

Police powers and drugs

Part 3: The courts and drugs laws

FOLLOWING ON from August and September's factsheets focusing on police powers and drugs laws, the legal team at Release here provide the latest information on the powers available to the courts where the defendant's drug use is central to a case. In the January issue of Druglink we will provide a second 'courts and drug laws' factsheet concentrating on the new Intervention Orders that came into effect on 1 October 2006 and the proceeds of Crime Act 2002.

Restrictions on Bail ('RoB')

If a defendant is making an application for bail and it is established that he/she:

- Is aged 18 or over; and
- Has tested positive for the presence of a specified Class A drug either after testing on charge/ arrest; and
- Has been charged with possession of a controlled drug or possession with intent to supply a controlled drug or the court is satisfied that the alleged offence was caused partly or wholly by the defendant's use of a specified Class A drug;
- The Court should not grant bail unless the defendant agrees to undergo an assessment or agrees to undergo follow up action/treatment in relation to an assessment.

Community Orders

(1) Drug Rehabilitation Requirements ('DRRs')

A DRR is a requirement that may be imposed by a Court as part of a Community Order ('CO'). Community Orders were introduced as part of a new sentencing regime on 4 April 2005. A CO can be made up of several different requirements that should suit the needs of the offender as well as reflect the seriousness of the offence.

DRRs replace drug testing and treatment orders ('DTTOs') (but see further below).

A Court will impose a DRR if it is satisfied that all the following factors apply:

- The offender has a dependency on or a propensity to misuse drugs;
- Treatment could be effective;
- Arrangements can be made to facilitate the treatment;
- A DRR has been recommended by probation or YOT;
- The offender is willing to comply with the order.

The offender must agree to a specified period of drug treatment and testing of between six months and three years. The offender will be required to engage in a treatment programme and will be required to undergo testing throughout the duration of the order.

The terms of the DRR will vary to reflect the needs of the offender and the seriousness of the offence. There are three possible levels of contact: low offence seriousness, medium offence seriousness and high offence seriousness.

During the first 16 weeks of the DRR the amount of contact and level of testing an offender should have is as follows:

- Low offence seriousness – at least one contact hour per week (no minimum hours specified) and weekly tests;
- Medium offence seriousness – minimum eight hours' contact a week and twice-weekly tests (this can be reduced after 16 weeks);
- High offence seriousness – minimum 15 hours' contact a week and twice weekly tests (again, this can be reduced after 16 weeks).

The number of contact hours relates to the whole of the CO not just to the DRR. Refusal to provide a sample for testing, without a reasonable excuse, could amount to a failure to comply with the DRR.

A DRR may be subject to reviews. If the DRR is for more than 12 months then it must be subject to a review at Court. The conditions for reviews are:

- Reviews are to take place at intervals of at least one month;
- The offender must attend each review hearing;
- Submission of a report detailing the offender's progress is to be provided by the probation. The report will include the results of the tests and views of the treatment provider.

At the review hearing the Court may amend the order, if the offender agrees to the proposed amendments.

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