



# Police, Public Order and Criminal Justice (Scotland) Act 2006

2006 asp 10

## PART 3

### CRIMINAL JUSTICE

#### *Arrested persons: drug testing and reference for assessment*

#### **84 Testing of arrested persons for Class A drugs**

After section 20 of the 1995 Act there is inserted—

#### *“Testing for Class A drugs*

#### **20A 20A Arrested persons: testing for certain Class A drugs**

- (1) Subject to subsection (2) below, where subsection (3) below applies an appropriate officer may—
  - (a) require a person who has been arrested and is in custody in a police station to provide him with a sample of urine; or
  - (b) take from the inside of the mouth of such a person, by means of swabbing, a sample of saliva or other material,which the officer may subject to analysis intended to reveal whether there is any relevant Class A drug in the person’s body.
- (2) The power conferred by subsection (1) above shall not be exercised where the person has previously been required to provide or had taken from him a sample under that subsection in the same period in custody.
- (3) This subsection applies where—
  - (a) the person is of 16 years of age or more;
  - (b) the period in custody in the police station has not exceeded 6 hours;
  - (c) the police station is situated in an area prescribed by order made by statutory instrument by the Scottish Ministers; and

- (d) either—
  - (i) the person’s arrest was on suspicion of committing or having committed a relevant offence; or
  - (ii) a senior police officer who has appropriate grounds has authorised the making of the requirement to provide or the taking of the sample.
- (4) Before exercising the power conferred by subsection (1) above, an appropriate officer shall—
  - (a) warn the person in respect of whom it is to be exercised that failure, without reasonable excuse, to comply with the requirement or, as the case may be, allow the sample to be taken constitutes an offence; and
  - (b) in a case within subsection (3)(d)(ii) above, inform the person of the giving of the authorisation and the grounds for the suspicion.
- (5) Where—
  - (a) a person has been required to provide or has had taken a sample under subsection (1) above;
  - (b) any of the following is the case—
    - (i) the sample was not suitable for the means of analysis to be used to reveal whether there was any relevant Class A drug in the person’s body;
    - (ii) though suitable, the sample was insufficient (either in quantity or quality) to enable information to be obtained by that means of analysis; or
    - (iii) the sample was destroyed during analysis and the means of analysis failed to produce reliable information; and
  - (c) the person remains in custody in the police station (whether or not the period of custody has exceeded 6 hours),an appropriate officer may require the person to provide or as the case may be take another sample of the same kind by the same method.
- (6) Before exercising the power conferred by subsection (5) above, an appropriate officer shall warn the person in respect of whom it is to be exercised that failure, without reasonable excuse, to comply with the requirement or, as the case may be, allow the sample to be taken constitutes an offence.
- (7) A person who fails without reasonable excuse—
  - (a) to comply with a requirement made of him under subsection (1)(a) or (5) above; or
  - (b) to allow a sample to be taken from him under subsection (1)(b) or (5) above,shall be guilty of an offence.
- (8) In this section—
  - “appropriate grounds” means reasonable grounds for suspecting that the misuse by the person of any relevant Class A drug caused or contributed to the offence on suspicion of which the person was arrested;
  - “appropriate officer” means—
    - (a) a constable; or

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(b) a police custody and security officer acting on the direction of a constable;

“misuse” has the same meaning as in the Misuse of Drugs Act 1971 (c. 38);

“relevant Class A drug” means any of the following substances, preparations and products—

- (a) cocaine or its salts;
- (b) any preparation or other product containing cocaine or its salts;
- (c) diamorphine or its salts;
- (d) any preparation or other product containing diamorphine or its salts;

“relevant offence” means any of the following offences—

- (a) theft;
- (b) assault;
- (c) robbery;
- (d) fraud;
- (e) reset;
- (f) uttering a forged document;
- (g) embezzlement;
- (h) an attempt, conspiracy or incitement to commit an offence mentioned in paragraphs (a) to (g);
- (i) an offence under section 4 of the Misuse of Drugs Act 1971 (c. 38) (restriction on production and supply of controlled drugs) committed in respect of a relevant Class A drug;
- (j) an offence under section 5(2) of that Act of 1971 (possession of controlled drug) committed in respect of a relevant Class A drug;
- (k) an offence under section 5(3) of that Act of 1971 (possession of controlled drug with intent to supply) committed in respect of a relevant Class A drug;

“senior police officer” means a police officer of a rank no lower than inspector.

## **20B 20B Section 20A: supplementary**

- (1) Section 20A of this Act does not prejudice the generality of section 18 of this Act.
- (2) Each person carrying out a function under section 20A of this Act must have regard to any guidance issued by the Scottish Ministers—
  - (a) about the carrying out of the function; or
  - (b) about matters connected to the carrying out of the function.
- (3) An order under section 20A(3)(c) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) An authorisation for the purposes of section 20A of this Act may be given orally or in writing but, if given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.

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

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- (5) If a sample is provided or taken under section 20A of this Act by virtue of an authorisation, the authorisation and the grounds for the suspicion are to be recorded in writing as soon as is reasonably practicable after the sample is provided or taken.
- (6) A person guilty of an offence under section 20A of this Act shall be liable on summary conviction to the following penalties—
- (a) a fine not exceeding level 4 on the standard scale;
  - (b) imprisonment for a period—
    - (i) where conviction is in the district court, not exceeding 60 days; or
    - (ii) where conviction is in the sheriff court, not exceeding 3 months; or
  - (c) both such fine and imprisonment.
- (7) Subject to subsection (8) below, a sample provided or taken under section 20A of this Act shall be destroyed as soon as possible following its analysis for the purpose for which it was taken.
- (8) Where an analysis of the sample reveals that a relevant Class A drug is present in the person's body, the sample may be retained so that it can be used, and supplied to others, for the purpose of any proceedings against the person for an offence under section 88 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10); but—
- (a) the sample may not be used, or supplied, for any other purpose; and
  - (b) the sample shall be destroyed as soon as possible once it is no longer capable of being used for that purpose.
- (9) Information derived from a sample provided by or taken from a person under section 20A of this Act may be used and disclosed only for the following purposes—
- (a) for the purpose of proceedings against the person for an offence under section 88 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10);
  - (b) for the purpose of informing any decision about granting bail in any criminal proceedings to the person;
  - (c) for the purpose of informing any decision of a children's hearing arranged to consider the person's case;
  - (d) where the person is convicted of an offence, for the purpose of informing any decision about the appropriate sentence to be passed by a court and any decision about the person's supervision or release;
  - (e) for the purpose of ensuring that appropriate advice and treatment is made available to the person.
- (10) Subject to subsection (11) below, the Scottish Ministers may by order made by statutory instrument modify section 20A(8) of this Act for either of the following purposes—
- (a) for the purpose of adding an offence to or removing an offence from those for the time being listed in the definition of "relevant offence";

(b) for the purpose of adding a substance, preparation or product to or removing a substance, preparation or product from those for the time being listed in the definition of “relevant Class A drug”.

(11) An order under subsection (10)(b) may add a substance, preparation or product only if it is a Class A drug (that expression having the same meaning as in the Misuse of Drugs Act 1971 (c. 38)).

(12) An order under subsection (10) above shall not be made unless a draft of the statutory instrument containing it has been laid before and approved by resolution of the Scottish Parliament.”.

## **85 Assessment following positive test under section 20A of the 1995 Act**

(1) This section applies where—

- (a) a sample is provided or taken under section 20A of the 1995 Act by or from a person in custody in a police station; and
- (b) an analysis of the sample reveals that a relevant Class A drug is present in the person’s body.

(2) A constable must require the person to attend, and remain for the duration of, a drugs assessment.

(3) A drugs assessment is an appointment with a suitably qualified person (“a drugs assessor”)—

- (a) for the purpose of establishing whether the person is dependent on, or has a propensity to misuse, any relevant Class A drug;
- (b) if the drugs assessor thinks that the person has such a dependency or propensity, for the purpose of establishing whether the person might benefit from assistance or treatment (or both) in connection with the dependency or propensity; and
- (c) if the drugs assessor thinks that the person might benefit from such assistance or treatment (or both), for the purpose of drawing up a document which sets out the nature of assistance or treatment (or both) which may be most appropriate for the person in connection with any dependency on, or propensity to misuse, a relevant Class A drug which the drugs assessor thinks the person has.

## **86 Requirements under section 85: supplementary**

(1) This section applies where by virtue of section 85(2) a person is required by a constable to attend and remain for the duration of a drugs assessment.

(2) The constable must—

- (a) inform the person of the place at which the drugs assessment is to take place; and
- (b) require the person, for the purpose of being given details of the date and time of the assessment, to report at that place on such date, or on one of such dates, as the constable specifies (such date or dates falling within the period of 7 days beginning with the date on which the requirement is made), at such time, or between such times, as the constable specifies;

and the constable must explain that these matters will be confirmed in writing.

- (3) The constable must warn the person that the person is liable to prosecution if the person fails without reasonable excuse—
  - (a) to attend and remain for the duration of the drugs assessment; or
  - (b) to comply with the requirement imposed under subsection (2)(b).
- (4) The constable must give the person notice in writing which—
  - (a) confirms the requirement to attend and remain for the duration of a drugs assessment;
  - (b) confirms the information given in pursuance of subsection (2)(a);
  - (c) confirms the requirement imposed under subsection (2)(b); and
  - (d) repeats the warning given in pursuance of subsection (3).
- (5) The duties imposed by subsections (2) to (4) must be carried out before the person is released from custody at the police station.
- (6) As soon as reasonably practicable following the carrying out of those duties, the constable must inform the drugs assessor who is to carry out the drugs assessment—
  - (a) of the making of the requirement to attend and remain for the duration of the assessment; and
  - (b) of the requirement imposed under subsection (2)(b).

## **87 Date, time and place of assessment**

- (1) Subsection (2) applies where, in accordance with a requirement imposed by virtue of section 86(2), a person reports at the place where the person's drugs assessment is to take place.
- (2) The drugs assessor who is to carry out the drugs assessment or a person acting on the drugs assessor's behalf must give the person a notice in writing which—
  - (a) informs the person of the date and time of the drugs assessment;
  - (b) confirms the place of the drugs assessment; and
  - (c) warns the person that the person is liable to prosecution if the person fails without good cause to attend and remain for the duration of the drugs assessment.
- (3) Where a person is given a notice in pursuance of subsection (2), the drugs assessor who is to carry out the drugs assessment or a person acting on the drugs assessor's behalf may change the date, time or place of the assessment by serving on the person a further notice in writing which—
  - (a) informs the person of the change; and
  - (b) repeats the warning mentioned in subsection (2)(c).
- (4) For the purpose of subsection (3), a notice is served on a person if—
  - (a) given to the person; or
  - (b) sent to the person by registered post or a recorded delivery service.
- (5) A certificate of posting of a notice sent under subsection (4)(b) issued by the postal operator concerned is sufficient evidence of the sending of the notice on the day specified in the certificate.
- (6) In subsection (5), "postal operator" has the meaning given by section 125(1) of the Postal Services Act 2000 (c. 26).

## **88 Failure to comply with requirements under sections 85 and 86**

- (1) The drugs assessor must inform a constable if a person who, by virtue of section 85(2), is required to attend and remain for the duration of a drugs assessment—
  - (a) fails to comply with the requirement imposed by virtue of section 86(2)(b);
  - (b) fails to attend the assessment on the specified date and at the specified time and place; or
  - (c) attends the assessment on the specified date and at the specified time and place but fails to remain for its duration.
- (2) A person who, by virtue of section 85(2), is required to attend and remain for the duration of a drugs assessment commits an offence if without reasonable excuse the person—
  - (a) fails to comply with the requirement imposed by virtue of section 86(2)(b);
  - (b) fails to attend the assessment on the specified date and at the specified time and place; or
  - (c) attends the assessment on the specified date and at the specified time or place but fails to remain for its duration.
- (3) A person who commits an offence under subsection (2) is liable on summary conviction to—
  - (a) imprisonment for a period not exceeding 3 months;
  - (b) a fine not exceeding level 4 on the standard scale; or
  - (c) both.
- (4) In this section—
  - (a) the specified date, in relation to a drugs assessment, is the date specified in the notice given to the person who is required to attend the assessment in pursuance of subsection (2) of section 87 or, if a further notice specifying a different date has been given to the person in pursuance of subsection (3) of that section, the date specified in that notice;
  - (b) the specified time, in relation to a drugs assessment, is the time specified in the notice given to the person who is required to attend the assessment in pursuance of subsection (2) of section 87 or, if a further notice specifying a different time has been given to the person in pursuance of subsection (3) of that section, the time specified in that notice; and
  - (c) the specified place, in relation to a drugs assessment, is the place specified in the notice given to the person who is required to attend the assessment in pursuance of section 86(2) or, if a further notice specifying a different place has been given to the person in pursuance of section 87(3), the place specified in that notice.

## **89 Guidance for the purposes of sections 85 to 88**

In carrying out a function under any of sections 85 to 88, a constable or a drugs assessor must have regard to any guidance issued by the Scottish Ministers—

- (a) about the carrying out of the function; or
- (b) about matters connected to the carrying out of the function.

**90 Interpretation of sections 85 to 88**

In sections 85 to 88—

“misuse” has the same meaning as in the Misuse of Drugs Act 1971 (c. 38);

“drugs assessment” and “drugs assessor” must be construed in accordance with section 85(3);

“relevant Class A drug” has the meaning given by section 20A(8) of the 1995 Act;

“suitably qualified person” means a person who has such qualifications or experience as are prescribed by regulations made by the Scottish Ministers.