



# Drugs Act 2005

## 2005 CHAPTER 17

### PART 3

#### ASSESSMENT OF MISUSE OF DRUGS

#### **9 Initial assessment following testing for presence of Class A drugs**

- (1) This section applies if—
  - (a) a sample is taken under section 63B of PACE (testing for presence of Class A drug) from a person detained at a police station,
  - (b) an analysis of the sample reveals that a specified Class A drug may be present in the person's body,
  - (c) the age condition is met, and
  - (d) the notification condition is met.
- (2) A police officer may, at any time before the person is released from detention at the police station, require him to attend an initial assessment and remain for its duration.
- (3) An initial assessment is an appointment with a suitably qualified person (an "initial assessor")—
  - (a) for the purpose of establishing whether the person is dependent upon or has a propensity to misuse any specified Class A drug,
  - (b) if the initial assessor thinks that he has such a dependency or propensity, for the purpose of establishing whether he might benefit from further assessment, or from assistance or treatment (or both), in connection with the dependency or propensity, and
  - (c) if the initial assessor thinks that he might benefit from such assistance or treatment (or both), for the purpose of providing him with advice, including an explanation of the types of assistance or treatment (or both) which are available.
- (4) The age condition is met if the person has attained the age of 18 or such different age as the Secretary of State may by order made by statutory instrument specify for the purposes of this section.

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- (5) In relation to a person (“A”) who has attained the age of 18, the notification condition is met if—
- (a) the relevant chief officer has been notified by the Secretary of State that arrangements for conducting initial assessments for persons who have attained the age of 18 have been made for persons from whom samples have been taken (under section 63B of PACE) at the police station in which A is detained, and
  - (b) the notice has not been withdrawn.
- (6) In relation to a person (“C”) who is of an age which is less than 18, the notification condition is met if—
- (a) the relevant chief officer has been notified by the Secretary of State that arrangements for conducting initial assessments for persons of that age have been made for persons from whom samples have been taken (under section 63B of PACE) at the police station in which C is detained, and
  - (b) the notice has not been withdrawn.
- (7) In subsections (5) and (6), “relevant chief officer” means the chief officer of police of the police force for the police area in which the police station is situated.

## **10 Follow-up assessment**

- (1) This section applies if—
- (a) a police officer requires a person to attend an initial assessment and remain for its duration under section 9(2),
  - (b) the age condition is met, and
  - (c) the notification condition is met.
- (2) The police officer must, at the same time as he imposes the requirement under section 9(2)—
- (a) require the person to attend a follow-up assessment and remain for its duration, and
  - (b) inform him that the requirement ceases to have effect if he is informed at the initial assessment that he is no longer required to attend the follow-up assessment.
- (3) A follow-up assessment is an appointment with a suitably qualified person (a “follow-up assessor”)—
- (a) for any of the purposes of the initial assessment which were not fulfilled at the initial assessment, and
  - (b) if the follow-up assessor thinks it appropriate, for the purpose of drawing up a care plan.
- (4) A care plan is a plan which sets out the nature of the assistance or treatment (or both) which may be most appropriate for the person in connection with any dependency upon, or any propensity to misuse, a specified Class A drug which the follow-up assessor thinks that he has.
- (5) The age condition is met if the person has attained the age of 18 or such different age as the Secretary of State may by order made by statutory instrument specify for the purposes of this section.

- (6) In relation to a person (“A”) who has attained the age of 18, the notification condition is met if—
- (a) the relevant chief officer has been notified by the Secretary of State that arrangements for conducting follow-up assessments for persons who have attained the age of 18 have been made for persons from whom samples have been taken (under section 63B of PACE) at the police station in which A is detained, and
  - (b) the notice has not been withdrawn.
- (7) In relation to a person (“C”) who is of an age which is less than 18, the notification condition is met if—
- (a) the relevant chief officer has been notified by the Secretary of State that arrangements for conducting follow-up assessments for persons of that age have been made for persons from whom samples have been taken (under section 63B of PACE) at the police station in which C is detained, and
  - (b) the notice has not been withdrawn.
- (8) In subsections (6) and (7), “relevant chief officer” means the chief officer of police of the police force for the police area in which the police station is situated.

## **11 Requirements under sections 9 and 10: supplemental**

- (1) This section applies if a person is required to attend an initial assessment and remain for its duration by virtue of section 9(2).
- (2) A police officer must—
- (a) inform the person of the time when, and the place at which, the initial assessment is to take place, and
  - (b) explain that this information will be confirmed in writing.
- (3) A police officer must warn the person that he may be liable to prosecution if he fails without good cause to attend the initial assessment and remain for its duration.
- (4) If the person is also required to attend a follow-up assessment and remain for its duration by virtue of section 10(2), a police officer must also warn the person that he may be liable to prosecution if he fails without good cause to attend the follow-up assessment and remain for its duration.
- (5) A police officer must give the person notice in writing which—
- (a) confirms that he is required to attend and remain for the duration of an initial assessment or both an initial assessment and a follow-up assessment (as the case may be),
  - (b) confirms the information given in pursuance of subsection (2), and
  - (c) repeats the warning given in pursuance of subsection (3) and any warning given in pursuance of subsection (4).
- (6) The duties imposed by subsections (2) to (5) must be discharged before the person is released from detention at the police station.
- (7) A record must be made, as part of the person’s custody record, of—
- (a) the requirement imposed on him by virtue of section 9(2),
  - (b) any requirement imposed on him by virtue of section 10(2),

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- (c) the information and explanation given to him in pursuance of subsection (2) above,
  - (d) the warning given to him in pursuance of subsection (3) above and any warning given to him in pursuance of subsection (4) above, and
  - (e) the notice given to him in pursuance of subsection (5) above.
- (8) If a person is given a notice in pursuance of subsection (5), a police officer or a suitably qualified person may give the person a further notice in writing which—
- (a) informs the person of any change to the time when, or to the place at which, the initial assessment is to take place, and
  - (b) repeats the warning given in pursuance of subsection (3) and any warning given in pursuance of subsection (4).

## **12 Attendance at initial assessment**

- (1) This section applies if a person is required to attend an initial assessment and remain for its duration by virtue of section 9(2).
- (2) The initial assessor must inform a police officer or a police support officer if the person—
- (a) fails to attend the initial assessment at the specified time and place, or
  - (b) attends the assessment at the specified time and place but fails to remain for its duration.
- (3) A person is guilty of an offence if without good cause—
- (a) he fails to attend an initial assessment at the specified time and place, or
  - (b) he attends the assessment at the specified time and place but fails to remain for its duration.
- (4) A person who is guilty of an offence under subsection (3) is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 4 on the standard scale, or to both.
- (5) If a person fails to attend an initial assessment at the specified time and place, any requirement imposed on him by virtue of section 10(2) ceases to have effect.
- (6) In this section—
- (a) the specified time, in relation to the person concerned, is the time specified in the notice given to him in pursuance of subsection (5) of section 11 or, if a further notice specifying a different time has been given to him in pursuance of subsection (8) of that section, the time specified in that notice, and
  - (b) the specified place, in relation to the person concerned, is the place specified in the notice given to him in pursuance of subsection (5) of section 11 or, if a further notice specifying a different place has been given to him in pursuance of subsection (8) of that section, the place specified in that notice.
- (7) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44) (alteration of penalties for summary offences), the reference in subsection (4) to 51 weeks is to be read as a reference to 3 months.

## **13 Arrangements for follow-up assessment**

- (1) This section applies if—

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- (a) a person attends an initial assessment in pursuance of section 9(2), and
  - (b) he is required to attend a follow-up assessment and remain for its duration by virtue of section 10(2).
- (2) If the initial assessor thinks that a follow-up assessment is not appropriate, he must inform the person concerned that he is no longer required to attend the follow-up assessment.
- (3) The requirement imposed by virtue of section 10(2) ceases to have effect if the person is informed as mentioned in subsection (2).
- (4) If the initial assessor thinks that a follow-up assessment is appropriate, the assessor must—
  - (a) inform the person of the time when, and the place at which, the follow-up assessment is to take place, and
  - (b) explain that this information will be confirmed in writing.
- (5) The assessor must also warn the person that, if he fails without good cause to attend the follow-up assessment and remain for its duration, he may be liable to prosecution.
- (6) The initial assessor must also give the person notice in writing which—
  - (a) confirms that he is required to attend and remain for the duration of the follow-up assessment,
  - (b) confirms the information given in pursuance of subsection (4), and
  - (c) repeats the warning given in pursuance of subsection (5).
- (7) The duties mentioned in subsections (2) and (4) to (6) must be discharged before the conclusion of the initial assessment.
- (8) If a person is given a notice in pursuance of subsection (6), the initial assessor or another suitably qualified person may give the person a further notice in writing which—
  - (a) informs the person of any change to the time when, or to the place at which, the follow-up assessment is to take place, and
  - (b) repeats the warning mentioned in subsection (5).

#### **14 Attendance at follow-up assessment**

- (1) This section applies if a person is required to attend a follow-up assessment and remain for its duration by virtue of section 10(2).
- (2) The follow-up assessor must inform a police officer or a police support officer if the person—
  - (a) fails to attend the follow-up assessment at the specified time and place, or
  - (b) attends the assessment at the specified time and place but fails to remain for its duration.
- (3) A person is guilty of an offence if without good cause—
  - (a) he fails to attend a follow-up assessment at the specified time and place, or
  - (b) he attends the assessment at the specified time and place but fails to remain for its duration.

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- (4) A person who is guilty of an offence under subsection (3) is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding level 4 on the standard scale, or to both.
- (5) In this section—
- (a) the specified time, in relation to the person concerned, is the time specified in the notice given to him in pursuance of subsection (6) of section 13 or, if a further notice specifying a different time has been given to him in pursuance of subsection (8) of that section, the time specified in that notice, and
  - (b) the specified place, in relation to the person concerned, is the place specified in the notice given to him in pursuance of subsection (6) of section 13 or, if a further notice specifying a different place has been given to him in pursuance of subsection (8) of that section, the place specified in that notice.
- (6) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44) (alteration of penalties for summary offences), the reference in subsection (4) to 51 weeks is to be read as a reference to 3 months.

## 15 Disclosure of information about assessments

- (1) An initial assessor may disclose information obtained as a result of an initial assessment to any of the following—
- (a) a person who is involved in the conduct of the assessment;
  - (b) a person who is or may be involved in the conduct of any follow-up assessment.
- (2) A follow-up assessor may disclose information obtained as a result of a follow-up assessment to a person who is involved in the conduct of the assessment.
- (3) Subject to subsections (1) and (2), information obtained as a result of an initial or a follow-up assessment may not be disclosed by any person without the written consent of the person to whom the assessment relates.
- (4) Nothing in this section affects the operation of section 17(4).

## 16 Samples submitted for further analysis

- (1) A requirement imposed on a person by virtue of section 9(2) or 10(2) ceases to have effect if at any time before he has fully complied with the requirement—
- (a) a police officer makes arrangements for a further analysis of the sample taken from him as mentioned in section 9(1)(a), and
  - (b) the analysis does not reveal that a specified Class A drug was present in the person's body.
- (2) If a requirement ceases to have effect by virtue of subsection (1), a police officer must so inform the person concerned.
- (3) Nothing in subsection (1) affects the validity of anything done in connection with the requirement before it ceases to have effect.
- (4) If a person fails to attend an assessment which he is required to attend by virtue of section 9(2) or fails to remain for the duration of such an assessment but, at any time

after his failure, the requirement ceases to have effect by virtue of subsection (1) above—

- (a) no proceedings for an offence under section 12(3) may be brought against him, and
- (b) if any such proceedings were commenced before the requirement ceased to have effect, those proceedings must be discontinued.

(5) If a person fails to attend an assessment which he is required to attend by virtue of section 10(2) or fails to remain for the duration of such an assessment but, at any time after his failure, the requirement ceases to have effect by virtue of subsection (1) above—

- (a) no proceedings for an offence under section 14(3) may be brought against him, and
- (b) if any such proceedings were commenced before the requirement ceased to have effect, those proceedings must be discontinued.

## **17 Relationship with Bail Act 1976 etc.**

(1) A requirement imposed on a person by virtue of section 9(2) or 10(2) ceases to have effect if at any time before he has fully complied with the requirement—

- (a) he is charged with the related offence, and
- (b) a court imposes on him a condition of bail under section 3(6D) of the Bail Act 1976 (c. 63) (duty to impose condition to undergo relevant assessment etc.).

(2) For the purposes of section 3(6D) of the 1976 Act, a relevant assessment (within the meaning of that Act) is to be treated as having been carried out if—

- (a) a person attends an initial assessment and remains for its duration, and
- (b) the initial assessor is satisfied that the initial assessment fulfilled the purposes of a relevant assessment.

(3) For the purposes of paragraph 6B(2)(b) of Schedule 1 to the 1976 Act (exceptions to right to bail for drug users in certain areas), a person is to be treated as having undergone a relevant assessment (within the meaning of that Act) if—

- (a) the person attends an initial assessment and remains for its duration, and
- (b) the initial assessor is satisfied that the initial assessment fulfilled the purposes of a relevant assessment.

(4) An initial assessor may disclose information relating to an initial assessment for the purpose of enabling a court considering an application for bail by the person concerned to determine whether subsection (2) or (3) applies.

(5) Nothing in subsection (1) affects—

- (a) the validity of anything done in connection with the requirement before it ceases to have effect, or
- (b) any liability which the person may have for an offence under section 12(3) or 14(3) committed before the requirement ceases to have effect.

(6) In subsection (1), “the related offence” is the offence in respect of which the condition specified in subsection (1A) or (2) of section 63B of PACE is satisfied in relation to the taking of the sample mentioned in section 9(1)(a) of this Act.

## **18 Orders under this Part and guidance**

- (1) A statutory instrument containing an order under section 9(4) or 10(5) must not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (2) Any such order may—
  - (a) make different provision for different police areas;
  - (b) make such provision as the Secretary of State considers appropriate in connection with requiring persons who have not attained the age of 18 to attend and remain for the duration of an initial assessment or a follow-up assessment (as the case may be), including provision amending this Part.
- (3) In exercising any functions conferred by this Part, a police officer and a suitably qualified person must have regard to any guidance issued by the Secretary of State for the purposes of this Part.

## **19 Interpretation**

- (1) This section applies for the purposes of this Part.
- (2) “Class A drug” and “misuse” have the same meanings as in the Misuse of Drugs Act 1971 (c. 38).
- (3) “Specified”, in relation to a Class A drug, has the same meaning as in Part 3 of the Criminal Justice and Court Services Act 2000 (c. 43).
- (4) “Initial assessment” and “initial assessor” must be construed in accordance with section 9(3).
- (5) “Follow-up assessment” and “follow-up assessor” must be construed in accordance with section 10(3).
- (6) “Suitably qualified person” means a person who has such qualifications or experience as are from time to time specified by the Secretary of State for the purposes of this Part.
- (7) “Police support officer” means a person who is employed by a police authority under section 15(1) of the Police Act 1996 (c. 16) and who is under the direction and control of the chief officer of police of the police force maintained by that authority.
- (8) “PACE” means the Police and Criminal Evidence Act 1984 (c. 60).