



Police, Public Order and Criminal Justice (Scotland) Act 2006

2006 asp 10

PART 3

CRIMINAL JUSTICE

Arrested persons: drug testing and reference for assessment

84 Testing of arrested persons for Class A drugs

After section 20 of the 1995 Act there is inserted—

“Testing for Class A drugs

20A Arrested persons: testing for certain Class A drugs

- (1) Subject to subsection (2) below, where subsection (3) below applies an appropriate officer may—
 - (a) require a person who has been arrested and is in custody in a police station to provide him with a sample of urine; or
 - (b) take from the inside of the mouth of such a person, by means of swabbing, a sample of saliva or other material,which the officer may subject to analysis intended to reveal whether there is any relevant Class A drug in the person’s body.
- (2) The power conferred by subsection (1) above shall not be exercised where the person has previously been required to provide or had taken from him a sample under that subsection in the same period in custody.
- (3) This subsection applies where—
 - (a) the person is of 16 years of age or more;
 - (b) the period in custody in the police station has not exceeded 6 hours;
 - (c) the police station is situated in an area prescribed by order made by statutory instrument by the Scottish Ministers; and

- (d) either—
 - (i) the person’s arrest was on suspicion of committing or having committed a relevant offence; or
 - (ii) a senior police officer who has appropriate grounds has authorised the making of the requirement to provide or the taking of the sample.
- (4) Before exercising the power conferred by subsection (1) above, an appropriate officer shall—
 - (a) warn the person in respect of whom it is to be exercised that failure, without reasonable excuse, to comply with the requirement or, as the case may be, allow the sample to be taken constitutes an offence; and
 - (b) in a case within subsection (3)(d)(ii) above, inform the person of the giving of the authorisation and the grounds for the suspicion.
- (5) Where—
 - (a) a person has been required to provide or has had taken a sample under subsection (1) above;
 - (b) any of the following is the case—
 - (i) the sample was not suitable for the means of analysis to be used to reveal whether there was any relevant Class A drug in the person’s body;
 - (ii) though suitable, the sample was insufficient (either in quantity or quality) to enable information to be obtained by that means of analysis; or
 - (iii) the sample was destroyed during analysis and the means of analysis failed to produce reliable information; and
 - (c) the person remains in custody in the police station (whether or not the period of custody has exceeded 6 hours),an appropriate officer may require the person to provide or as the case may be take another sample of the same kind by the same method.
- (6) Before exercising the power conferred by subsection (5) above, an appropriate officer shall warn the person in respect of whom it is to be exercised that failure, without reasonable excuse, to comply with the requirement or, as the case may be, allow the sample to be taken constitutes an offence.
- (7) A person who fails without reasonable excuse—
 - (a) to comply with a requirement made of him under subsection (1)(a) or (5) above; or
 - (b) to allow a sample to be taken from him under subsection (1)(b) or (5) above,shall be guilty of an offence.
- (8) In this section—
 - “appropriate grounds” means reasonable grounds for suspecting that the misuse by the person of any relevant Class A drug caused or contributed to the offence on suspicion of which the person was arrested;
 - “appropriate officer” means—
 - (a) a constable; or

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(b) a police custody and security officer acting on the direction of a constable;

“misuse” has the same meaning as in the Misuse of Drugs Act 1971 (c. 38);

“relevant Class A drug” means any of the following substances, preparations and products—

- (a) cocaine or its salts;
- (b) any preparation or other product containing cocaine or its salts;
- (c) diamorphine or its salts;
- (d) any preparation or other product containing diamorphine or its salts;

“relevant offence” means any of the following offences—

- (a) theft;
- (b) assault;
- (c) robbery;
- (d) fraud;
- (e) reset;
- (f) uttering a forged document;
- (g) embezzlement;
- (h) an attempt, conspiracy or incitement to commit an offence mentioned in paragraphs (a) to (g);
- (i) an offence under section 4 of the Misuse of Drugs Act 1971 (c. 38) (restriction on production and supply of controlled drugs) committed in respect of a relevant Class A drug;
- (j) an offence under section 5(2) of that Act of 1971 (possession of controlled drug) committed in respect of a relevant Class A drug;
- (k) an offence under section 5(3) of that Act of 1971 (possession of controlled drug with intent to supply) committed in respect of a relevant Class A drug;

“senior police officer” means a police officer of a rank no lower than inspector.

20B Section 20A: supplementary

- (1) Section 20A of this Act does not prejudice the generality of section 18 of this Act.
- (2) Each person carrying out a function under section 20A of this Act must have regard to any guidance issued by the Scottish Ministers—
 - (a) about the carrying out of the function; or
 - (b) about matters connected to the carrying out of the function.
- (3) An order under section 20A(3)(c) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) An authorisation for the purposes of section 20A of this Act may be given orally or in writing but, if given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.

- (5) If a sample is provided or taken under section 20A of this Act by virtue of an authorisation, the authorisation and the grounds for the suspicion are to be recorded in writing as soon as is reasonably practicable after the sample is provided or taken.
- (6) A person guilty of an offence under section 20A of this Act shall be liable on summary conviction to the following penalties—
- (a) a fine not exceeding level 4 on the standard scale;
 - (b) imprisonment for a period—
 - (i) where conviction is in the district court, not exceeding 60 days; or
 - (ii) where conviction is in the sheriff court, not exceeding 3 months; or
 - (c) both such fine and imprisonment.
- (7) Subject to subsection (8) below, a sample provided or taken under section 20A of this Act shall be destroyed as soon as possible following its analysis for the purpose for which it was taken.
- (8) Where an analysis of the sample reveals that a relevant Class A drug is present in the person's body, the sample may be retained so that it can be used, and supplied to others, for the purpose of any proceedings against the person for an offence under section 88 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10); but—
- (a) the sample may not be used, or supplied, for any other purpose; and
 - (b) the sample shall be destroyed as soon as possible once it is no longer capable of being used for that purpose.
- (9) Information derived from a sample provided by or taken from a person under section 20A of this Act may be used and disclosed only for the following purposes—
- (a) for the purpose of proceedings against the person for an offence under section 88 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10);
 - (b) for the purpose of informing any decision about granting bail in any criminal proceedings to the person;
 - (c) for the purpose of informing any decision of a children's hearing arranged to consider the person's case;
 - (d) where the person is convicted of an offence, for the purpose of informing any decision about the appropriate sentence to be passed by a court and any decision about the person's supervision or release;
 - (e) for the purpose of ensuring that appropriate advice and treatment is made available to the person.
- (10) Subject to subsection (11) below, the Scottish Ministers may by order made by statutory instrument modify section 20A(8) of this Act for either of the following purposes—
- (a) for the purpose of adding an offence to or removing an offence from those for the time being listed in the definition of "relevant offence";

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- (b) for the purpose of adding a substance, preparation or product to or removing a substance, preparation or product from those for the time being listed in the definition of “relevant Class A drug”.
- (11) An order under subsection (10)(b) may add a substance, preparation or product only if it is a Class A drug (that expression having the same meaning as in the Misuse of Drugs Act 1971 (c. 38)).
- (12) An order under subsection (10) above shall not be made unless a draft of the statutory instrument containing it has been laid before and approved by resolution of the Scottish Parliament.”.