

# DRUGS ACT 2005

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## EXPLANATORY NOTES

### THE ACT

#### *Commentary on Sections*

#### **Part 2: Police Powers Relating to Drugs**

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

23. This section makes a number of amendments to the Police and Criminal Evidence Act 1984 (PACE) to allow for the introduction of drug testing of persons after arrest. The existing provisions for testing after charge remain. The new provision will apply to persons aged 18 and over. *Subsections* (2) to (6) amend section 63B of PACE to permit persons aged eighteen or over to be tested on arrest for a specified Class A drug. This power arises where the person has been arrested for a “trigger” offence or for any offence where a police officer of at least the rank of inspector has reason to believe the misuse of such a drug contributed to that offence and authorises the test. This power sits alongside the existing power in section 63B of PACE, as amended by section 5 of the Criminal Justice Act 2003, to test persons who have been charged with such an offence.
24. *Subsection* (7) inserts new sections 63B(4A) and 63B(4B) into PACE. These require a notification to be given by the Secretary of State that appropriate arrangements have been made in respect of an area before testing on arrest can operate. The notification may refer to an entire police area or to a single police station.
25. *Subsections* (8) to (12) further amend section 63B of PACE. New section 63B(5B) ensures that, where a sample is taken from a person on arrest, no other sample can be taken if he is charged with that offence or any other offence which meets the charge condition during that period of detention. However, in that event, the sample must be treated as having been taken in respect of the offence for which the person is charged. New section 63B(5C) allows for a person who has been arrested for an offence which meets the arrest condition to be tested within a period of 24 hours following his arrest for that offence even though the only reason for his detention at the point the sample is taken is due to his having been arrested for a further offence that does not satisfy the arrest condition. New section 63B(5D) also provides that a person has to have been brought before the custody officer before a test may take place. *Subsection* (10) substitutes a new section 63B(6A) which provides the Secretary of State with a power to amend by order the age of persons to whom such a request can be made on arrest and on charge. *Subsection* (11) amends section 63B(7) of PACE to permit disclosure of the drug test results for the purpose of making a decision as to whether to give a conditional caution under Part 3 of the Criminal Justice Act 2003. *Subsection* (12) omits section 63B(9) of PACE. *Subsection* (13) provides that the notification condition is to be treated as being satisfied for the purposes of the charge condition in those areas in which section 63B(2) of PACE is in force on the day this section comes into force. *Subsection* (13) also provides that the notification condition is to be treated as being satisfied for the purposes of the age condition in those areas in which a notification has been given under section 63B(9) of PACE on the day this section comes into force.