

DRUGS ACT 2005

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 1: Supply of Controlled Drugs

Section 1: Aggravated supply of controlled drug

4. This section, in *subsection (1)*, inserts a new section 4A into the Misuse of Drugs Act 1971 and stipulates the circumstances which a court must treat as aggravating factors in respect of the offence of supply of a controlled drug. New section 4A(2) requires a court to treat either or both of two conditions as aggravating factors and, where either condition is met, to state that the offence is so aggravated.
5. New section 4A(3), together with new section 4A(5), provides that the first condition is met when a person supplies a controlled drug on or in the vicinity of school premises when they are being used by children and young people and within one hour of any such time. New section 4A(4), together with new section 4A(6), provides that the second condition is met when a person causes or permits a child or young person to deliver a controlled drug to a third person or to deliver a drug related consideration to himself or a third person in connection with the offence of supply of a controlled drug.
6. New section 4A(7) defines a drug related consideration as a consideration of any kind, thus encompassing any form of payment or reward, be it in cash, goods or services.
7. New section 4A(8) defines ‘school premises’ and ‘school’ for the purposes of this provision
8. *Subsection (2)* provides that new section 4A does not apply to any offence committed before it comes into force.

Section 2: Proof of intention to supply a controlled drug

9. It is an offence under section 5 of the Misuse of Drugs Act 1971 to possess a controlled drug with intent to supply it to another. This section in *subsection (2)*, amends section 5 of the 1971 Act to create a presumption of intent to supply where the defendant is found to be in possession of a particular amount of controlled drugs. Where the presumption applies a court or jury must assume that the defendant intended to supply the drugs. The presumption does not apply if evidence is adduced, by any person, that raises an issue that the

defendant may not in fact have intended to supply those drugs. Where such evidence is raised it will be for the prosecution to prove beyond reasonable doubt that the defendant intended to supply the drugs in his possession. The particular amount of drugs that will give rise to the presumption will be prescribed by the Secretary of State in regulations. The levels will reflect and be proportionate to the seriousness of the offence of supply of a controlled drug. *Subsection (2)* provides that the regulations only have effect in respect of proceedings for an offence committed

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after those regulations come into force. Section 31 of the 1971 Act will apply to those regulations. Therefore the regulations may make different provision for different controlled drugs and may only be made following consultation with the Advisory Council on the Misuse of Drugs. *Subsection (3)* amends section 31 of the 1971 Act to provide that a draft of the regulations made must be approved by a resolution of each House of Parliament.