

Serious Crime Act 2015

Fact sheet: Powers to seize, detain and destroy drug cutting agents

Background

1. Certain chemical substances, which in their raw form have limited uses in the legitimate manufacture of medicinal products, can also be used as cutting agents for bulking illegal drugs, thereby maximising criminal profit margins. The 'grey market' trade (that is, where it is unclear if there is a legitimate end use) in these substances has become a significant element of the domestic cocaine trade over the last five years, but there are currently no laws or regulations that specifically target the domestic trade in cutting agents. This trade impacts across the UK enabling organised criminals to maximise their profits from the trade in illegal drugs and increases the risks posed to local communities. The Government's Drug Strategy 2010¹ included a commitment to develop a robust approach to stop criminals profiting from the trade in cutting agents. This commitment was reinforced in the 2013 Serious and Organised Crime Strategy.
2. In 2013, there were over 75 border seizures of chemicals such as benzocaine, lidocaine and phenacetin (the most common cutting agents), totalling over 2 tonnes². The majority of cocaine available at street level contains one or more adulterants, some of the most common being benzocaine and phenacetin. In 2013, 63% of street level seizures of cocaine hydrochloride (powder cocaine) contained benzocaine, while 91% of street level base cocaine seizures (the majority of which is 'crack cocaine') contained phenacetin. Much of this adulteration occurs within the UK; in 2013, the quarterly average purity of cocaine hydrochloride at importation level ranged from 69-71%, while the average purity at user level ranged from 32-38%³. The additional profits that cutting agents provide are substantial. Importing a kilogram of high-quality cocaine may cost around £45,000, while a kilogram of benzocaine can be bought for £300. It is common for cocaine to be mixed at an initial 1:1 ratio with benzocaine, allowing the resulting product to be potentially sold for £90,000⁴.
3. Law enforcement agencies currently use existing powers to seize cutting agents, such as those under the Police and Criminal Evidence Act 1984. However, there are no explicit powers for tackling the domestic trade in cutting agents. This means loopholes exist which can prevent law enforcement from seizing suspected cutting agents. Unless a successful prosecution can be brought, for instance for conspiracy to supply Class A drugs or assisting in the commission of an offence under the Serious Crime Act 2007, law enforcement are limited in the options available for restricting the supply of cutting agents. The bespoke new

¹ <https://www.gov.uk/government/publications/drug-strategy-2010--2>

² NCA – Project Kitley

³ 'Average' here refers to weighted mean purity. For further details see the NCA ENDORSE 2013 Annual Report

⁴ NCA – Expert Evidence Team

powers in the Serious Crime Act 2015 ensure that law enforcement agencies can deal robustly with cutting agents, and also ensure that they do not have to return seized cutting agents to a dealer in circumstances where they will in all probability be used to facilitate the supply in illegal drugs.

The new cutting agent powers

4. These powers are available to UK police forces (including the British Transport Police and Ministry of Defence Police), Border Force and the National Crime Agency. Law enforcement officers have the power to seize and detain any substances suspected of being intended for use as a drug cutting agent. They are able to do this in two ways: while legally on premises (for example at a port), or with a new cutting agents warrant. It is anticipated that many of these seizures will occur at the border, where large shipments of suspicious substances are often imported under false labelling. This is not likely to affect legitimate businesses, since seizures of suspected cutting agents are currently undertaken in a targeted manner using existing criminal or customs powers. The new powers will be used in a similar intelligence-led fashion.
5. Law enforcement agencies are also be able to apply for a warrant to search premises for suspected cutting agents. The process for application and execution of the warrant mirrors that in existing legislation, such as the Misuse of Drugs Act 1971. As such, it is a criminal offence to obstruct an officer in executing the warrant. In many cases the cutting agents warrant will not be necessary, since the closely entwined nature of the market for cutting agents and for illegal drugs means that criminals will often be trading in both. In such instances, law enforcement agencies are likely to use a warrant under the Misuse of Drugs Act 1971, and would be able to seize any cutting agents found using powers under the Police and Criminal Evidence Act 1984.
6. Once the suspected cutting agents have been seized under the new powers, they can be detained for up to 30 days while investigations proceed. The responsible officer must make reasonable efforts to give proper notice of the seizure and the consequences of this to the person from whom the substances were seized and the owner of the substances (if they may belong to a different person). If law enforcement wish to detain the substances beyond the initial 30 day period, for instance to allow for further investigation or if proceedings against the owner have been initiated, permission must be sought from a magistrate's court or justice of the peace⁵. This ensures judicial oversight of the detention period. If a person entitled to the substances is not present or represented at the hearing for continued detention, the responsible officer must again make reasonable efforts to inform the owner, or person from whom they were seized, that the detention period has been extended.
7. There is further judicial oversight if the law enforcement agency wishes to destroy the substances, since it will need to apply to a magistrates' court for forfeiture.

⁵ In relation to Scotland this means a 'sheriff' and in Northern Ireland a 'court of summary jurisdiction'.

The court must grant forfeiture if satisfied, to the civil standard of proof, that the substance was intended for use as a drug cutting agent. If the court is not satisfied of this, it must order the substance to be returned to the owner or person from whom it was seized. The application for forfeiture can be made at any point after the initial seizure. The ability to apply for forfeiture soon after seizure allows law enforcement agencies to avoid burdensome storage costs where the substances clearly have no legitimate end use. For instance, the total benzocaine requirement for legitimate UK industry is around 25 kilograms per year, yet it is not uncommon for the volume of individual intercepted shipments of benzocaine at the border to be many times greater than this. In such cases, an early application for forfeiture will save considerable law enforcement resources.

8. Once the court has ordered the substances either to be returned or forfeited, a 'party to the proceedings' (most likely either the relevant law enforcement agency or the owner of the substances) or a person entitled to the substances (if not a party to those proceedings) has 30 days to appeal against the decision.
9. In the unlikely event that the property of a legitimate business is seized under these powers (that is, where substances are seized but no forfeiture is granted), the owner will be able to apply for compensation. The compensation would be paid by the law enforcement agency which made the seizure. To prevent unreasonable claims, the value of the compensation will be no more than the wholesale value of the substances seized (unless exceptional circumstances exist).

Case study

In April 2014 a husband and wife were sentenced to a total of 12 years in prison after police found 326 kilograms of benzocaine at their house, along with quantities of Class B and C drugs. If the benzocaine had been used to cut cocaine at a ratio of 3:1 (benzocaine:cocaine), this could have resulted in 435kg of the resulting powder being distributed within the domestic wholesale market, with an approximate value of £8,700,000. This quantity of cocaine, when sold on the street in deals of one gram each, would generate user level outlay in excess of £17,000,000.

Both defendants pleaded guilty to importing benzocaine to supply the Class A drugs market. The husband had established 'Global Medical Healthcare Products' in 2006, a front business to allow him to portray himself as a legitimate trader in the pharmaceutical industry.

Law enforcement intercepted 17 suspicious packages of benzocaine belonging to the company between October 2010 and March 2011, which were sent to various addresses in an effort to reduce suspicion. These packages were intercepted using existing powers as they were linked to an ongoing criminal investigation. However, there are limited options available to intercept packages which are not directly linked to a criminal investigation, even if they contain chemicals which will, in all probability, be used to facilitate the supply in illegal drugs. The new powers to seize packages of suspected cutting agents will address this gap.

**Home Office
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