

Guidelines for field mycologists: the practical interpretation of Section 21 of the Drugs Act 2005.

This document has been prepared in consultation with the Home Office Drugs Branch Licensing Section and with reference to Home Office Circular 36 / 2005. Whilst the Home Office is happy that these guidelines are satisfactory from a legislative point of view, it should be noted that only the courts can give an authoritative view. Field mycologists, in following these guidelines, are acting lawfully and do not require a licence in so doing.

Overview

Section 21 of the Drugs Act 2005 amends the Misuse of Drugs Act 1971 to provide that all psilocybe magic mushrooms¹, regardless of whether they constitute a preparation or a product, constitute a Class A drug. This was achieved by inserting

‘Fungus (of any kind) which contains psilocin or an ester of psilocin’

into Part 1 of Schedule 2 to the 1971 Act.

Thus, as of 18th July 2005, it is an offence to import, export, produce, supply, possess or possess with intent to supply magic mushrooms whatever form they are in, whether prepared or fresh.

Exceptions:

- A person will not be committing an offence of possession of magic mushrooms if the mushrooms are growing uncultivated on his or her premises.
- A person will not be committing an offence of possession if he or she picks magic mushrooms for disposal (i.e. destruction OR delivery to a person who can lawfully take custody of them, e.g. licensed staff at the Royal Botanic Garden, Kew) as soon as is reasonably practicable and holds them in accordance with that purpose.

Licence provision:

The Secretary of State can issue a licence in respect of the production, supply, offer to supply or possession of psilocybe fungi – normally for research purposes rather than for general use.

Such a licence is issued annually and currently costs £31.00 p.a. Applications would be made to:

Ian Breadmore or Mike Evans
The Home Office Drugs Branch Licensing Section
Floor 6
Peel Building
2, Marsham Street
London SW1P 4DF

¹ The phrase ‘magic mushroom’ refers to all those species listed in Appendix 1. This is a provisional list prepared by the Royal Botanic Garden, Kew: it reflects current knowledge only and revisions will need to be made as that knowledge expands.

The law and field mycology:

- If the fungi are growing uncultivated on your lawn or field, you are not considered to be in possession of a Class A drug.
- Be aware of the fungi listed in Appendix 1.
- If you knowingly collect a fungus listed in Appendix 1, e.g. *Psilocybe semilanceata* or *Hygrocybe psittacina*, you potentially commit an offence of possession. If field identification is possible then it is, of course, unlikely that you would need to take the fungus home for further identification.
- If you do not know what the fungus is and have no reason to suspect that it is a controlled drug then it is lawful to collect it and hold it for identification. If it proves to be a species known to contain psilocin or esters of psilocin then it should either be destroyed or forwarded (as soon as possible) to a person who is lawfully able to hold the material. It is important to label material correctly. The label should give the usual information recorded with herbarium specimens (name given to fungus / text used to ID / when / where / who collected it etc.) but with the addition of a statement about the future of the specimen, e.g. 'Specimen to be forwarded to Royal Botanic Garden, Kew for retention in herbarium'.
- If you have collections of the fungi listed in Appendix 1 already in your herbarium then you should destroy the collections or forward them to the custody of a person lawfully able to hold the material.
- You may wish to continue to hold Appendix 1 listed fungi as a part of your personal herbarium reference collection. However, an application for an individual licence for this purpose is likely to fail.

Further Information

The Drugs Act 2005 can be found at:

<http://www.opsi.gov.uk/acts.htm>

The Misuse of Drugs (Amendment) (No. 2) Regulations 2005 and the Misuse of Drugs (Designation)(Amendment) Order 2005 can be found at:

www.hmsso.gov.uk/stat.htm

The 2005 Regulations and Order are published by The Stationery Office. Telephone orders / general enquiries 0870 600 5522 or online at: www.tso.co.uk/bookshop.

Background and further detail

The following text explains the background to the 2005 amendment of the legislation and gives further detail with regard to exceptions.

Previously existing legislation

The Misuse of Drugs Act 1971: this Act controlled the chemicals inside the mushrooms as a Class A drug rather than the mushrooms themselves. Magic mushrooms were only classified as a Class A drug under that Act if they constituted a preparation or a product containing psilocin or an ester of psilocin. It is a matter of legal interpretation what constitutes a preparation or a product and this had led to uncertainty.

Why amendment to the 1971 Act was considered necessary

Magic mushrooms are a powerful hallucinogen and can cause real harm, especially to vulnerable people and those with mental health problems. Estimates indicated that over 400 establishments in this country had been supplying magic mushrooms (mostly imported). The very substantial increase in the commercial sale of magic mushrooms in the UK raised concerns regarding public health, which the Government is fully entitled to address.

The amended legislation

Section 21 of the Drugs Act 2005: amends the 1971 Act to provide that all psilocybe magic mushrooms, regardless of whether they constitute a preparation or a product, constitute a Class A drug. This was achieved by inserting

‘Fungus (of any kind) which contains psilocin or an ester of psilocin’

into Part 1 of Schedule 2 to the 1971 Act. It came into force on 18th July 2005.

It is therefore an offence to import, export, produce, supply, possess or possess with intent to supply magic mushrooms whatever form they are in, whether prepared or fresh.

When is it not unlawful to possess magic mushrooms?

The Misuse of Drugs (Amendment) (No. 2) Regulations 2005 (the 2005 Regulations) outline four situations when it is not unlawful to possess magic mushrooms.

Regulation 2(2) inserts a new regulation 4A (Exceptions for drugs in Schedule 1) into the Misuse of Drugs Regulations 2001 (the 2001 Regulations) to ensure that magic mushrooms are exempted from the offence of possession under section 5(1) of the Misuse of Drugs Act 1971:

- (i) where the magic mushrooms are growing uncultivated. This ensures that persons who have magic mushrooms growing on their land uncultivated will not be acting unlawfully by possessing them in this way. (Should those persons intend to supply those magic mushrooms they will, however, be committing an offence of possession with intent to supply controlled drugs);
- (ii) where the magic mushrooms are picked by a person, who possesses them lawfully (for example, because they are growing uncultivated on premises they own or occupy) in order to deliver them as soon as is reasonably practicable into the custody of a person lawfully entitled to take custody of them and they remain in that person’s possession for and in accordance with that objective;
- (iii) where the magic mushrooms are picked in order to either destroy them as soon as is reasonably practicable (purpose of destruction) or deliver them as soon as is reasonably practicable to a person (including a police officer) lawfully entitled to take custody of them (for purposes of delivery) and are then held, whether by the person who picked them or by another person, for and in accordance with the purpose of destruction; and

- (iv) where the magic mushrooms are picked in order to destroy them as soon as is reasonable practicable (purpose of destruction) and then held, whether by the person who picked them or by another person, for and in accordance with the purpose of delivering them as soon as is reasonably practicable to a person lawfully entitled to take custody of them (purpose of delivery).

In addition to the above four scenarios, section 5(4)(b) of the 1971 Act already provides a defence to the offence of possession of a controlled drug where a person shows that they took possession of that drug for the purpose of delivering it into the custody of a person lawfully entitled to take custody of it and that as soon as possible after taking possession of it they took all such steps as were reasonably open to them to deliver it into the custody of such a person.

Effectively, thus far, any person can pick magic mushrooms for either the purpose of delivery or destruction, or acquire magic mushrooms for such purposes, so long as he holds them for and in accordance with either of those purposes.

There is also a defence in section 5(4)(a) of the 1971 Act for those who, having such fungi in their possession, can prove that that they took possession of the mushrooms (knowing or suspecting the fungi to be a controlled drug) for the purpose of preventing others from committing or continuing to commit an offence in connection with the fungi and that as soon as possible after taking possession of the fungi they had taken all such steps as were reasonably open to them to destroy the fungi or to deliver them into the custody of a person lawfully entitled to take custody of them.

Proof of lack of knowledge is also a defence to the offences of production, supply, possession and possession with intent to supply magic mushrooms under section 28 of the 1971 Act. Section 28 would apply, for example, where a person who picks magic mushrooms in the wild does not know or suspect and has no reason to suspect that they are magic mushrooms.

Licensing provision

Regulation 2(3) of the 2005 Regulations inserts a fungus containing psilocin or an ester of psilocin into Schedule 1 to the 2001 Regulations, enabling the Secretary of State to issue a licence under regulation 5 of the 2001 Regulations in respect of the production, supply, offer to supply or possession of those fungi – normally for research purposes rather than for general use.

Liz Holden
BMSRN Co-ordinator
March 7th 2006

Appendix 1.

Preliminary list of British Fungi reported to contain psilocybin/psilocin.

N.B. This list may be incomplete and should be treated as provisional.

Based on: Rättsch, A. (2005). *The Encyclopedia of Psychoactive Plants. Ethnopharmacology and its Applications.* Park Street Press.

Confirmed

Conocybe cyanopus
Conocybe velutipes (= kuehneriana)
[Galerina steglichii hothouse alien]
Gymnopilus junonius
Gymnopilus liquiritiae
[Gymnopilus purpuratus hothouse alien]
Inocybe corydalina
Inocybe haemacta
Panaeolina foenicisecii
Panaeolus acuminatus
Panaeolus fimicola
Panaeolus olivaceus
Panaeolus papilionaceus
Panaeolus subbalteatus
Pluteus salicinus
Psilocybe coprophila
Psilocybe crobula
Psilocybe cyanescens
Psilocybe inquilina
Psilocybe merdaria
Psilocybe montana (incl. physaloides)
Psilocybe semilanceata
Psilocybe strictipes
[Psilocybe stuntzii hothouse alien]
Stropharia aeruginosa
Stropharia caerulea / cyanea
Stropharia percevalii
Stropharia pseudocyanea
Stropharia semiglobata
Stropharia squamosa
Stropharia thrausta

Possible but not confirmed

Hygrocybe psittacina
Mycena amicta
Panaeolus semiovatus
Pluteus cervinus
Pluteus ephebeus (= villosus/pearsonii)
Psathyrella candolleana
Rickenella fibula
Rickenella swartzii
Stropharia coronilla

Brian Spooner August 2005