

DRUGS ACT 2005

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 3: Assessment of Misuse of Drugs

Section 9: Initial assessment following testing for the presence of Class A drugs

31. This section in *subsections* (1) and (2), introduces a new discretionary power for the police to require persons who have tested positive for a specified Class A drug under section 63B of PACE, as amended by section 7 of this Act, to attend an initial assessment of their drug misuse. *Subsection* (3) sets out the purposes of that initial assessment. This power is subject to the age condition and notification condition (as set out in *subsections* (4) to (6)) being met. *Subsection* (4) provides that a person can only be subject to the requirement if he has reached the age of 18 (or a different age, if the Secretary of State so specifies by order made by statutory instrument). *Subsections* (5) and (6) provide that a person can only be subject to the requirement where the relevant chief officer of police has been informed that the necessary arrangements for carrying out the assessments have been made for those who have been tested at the police station in which the person was detained. Such a notification can apply to a police area or to a single police station.

Section 10: Follow-up assessment

32. This section in *subsections* (1) and (2), provides that a police officer must, when imposing a requirement to attend an initial assessment under section 9, also require the person to attend a follow-up assessment and must inform the person that this second requirement will cease to have effect if he is informed at the initial assessment that he is no longer required to attend the follow-up assessment. *Subsections* (3) and (4) set out the purposes of the follow-up assessment. The age and notification conditions which apply to follow-up assessments are similar to those which apply to initial assessments. *Subsection* (5) provides that the person concerned must have reached the age of 18, (or such different age as is specified by the Secretary of State by order). *Subsections* (6) and (7) provide that a person can only be subject to the requirement where the relevant chief officer of police has been informed that the necessary arrangements for carrying out the assessments have been made for those who have been tested at the police station in which the person was detained.

Section 11: Requirements under sections 9 and 10: supplemental

33. This section imposes a number of obligations on police officers where they require a person to attend an initial assessment under section 9, or both an initial assessment under section 9 and a follow-up assessment under section 10. *Subsection* (2) requires a police officer to inform the person of the time and place of the initial assessment and *subsection* (3) requires a police officer to warn the person that he may be prosecuted if he fails, without good cause, to attend for the duration of the initial assessment. *Subsection* (4) requires a police officer to give a similar warning in the case of a person

who is also required to attend a follow-up assessment. *Subsection (5)* requires a police officer to confirm the requirement to attend an initial assessment or both an initial assessment and a follow-up assessment (as the case may be) and the matters expressed verbally under *subsections (2) and (3)* and any warning given under *subsection (4)* in writing. *Subsection (6)* confirms that this information must be conveyed verbally and in writing before the person is released from police detention. *Subsection (7)* requires the provision of such information to be recorded in the person's custody record. *Subsection (8)* enables the police or a suitably qualified person to provide a further written notice to the person varying the time and/or place of the initial assessment and repeating the previous warning regarding threat of prosecution.

Section 12: Attendance at initial assessment

34. This section in *subsection (2)*, places a duty on the person conducting the initial assessment to inform the police if the person concerned fails to attend or remain for the duration of that assessment. *Subsections (3) and (4)* provide that a person is guilty of an offence and liable on summary conviction to a fine, imprisonment or both if they fail without good cause to attend and remain for the duration of the initial assessment. *Subsection (5)* provides that a person who fails to attend the initial assessment will no longer be required to attend a follow-up assessment.

Section 13: Arrangements for follow-up assessment

35. This section sets out the arrangements for a follow-up assessment. *Subsections (2) and (3)* provide that the requirement for a person to attend a follow-up assessment ceases to have effect if the person is informed by the initial assessor that he is no longer required to attend that assessment. The initial assessor will do so where he considers that a follow-up assessment is not appropriate. *Subsections (4) and (5)* require the initial assessor, where he considers a follow-up assessment to be appropriate, to inform the person of the time and place of that assessment and warn the person that a failure to attend for the duration of the assessment without good cause may render him liable to prosecution. *Subsection (6)* requires the initial assessor to confirm the requirement and the matters expressed verbally in *subsections (4) and (5)* in writing. *Subsection (7)* confirms that this information must be conveyed verbally and in writing before the end of initial assessment. *Subsection (8)* enables the initial assessor or another qualified person to provide a further written notice to the person varying the time and/or place of the follow up assessment and repeating the previous warning regarding threat of prosecution.

Section 14: Attendance at follow-up assessment

36. This section in *subsection (2)*, places a duty on the person conducting the follow-up assessment to inform the police if the person concerned fails to attend or remain for the duration of that assessment. *Subsections (3) and (4)* provide that a person is guilty of an offence and liable on summary conviction to a fine, imprisonment or both if they fail without good cause to attend and remain for the duration of the follow-up assessment.

Section 15: Disclosure of information about assessments

37. This section provides that information obtained as a result of the initial assessment or follow-up assessment may not be disclosed without the written consent of the person concerned except as provided for in *subsections (1) and (2)*. *Subsection (1)* provides that information obtained as a result of an initial assessment may be disclosed to those involved in the conduct of the initial assessment and those who are or may be involved in the conduct of any follow-up assessment. *Subsection (2)* provides that information obtained as a result of a follow-up assessment may be disclosed to those who are involved in the conduct of that assessment.

Section 16: Samples submitted for further analysis

38. This section in *subsection* (1) provides that a person will no longer be required to attend an initial or follow-up assessment if, before he attends that assessment, a further analysis of the sample taken reveals that it was negative. *Subsections* (4) and (5) provide that where a person has failed to attend or to attend for the duration of an assessment and the requirement subsequently ceases to have effect by virtue of *subsection* (1), no proceedings will be brought in respect of that failure and any ongoing proceedings in respect of that failure will be discontinued.

Section 17: Relationship with the Bail Act 1976 etc.

39. This section in *subsection* (1) provides that a requirement to attend either an initial assessment or a follow-up assessment ceases to have effect if, before he has complied with the requirement in question, the person is charged with an offence which satisfied the arrest or charge condition in relation to the drug test (the related offence) and is granted bail in respect of that offence by a court on the condition that he undergo a relevant assessment and/or participate in follow-up under the Bail Act 1976. *Subsection* (2) provides that a relevant assessment for the purposes of the Bail Act 1976 is to be treated as having been carried out where a person attends for the duration of an initial assessment and the initial assessor is satisfied that the assessment fulfilled the purposes of the relevant assessment. *Subsection* (3) further provides that a person will be considered to have undergone such a relevant assessment in those circumstances. *Subsection* (4) provides that an initial assessor may disclose information regarding the initial assessment to enable a court to determine whether those circumstances arise.

Section 18: Orders under this Part and guidance

40. This section provides that an order made by the Secretary of State amending the age at which persons may be required to attend an initial assessment and a follow-up assessment may make provision where appropriate in respect of persons under the age of eighteen, may make different provision for different police areas and must be approved in draft by both Houses of Parliament. *Subsection* (3) provides that a police officer and a suitably qualified person must have regard to any guidance issued by the Secretary of State under this Part of the Act.

Section 19: Interpretation

41. This section defines a number of terms that are used in Part 3 of the Act.