

Police powers and drugs

Part 1: Testing, assessment and searching

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THERE have been a number of significant changes to legislation in the past few years which impact directly on drug users and those working within the drugs field. One of the most striking changes has been the increased access to drug treatment via the Criminal Justice System. The following information looks at some of the major legislative changes brought in through the Criminal Justice Act 2003 and Drugs Act 2005.

Mandatory testing on arrest/charge

Section 7 of the Drugs Act 2005 amended s63B of the Police and Criminal Evidence Act 1984 to allow for the testing of Class A drugs on arrest of over 18s. Testing of under 18s is presently only allowed where the person has been charged with an offence. The following conditions apply to drug testing on arrest or charge:

- The police can only test for specified Class A drugs, that is, heroin or cocaine (including crack);
- Testing is allowed where a person has been arrested or charged with a trigger offence or where the test has been authorised by a police officer whose rank is at least that of an inspector on certain grounds;
- The police must inform the person subject to arrest or charge that they are required to give a sample and that failure to do so is a summary offence. This offence carries a sentence of up to three months imprisonment (this will increase to 51 weeks later this year) and/or a fine not exceeding £2,500.
- Under 18s can only be tested on charge in the presence of an appropriate adult.

The results of a drugs test on either arrest or charge may be disclosed for the following purposes:

- Deciding whether bail should be granted. A person who has tested positive and is subject to bail proceedings should not be granted bail unless they agree to undergo an assessment for drug treatment or to engage in a treatment programme.
- Deciding the terms of a conditional caution (see further below).
- To assist a Court in determining the appropriate sentence.
- In the case of a positive result, to initiate a required assessment in those areas where the Drug Intervention programme is in operation.

Required assessments

Required assessments were introduced under Part 3 of the Drugs Act 2005 and were brought into force on 1st December 2005. This provision only exists in those areas which have the Drug Intervention Programme.

Where someone has tested positive for the presence of a specified Class A drug upon arrest or charge, they will be required to undergo an assessment with a qualified drugs worker. There is a two stage approach to the assessment, with the first stage being referred to as the 'initial assessment' and the second stage the 'follow up' assessment. The purpose of the initial assessment will be:

- To determine whether the person is dependent on, or has a propensity, to misuse and specified Class A drug;
- To determine whether the person would benefit from a follow up assessment or treatment;
- To provide an explanation of the treatment available.

Once the initial assessment is complete the drugs worker will inform the person whether they have to attend a follow up assessment. If they fail to attend or remain for the duration of either the initial assessment or the follow up assessment, without good cause, they will have committed an offence and could be subject to prosecution. If found guilty the Court can impose a sentence of up to three months imprisonment (this will increase to 51 weeks later in 2006) and/or a fine not exceeding £2,500.

New powers of search and detention

- Part 2 of the Drugs Act 2005 amended police powers in relation to intimate searches and the use of x-rays where a person is suspected of swallowing a controlled drug. Consent must now be given by the person subject to the search or x-ray.
- Refusal to undergo either procedure, without good cause, can lead to adverse inferences being drawn by a Court if criminal proceedings ensue.

Extended detention of suspected drug trafficking offenders is permitted where an application has been granted by the magistrates' court. The police can apply to detain a person without charge for a period of eight days.

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