



# Misuse of Drugs Act 1971

## 1971 CHAPTER 38

### *Restrictions relating to controlled drugs etc.*

#### **5 Restriction of possession of controlled drugs.**

- (1) Subject to any regulations under section 7 of this Act for the time being in force, it shall not be lawful for a person to have a controlled drug in his possession.
- (2) Subject to section 28 of this Act and to subsection (4) below, it is an offence for a person to have a controlled drug in his possession in contravention of subsection (1) above.

[<sup>F1</sup>(2A) Subsections (1) and (2) do not apply in relation to a temporary class drug.]

- (3) Subject to section 28 of this Act, it is an offence for a person to have a controlled drug in his possession, whether lawfully or not, with intent to supply it to another in contravention of section 4(1) of this Act.
- (4) In any proceedings for an offence under subsection (2) above in which it is proved that the accused had a controlled drug in his possession, it shall be a defence for him to prove—
  - (a) that, knowing or suspecting it to be a controlled drug, he took possession of it for the purpose of preventing another from committing or continuing to commit an offence in connection with that drug and that as soon as possible after taking possession of it he took all such steps as were reasonably open to him to destroy the drug or to deliver it into the custody of a person lawfully entitled to take custody of it; or
  - (b) that, knowing or suspecting it to be a controlled drug, he took possession of it 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 he took all such steps as were reasonably open to him to deliver it into the custody of such a person.

[<sup>F2</sup>(5) Subsection (4) above shall apply in the case of proceedings for an offence under section 19(1) of this Act consisting of an attempt to commit an offence under

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*Changes to legislation: There are currently no known outstanding effects for the Misuse of Drugs Act 1971, Section 5. (See end of Document for details)*

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subsection (2) above as it applies in the case of proceedings for an offence under subsection (2), subject to the following modifications, that is to say—

- (a) for the references to the accused having in his possession, and to his taking possession of, a controlled drug there shall be substituted respectively references to his attempting to get, and to his attempting to take, possession of such a drug; and
  - (b) in paragraphs (a) and (b) the words from “and that as soon as possible” onwards shall be omitted.]
- (6) Nothing in subsection (4) [<sup>F3</sup>or (5)] above shall prejudice any defence which it is open to a person charged with an offence under this section to raise apart from that subsection.

#### Textual Amendments

- F1** S. 5(2A) inserted (15.11.2011) by [Police Reform and Social Responsibility Act 2011 \(c. 13\)](#), s. 157(1), [Sch. 17 para. 6](#); S.I. 2011/2515, art. 3(g)
- F2** S. 5(5) repealed (E.W.) by [Criminal Attempts Act 1981 \(c. 47, SIF 39:1\)](#), [Sch. Pt. I](#) and (N.I.) by S.I. 1983/1120 (N.I. 13), [Sch.](#)
- F3** Words repealed (E.W.) by [Criminal Attempts Act 1981 \(c. 47, SIF 39:1\)](#), [Sch. Pt. I](#) and (N.I.) by S.I. 1983/1120 (N.I. 13), [Sch.](#)

#### Modifications etc. (not altering text)

- C1** S. 5(1) excluded (1.2.2002) by S.I. 2001/3998, [regs. 4, 6\(4\)-\(7\), 10, 11\(1\)\(2\)](#) (with [reg. 2\(3\)](#))
- C2** S. 5(2)(3) saved by (E.W.) [Criminal Law Act 1977 \(c. 45\)](#), [Sch. 5 para. 1\(2\)\(a\)\(b\)\(iii\)](#) and (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\)](#), [Sch. 7B](#), para. 1(2)(a)(b)(iii)

**Changes to legislation:**

There are currently no known outstanding effects for the Misuse of Drugs Act 1971, Section 5.