

EXPLANATORY MEMORANDUM

The Criminal Justice and Court Services Act 2000 (Amendment) Order 2004

2004 No. 1892

This explanatory memorandum is laid before Parliament by Command of Her Majesty.

Department Responsible

Home Office

Description

The Order adds eight offences to the offences specified as “trigger offences” in Schedule 6 to the Criminal Justice and Court Services Act 2000, in respect of provisions introduced by that Act for the testing of persons for the presence of specified Class A drugs.

Legislative Background

Provisions introduced by the Criminal Justice and Court Services Act 2000 (CJCSA) allow for the taking of samples from persons in police detention after charge, and at later stages in the criminal justice process, for the purpose of ascertaining whether the person concerned has a specified Class A drug (heroin, cocaine and crack) present in his body. The provisions apply to those aged 18 and over, and particularly to persons who have been charged with, convicted of, or released from a custodial sentence for a trigger offence (a trigger offence is defined in Schedule 6 to the Act).

Trigger offences, are currently largely acquisitive crime offences under the Theft Act 1968, (which have been shown to be those offences most strongly connected with the misuse of such Class A drugs); and possession and supply offences under the Misuse of Drugs Act 1971, if committed in respect of a specified Class A drug.

Section 70(2) of the CJCSA provides that the Secretary of State may by order amend Schedule 6 to the Act so as to add, modify or omit any description of offence. Under section 76(5)(a) of that Act, the order may only be made if a draft of the Statutory Instrument containing the order has been laid before and approved by a resolution of each House of Parliament. This is the first use of that power.

Section 57 of the CJCSA (which has been commenced in certain police areas in England and Wales) inserted section 63B in the Police and Criminal Evidence Act 1984. This provides the police with the power to request persons aged 18 and over in police detention, who have been charged with a trigger offence, to provide a sample of urine or a non-intimate sample, for the purpose of testing for the presence of any specified Class A drug. (Those charged with other offences may also be tested where an officer of at

least the rank of inspector has reasonable grounds for suspecting that the misuse by that person of any specified Class A drug caused or contributed to that offence and has authorised the sample to be taken).

Trigger offences are also applicable in other provisions for drug testing at later stages in the criminal justice process, as introduced by sections 47,49, 63 and 64 of the CJCSA:

Section 47 CJCSA introduced section 58A of the Powers of Criminal Courts (Sentencing) Act 2000 (drug abstinence orders) which provides for the court to make a drug abstinence order in respect of persons aged 18 or over who have been convicted of an offence, if;

- in the opinion of the court, the offender is dependent on, or has a propensity to misuse, specified Class A drugs; and
- the offence is a trigger offence, or, in the opinion of the court, the misuse by the offender of any specified Class A drug, caused or contributed to the offence in question.

Section 49 CJCSA amended section 42 of the Powers of Criminal Courts (Sentencing Act) 2000 (additional requirements which may be included in community rehabilitation orders) and section 47 of that Act (obligations of persons subject to a community punishment order) to provide that the court may include a drug abstinence requirement in a community rehabilitation order or community punishment order for those offenders who, in the opinion of the court are dependent on or have a propensity to misuse specified class A drugs and who have been convicted of a trigger offence (or an offence which, in the opinion of the court, was caused by the misuse of specified Class A drugs or where such misuse was a contributory factor). The requirement is mandatory in the case of an offender who has been convicted of a trigger offence.

Section 63 CJCSA amended section 65 of the Criminal Justice Act 1991 (supervision of young offenders after release) to provide that a requirement to provide a sample for the purpose of ascertaining the presence of a specified Class A drug, may be included in a notice of supervision in the case of a young person aged at least 18 whose term of detention was imposed for a trigger offence.

Section 64 of the CJCSA (release on licence etc: drug testing requirements), provides for a drug testing requirement to be included in the conditions of release on licence of persons aged 18 or over, whose sentence of imprisonment was imposed for a trigger offence.

The additional trigger offences will apply in relation to these other provisions pending their repeal (or amendment in the case of section 64 of the Criminal Justice and Court Services Act) under new provisions in the Criminal Justice Act 2003.

Extent

This Order applies to England and Wales.

European Convention on Human Rights

In the view of the Parliamentary Under-Secretary of State for the Home Department, Caroline Flint, the provisions of the above Order are compatible with the Convention rights.

Policy Objective

The Order will amend Schedule 6 to the CJCSA to extend the range of trigger offences for the purposes of drug testing, to include additional offences which, on the basis of supporting research evidence, have been shown to be closely linked with the misuse of specified Class A drugs. The extension is intended primarily to ensure that through drug testing persons in police detention charged with these particular offences, those who are misusing specified Class A drugs can be more readily identified at an early stage so that they may be encouraged to address their drug misuse, gain access to treatment or other programmes of help, and be steered from crime. The extension is part of the wider Criminal Justice Interventions programme, which is focussing on high crime areas.

These additional offences will also be relevant to the drug testing provisions at later stages in the criminal justice process pending the implementation of new provisions in the Criminal Justice Act 2003 in relation to sentencing and release on licence.

The offences to be added to Schedule 6 are:

- section 22 of the Theft Act 1968 (handling stolen goods) ;
- section 1(1) of the Criminal Attempts Act 1981 in respect of the offences of theft, robbery, burglary, obtaining property by deception and handling stolen goods; and
- section 3 of the Vagrancy Act 1824 (begging) and section 4 (persistent begging).

The Criminal Justice White Paper, *Justice for All*, signalled the Government's intention to extend the range of trigger offences to include handling stolen goods and "attempted" acquisitive crime offences. (This did not generate any specific public interest.)

Criminal statistics for England and Wales show that almost 20,000 persons were proceeded against in the magistrates' courts for handling offences in both 2001 and 2002. No separate data is available for attempted offences, which are counted with the completed offence.

Whilst the number of persons proceeded against in the magistrates' courts in the case of begging was much smaller, (just under 4,000 in 2002) the offences of begging and persistent begging are included because of their very close link with specified Class A drug misuse and to help combat the antisocial behaviour associated with those offences.

The Order raises no particular points of legal or political importance.

Financial effects/regulatory impact

There is no foreseen regulatory impact on business, charities or voluntary bodies.

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