



# Drugs Act 2005

## 2005 CHAPTER 17

### PART 2

#### POLICE POWERS RELATING TO DRUGS

### 3 Drug offence searches: England and Wales

(1) Section 55 of the Police and Criminal Evidence Act 1984 (c. 60) (intimate searches) is amended as follows.

(2) After subsection (3) insert—

“(3A) A drug offence search shall not be carried out unless the appropriate consent has been given in writing.

(3B) Where it is proposed that a drug offence search be carried out, an appropriate officer shall inform the person who is to be subject to it—

- (a) of the giving of the authorisation for it; and
- (b) of the grounds for giving the authorisation.”

(3) After subsection (10) insert—

“(10A) If the intimate search is a drug offence search, the custody record relating to that person shall also state—

- (a) the authorisation by virtue of which the search was carried out;
- (b) the grounds for giving the authorisation; and
- (c) the fact that the appropriate consent was given.”

(4) In subsection (11), for “subsection (10)” substitute “subsections (10) and (10A)”.

(5) After subsection (13) insert—

“(13A) Where the appropriate consent to a drug offence search of any person was refused without good cause, in any proceedings against that person for an offence—

- (a) the court, in determining whether there is a case to answer;

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- (b) a judge, in deciding whether to grant an application made by the accused under paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998 (applications for dismissal); and
- (c) the court or jury, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper.”

(6) In subsection (17) at the appropriate place insert—

““appropriate officer” means—

- (a) a constable,
- (b) a person who is designated as a detention officer in pursuance of section 38 of the Police Reform Act 2002 if his designation applies paragraph 33D of Schedule 4 to that Act, or
- (c) a person who is designated as a staff custody officer in pursuance of section 38 of that Act if his designation applies paragraph 35C of Schedule 4 to that Act;”.

#### **4 Drug offence searches: Northern Ireland**

(1) Article 56 of the Police and Criminal Evidence (Northern Ireland) Order 1989 ([S.I. 1989/1341](#)) (intimate searches) is amended as follows.

(2) After paragraph (3) insert—

“(3A) A drug offence search shall not be carried out unless the appropriate consent has been given in writing.

(3B) Where it is proposed that a drug offence search be carried out, a constable shall inform the person who is to be subject to it—

- (a) of the giving of the authorisation for it; and
- (b) of the grounds for giving the authorisation.”

(3) After paragraph (10) insert—

“(10A) If the intimate search is a drug offence search, the custody record relating to that person shall also state—

- (a) the authorisation by virtue of which the search was carried out;
- (b) the grounds for giving the authorisation; and
- (c) the fact that the appropriate consent was given.”

(4) In paragraph (11), for “paragraph (10)” substitute “paragraphs (10) and (10A)”.

(5) After paragraph (13) insert—

“(13A) Where the appropriate consent to a drug offence search of any person was refused without good cause, in any proceedings against that person for an offence—

- (a) the court, in determining whether to commit the accused for trial or whether there is a case to answer;
- (b) a judge, in deciding whether to grant an application made by the accused under—

- (i) Article 5 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 (application for dismissal of charges

where a case of fraud has been transferred from a magistrates' court to the Crown Court under Article 3 of that Order); or

(ii) paragraph 4 of Schedule 1 to the Children's Evidence (Northern Ireland) Order 1995 (application for dismissal of charge of violent or sexual offence involving child in respect of which notice of transfer has been given under Article 4 of that Order); and

(c) the court or jury, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper."

## 5 X-rays and ultrasound scans: England and Wales

- (1) After section 55 (intimate searches) of the Police and Criminal Evidence Act 1984 (c. 60) insert—

### **“55A X-rays and ultrasound scans**

- (1) If an officer of at least the rank of inspector has reasonable grounds for believing that a person who has been arrested for an offence and is in police detention—
- (a) may have swallowed a Class A drug, and
- (b) was in possession of it with the appropriate criminal intent before his arrest,
- the officer may authorise that an x-ray is taken of the person or an ultrasound scan is carried out on the person (or both).
- (2) An x-ray must not be taken of a person and an ultrasound scan must not be carried out on him unless the appropriate consent has been given in writing.
- (3) If it is proposed that an x-ray is taken or an ultrasound scan is carried out, an appropriate officer must inform the person who is to be subject to it—
- (a) of the giving of the authorisation for it, and
- (b) of the grounds for giving the authorisation.
- (4) An x-ray may be taken or an ultrasound scan carried out only by a suitably qualified person and only at—
- (a) a hospital,
- (b) a registered medical practitioner's surgery, or
- (c) some other place used for medical purposes.
- (5) The custody record of the person must also state—
- (a) the authorisation by virtue of which the x-ray was taken or the ultrasound scan was carried out,
- (b) the grounds for giving the authorisation, and
- (c) the fact that the appropriate consent was given.
- (6) The information required to be recorded by subsection (5) must be recorded as soon as practicable after the x-ray has been taken or ultrasound scan carried out (as the case may be).
- (7) Every annual report—

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- (a) under section 22 of the Police Act 1996, or
    - (b) made by the Commissioner of Police of the Metropolis,

must contain information about x-rays which have been taken and ultrasound scans which have been carried out under this section in the area to which the report relates during the period to which it relates.
  - (8) The information about such x-rays and ultrasound scans must be presented separately and must include—
    - (a) the total number of x-rays;
    - (b) the total number of ultrasound scans;
    - (c) the results of the x-rays;
    - (d) the results of the ultrasound scans.
  - (9) If the appropriate consent to an x-ray or ultrasound scan of any person is refused without good cause, in any proceedings against that person for an offence—
    - (a) the court, in determining whether there is a case to answer,
    - (b) a judge, in deciding whether to grant an application made by the accused under paragraph 2 of Schedule 3 to the Crime and Disorder Act 1998 (applications for dismissal), and
    - (c) the court or jury, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper.
  - (10) In this section “the appropriate criminal intent”, “appropriate officer”, “Class A drug” and “suitably qualified person” have the same meanings as in section 55 above.”
- (2) In Schedule 4 to the Police Reform Act 2002 (c. 30)—
- (a) after paragraph 33C (inserted by paragraph 7 of Schedule 9 to the Serious Organised Crime and Police Act 2005 (c. 15)) insert—
 

“33D Where a designation applies this paragraph to any person, he is authorised to carry out the duty under—

    - (a) section 55 of the Police and Criminal Evidence Act 1984 of informing a person who is to be subject to an intimate search under that section of the matters of which he is required to be informed in pursuance of subsection (3B) of that section;
    - (b) section 55A of that Act of informing a person who is to be subject to x-ray or ultrasound (as the case may be) under that section of the matters of which he is required to be informed in pursuance of subsection (3) of that section.”;
  - (b) after paragraph 35B (inserted by paragraph 10 of Schedule 9 to the Serious Organised Crime and Police Act 2005) insert—
 

“35C Where a designation applies this paragraph to any person, he is authorised to carry out the duty under—

    - (a) section 55 of the Police and Criminal Evidence Act 1984 of informing a person who is to be subject to an intimate search under that section of the matters of which he is

- required to be informed in pursuance of subsection (3B) of that section;
- (b) section 55A of that Act of informing a person who is to be subject to x-ray or ultrasound (as the case may be) under that section of the matters of which he is required to be informed in pursuance of subsection (3) of that section.”

## **6 X-rays and ultrasound scans: Northern Ireland**

After Article 56 (intimate searches) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341) insert—

### **“56A X-rays and ultrasound scans**

- (1) If an officer of at least the rank of superintendent has reasonable grounds for believing that a person who has been arrested for an offence and is in police detention—
- (a) may have swallowed a Class A drug, and
  - (b) was in possession of it with the appropriate criminal intent before his arrest,
- the officer may authorise that an x-ray is taken of the person or an ultrasound scan is carried out on the person (or both).
- (2) An x-ray must not be taken of a person and an ultrasound scan must not be carried out on him unless the appropriate consent has been given in writing.
- (3) If it is proposed that an x-ray is taken or an ultrasound scan is carried out, a constable must inform the person who is to be subject to it—
- (a) of the giving of the authorisation for it, and
  - (b) of the grounds for giving the authorisation.
- (4) An x-ray may be taken or an ultrasound scan carried out only by a suitably qualified person and only at—
- (a) a hospital,
  - (b) a registered medical practitioner’s surgery, or
  - (c) some other place used for medical purposes.
- (5) The custody record of the person must also state—
- (a) the authorisation by virtue of which the x-ray was taken or the ultrasound scan was carried out,
  - (b) the grounds for giving the authorisation, and
  - (c) the fact that the appropriate consent was given.
- (6) The information required to be recorded by subsection (5) must be recorded as soon as practicable after the x-ray has been taken or ultrasound scan carried out (as the case may be).
- (7) Every annual report under section 58 of the Police (Northern Ireland) Act 2000 must contain information about x-rays which have been taken and ultrasound scans which have been carried out under this Article during the period to which it relates.

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- (8) The information about such x-rays and ultrasound scans must be presented separately and must include—
- (a) the total number of x-rays;
  - (b) the total number of ultrasound scans;
  - (c) the results of the x-rays;
  - (d) the results of the ultrasound scans.
- (9) If the appropriate consent to an x-ray or ultrasound scan of any person is refused without good cause, in any proceedings against that person for an offence—
- (a) the court, in determining whether to commit the accused for trial or whether there is a case to answer,
  - (b) a judge, in deciding whether to grant an application made by the accused under—
    - (i) Article 5 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 (application for dismissal of charges where a case of fraud has been transferred from a magistrates' court to the Crown Court under Article 3 of that Order), or
    - (ii) paragraph 4 of Schedule 1 to the Children's Evidence (Northern Ireland) Order 1995 (application for dismissal of charge of violent or sexual offence involving child in respect of which notice of transfer has been given under Article 4 of that Order), and
  - (c) the court or jury, in determining whether that person is guilty of the offence charged,
- may draw such inferences from the refusal as appear proper.
- (10) In this Article “the appropriate criminal intent”, “Class A drug” and “suitably qualified person” have the same meanings as in Article 56 above.”

## 7 **Testing for presence of Class A drugs**

- (1) Section 63B of the Police and Criminal Evidence Act 1984 (c. 60) (“PACE”) (testing for presence of Class A drugs) is amended in accordance with subsections (2) to (12).
- (2) In subsection (1) for “the following conditions are met” substitute “—
- (a) either the arrest condition or the charge condition is met;
  - (b) both the age condition and the request condition are met; and
  - (c) the notification condition is met in relation to the arrest condition, the charge condition or the age condition (as the case may be).”
- (3) After subsection (1) insert—
- “(1A) The arrest condition is that the person concerned has been arrested for an offence but has not been charged with that offence and either—
- (a) the offence is a trigger offence; or
  - (b) a police officer of at least the rank of inspector has reasonable grounds for suspecting that the misuse by that person of a specified Class A drug caused or contributed to the offence and has authorised the sample to be taken.”

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*Status: This is the original version (as it was originally enacted).*

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- (4) In subsection (2), for “The first condition is” substitute “The charge condition is either”.
- (5) For subsection (3) substitute—
- “ (3) The age condition is—
- (a) if the arrest condition is met, that the person concerned has attained the age of 18;
  - (b) if the charge condition is met, that he has attained the age of 14.”
- (6) In subsection (4), for “third” substitute “request”.
- (7) After subsection (4) insert—
- “(4A) The notification condition is that—
- (a) the relevant chief officer has been notified by the Secretary of State that appropriate arrangements have been made for the police area as a whole, or for the particular police station, in which the person is in police detention, and
  - (b) the notice has not been withdrawn.
- (4B) For the purposes of subsection (4A) above, appropriate arrangements are arrangements for the taking of samples under this section from whichever of the following is specified in the notification—
- (a) persons in respect of whom the arrest condition is met;
  - (b) persons in respect of whom the charge condition is met;
  - (c) persons who have not attained the age of 18.”
- (8) In subsection (5)(b) after “subsection” insert “(1A)(b) or”.
- (9) After subsection (5A) insert—
- “(5B) If a sample is taken under this section from a person in respect of whom the arrest condition is met no other sample may be taken from him under this section during the same continuous period of detention but—
- (a) if the charge condition is also met in respect of him at any time during that period, the sample must be treated as a sample taken by virtue of the fact that the charge condition is met;
  - (b) the fact that the sample is to be so treated must be recorded in the person’s custody record.
- (5C) Despite subsection (1)(a) above, a sample may be taken from a person under this section if—
- (a) he was arrested for an offence (the first offence),
  - (b) the arrest condition is met but the charge condition is not met,
  - (c) before a sample is taken by virtue of subsection (1) above he would (but for his arrest as mentioned in paragraph (d) below) be required to be released from police detention,
  - (d) he continues to be in police detention by virtue of his having been arrested for an offence not falling within subsection (1A) above, and
  - (e) the sample is taken before the end of the period of 24 hours starting with the time when his detention by virtue of his arrest for the first offence began.

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- (5D) A sample must not be taken from a person under this section if he is detained in a police station unless he has been brought before the custody officer.”
- (10) For subsection (6A) substitute—
- “(6A) The Secretary of State may by order made by statutory instrument amend—
- (a) paragraph (a) of subsection (3) above, by substituting for the age for the time being specified a different age specified in the order, or different ages so specified for different police areas so specified;
  - (b) paragraph (b) of that subsection, by substituting for the age for the time being specified a different age specified in the order.”
- (11) In subsection (7), after paragraph (a) insert—
- “(aa) for the purpose of informing any decision about the giving of a conditional caution under Part 3 of the Criminal Justice Act 2003 to the person concerned;”.
- (12) Subsection (9) is omitted.
- (13) On the day this section comes into force the notification condition must be treated as being met—
- (a) for the purposes of the charge condition in relation to a police area, if subsection (2) of section 63B of PACE is in force immediately before that day in relation to the police area;
  - (b) for the purposes of the age condition in relation to a police area or police station, if before that day notification was given under subsection (9) of that section in relation to the police area or police station and was not withdrawn, and “age condition”, “charge condition” and “notification condition” have the same meaning as in section 63B of PACE (as amended by this section).
- (14) Subsection (13) above does not prevent the Secretary of State withdrawing a notification which is treated as made by virtue of that subsection.

## **8 Extended detention of suspected drug offenders**

In section 152 of the Criminal Justice Act 1988 (c. 33) (remand of suspected drug offenders)—

- (a) in the title leave out “customs”;
- (b) after subsection (1) insert—

“(1A) In subsection (1) the power of a magistrates' court to remand a person to customs detention for a period not exceeding 192 hours includes power to commit the person to the custody of a constable to be detained for such a period.”