly in to a sharps bin with an open aperture.

After use the area where sharps were discarded will need to be thoroughly cleaned with cleansing solution.

The tips of the tongs should be soaked in bleach solution or similar after use to reduce risk of cross contamination.

8.3 Single, visible needles

While tongs or needle-proof gloves could be used for picking up single, visible needles, they are probably not as suitable as a humble pair of latex gloves. While they only provide minimal protection against needle-stick, they do provide good protection against contamination from body fluids.

The safest approach would be as follows:

- **take a sharps box to the discarded needle**. The box should be the worker's own, rather than the client's. This will ensure that the box is in good condition, not damaged and not overfilled. The box should be portable and have a non-return mechanism so that needles will not fall out if the box is dropped;
- **where latex or rubber gloves;**
- **pick up syringe and/or needle by non-sharp end**. If the cap is there DO NOT attempt to resheath the needle as this is more likely to result in needle-stick. Place needle/syringe in sharps box.
- **Clean area with rags and cleaning fluid.** Place rags and gloves in

yellow bag and seal.

- **Wash hands**

Latex or rubber gloves can only offer minimal protection from needle-stick injuries. They so however offer protection from any spilled fluids and so are useful for the handling of equipment. To be of any protection from needle-stick injuries, stout gloves such as gardening gloves, or purpose made "needle-proof gloves" would be needed. In turn, the use of thick gloves, tongs etc reduces dexterity.

8.4 Unseen needles:

Where there is a risk on injury from unseen needles such as cleaning gutters or undergrowth, then thick gloves will be needed. The best of these will be "needle-proof" gloves, which can be very expensive.

If these are used to pick up needles, they may be contaminated by blood and will need to be washed at high temperature before further use.

Care should be taken when putting gloves on and taking them off – any blood on the gloves could end up being transferred on to the hands.

8.5 Other hazards:

Beyond Hands:

Care should be taken to avoid needle-sticks to other parts of the body. Wearing of open-toed shoes should be discouraged in high-risk environments. Careless handling or dropping needles can also cause needle-sticks to legs or elsewhere.

Concealed needles:

Unfortunately, a small number of people leave needles where they cause serious risk to others. This is sometimes done deliberately. Workers should approach deserted properties with caution, and be aware of needles discarded in the following locations:

- soft furnishings and mattresses
    - handle with care wearing stout gloves
- suspended ceiling tiles, or cavity walls
    - examine with care – not using hands
- U-bends, cisterns
    - As above
- Inside drawers
    - Empty out and examine using gloves
- On top of cupboards and wardrobes
    - Use mirror on a stick to check tops; don't sweep off with stick

Bin-Bags
A common cause of needle-stick injuries is through the handling of bin bags. A needle, in a large bin bag, can bang in to the leg causing deep needle stick injuries.

Careful planning about bag handling can reduce this risk.

- Only carrying one bag at a time
- Carry bags away from body
- Consider loading several bags in to a cage or wheelie bin,
- Ensure that known injectors have access to sharps bins.

9 Responding to Needle-stick injuries

Accidental injury with a needle is distressing and can lead to further illness. Every effort should be made to prevent accidental injury with needles.

If needle stick injury should take place, the risks of contracting a blood-borne virus (BBV) such as hepatitis B or C or HIV is relatively low.

HIV is believed to have a relatively low risk following needlestick. Even in medical settings where needlesticks occurred from a known contaminated source, transmission rates of around 0.3% (1 in 300) have been recorded.

Where exposure is via splashes enteringeye, nose or throat infection from contaminated blood, the rate is lower – about 0.1% (1 in 1000).

In order for transmission to take place, this requires blood or body fluids to be fresh, and risk increases with deep, penetrating wound. The virusmay be viable in fluid spills for a few hours.

At present there is no vaccine, though there is scope for Post Exposure Prophylaxis.

Hep B carries a higher risk of infection. Research suggests transmission rate of 6-30% (up to 30 in 100) from cuts or needlestick from known contaminated sources.

The virus can also enter via open wounds, cuts, grazes etc. Hep B may be viable in dried blood for as much as ten days. There is a vaccine available, and treatment is available.

Workers who frequently encounter sharps or blood spills should consider being vaccinated against Hep B, and should discuss this with occupational health advisors.

Hep C carries a moderate risk of infection; transmission rate of 2-7% (up to 7 in 100) from cuts or needlestick from known contaminated sources. The virus can also enter via open wounds, cuts, grazes etc.

It has a long life-span outside of body, with various sources quoting time frames from four days up to three months.

There is currently no vaccine, but early treatment with anti-retrovirals reduces the likelihood of developing chronic disease.

Responding to needle-stick injuries:
In the event of a prick, scratch or puncture by a needle, the following procedure should be followed immediately:

- Remove the needle somewhere safe where it can be retrieved.
- Squeeze the injury to encourage bleeding for a few minutes, and place under cold running water.
- Wash and clean the site with iodine or soapy water.
- Dry and apply a plaster or other dressing.
- Those not vaccinated against Hep B should report to their GP or local A&E department for a vaccination within 48 hours.
- A senior worker should be informed and the incident recorded in the Accident Book.
- Support and counselling should be made available to the injured person.

Post-exposure Prophylaxis
Organisations should establish a named contact at a local hospital or health centre so that assessment for prophylaxis treatment can be undertaken rapidly.

This will be assessed according to the nature of the wound, and the likelihood of contracting an infection.

Hepatitis B – treatment with Hep B Immunoglobulin and/or the Hep B vaccine

HIV - Post-exposure Prophylaxis for HIV consists of a combination of drugs taken for one month. These drugs have been shown to reduce the risk of infection following accidental exposure to HIV.
They do not protect against repeated or long term exposure to HIV. Common side effects include diarrhoea, nausea, loss of appetite and headaches.

Hep C – patient is monitored for Hep C antibodies and liver function changes. If changes are detected, treatment takes place early with anti-retrovirals.

10 Further Information

Statutory Instrument 2003 no 1653: The Misuse of Drugs (Amendment) (No.2) Regulations 2003
http://www.hmso.gov.uk/si/si2003/20031653.htm

Home Office Circular HOC 35/2003: 11.7.03
http://www.homeoffice.gov.uk/docs2/cledu-paraphernalia-hoc.pdf

Tackling Drug-Related Litter – Guidance and Good Practice
(DEFRA, 2005)
http://www.defra.gov.uk/environment/localenv/litter/pdf/drugrelatedlitter.pdf

HIV and AIDS: information and guidance in the occupational setting
(HPA – 2005 rev)
http://www.hpa.org.uk/infections/topics_az/hiv_and_sti/hiv/occupational.htm

Hepatitis C: Information and Guidance in the Occupational Setting
(HPA – 2005 rev)
http://www.hpa.org.uk/infections/topics_az/hepatitis_c/occup_C.htm

Websites:

KFx:	www.ixion.demon.co.uk	kfx@ixion.demon.co.uk
Exchange:	http://www.exchangesupplies.org/	
Sharpak	http://www.sharpakforsharps.co.uk/00nav.html	

E-mail:

Books

• The safer Injecting Handbook	Derricott, Preston, Hunt	HIT	1999
• The Sample Drugs Policy	Kevin Flemen	KFx	2004