

# DRUGS ACT 2005

---

## EXPLANATORY NOTES

### THE ACT

#### *Commentary on Sections*

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

##### ***Section 3: Drug offence searches***

10. Those in possession of drugs may seek to conceal them from the police in body cavities. This section amends section 55 of the Police and Criminal Evidence Act 1984, which provides for an intimate search of a person where it is suspected that the person may have a Class A drug concealed on him.
11. *Subsection (2)* provides that a drug offence intimate search may only be undertaken where the person to be searched has consented in writing and requires that the person be informed that the search has been authorised and the grounds on which it has been authorised.
12. *Subsection (3)* inserts a new section 55(10A) which requires that the authorisation for the search, grounds for that authorisation and consent of the person to be searched is recorded in the custody record.
13. *Subsection (5)* inserts a new section 55(13A) which provides that appropriate inferences may be drawn by a court or jury where a person refuses without good cause to consent to an intimate search.
14. *Subsection (6)* amends section 55(17) to make clear that the information that is required to be given to the suspect by section 55(3B) can be conveyed by a constable or suitably designated detention officer or staff custody officer.

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

15. [Section 4](#) makes provision equivalent to section 3 for Northern Ireland. Section 4 amends Article 56 (intimate searches) of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(S.I. 1989/1341\)](#).

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

16. This section inserts a new section 55A into the Police and Criminal Evidence Act 1984.
17. New section 55A(1) enables a police officer of at least the rank of inspector to authorise an x-ray or ultrasound scan (or both) of a person suspected of swallowing a Class A drug which he had in his possession with intent to supply or export unlawfully, where the person has been arrested for an offence and is in police detention.
18. New section 55A(2) provides that an x-ray may not be taken or an ultrasound scan undertaken without the suspect's consent which must be in writing. New section 55A(3) requires that the person be informed that the x-ray or ultrasound has been authorised and the grounds on which it has been authorised. New section 55A(4) provides that the x-

ray or ultrasound scan may only be taken at a hospital, registered medical practitioner's surgery or other place used for medical purposes and only by a registered medical practitioner or nurse. New section 55A(5) and (6) requires that the authorisation for the x-ray or ultrasound, grounds for that authorisation and consent of the person to be searched is recorded in the custody record as soon as practicable after the x-ray has been taken or ultrasound carried out.

19. New section 55A(7) and (8) makes provision for information relating to x-rays and ultrasound scans to be included in annual reports made by chief constables or the Commissioner of Police of the Metropolis. The reporting requirements are similar to those which apply to information relating to intimate searches.
20. New section 55A(9) provides that appropriate inferences may be drawn by a court or jury where a person refuses without good cause to consent to an x-ray or ultrasound scan.
21. *Subsection* (2) amends Schedule 4 to the Police Reform Act 2002 to allow detention officers and staff custody officers to inform suspects of the matters referred to in section 55A(3).

### ***Section 6: X-rays and ultrasounds scans: Northern Ireland***

22. **Section 6** makes provision equivalent to section 5 for Northern Ireland. Section 6 inserts a new Article 56A into the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(S.I. 1989/1341\)](#) dealing with the taking of x-rays and the carrying out of ultrasounds. The authorisation must be given by a police officer of at least the rank of superintendent.

### ***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.

***Section 8: extended detention of suspected drug offenders***

26. Some drug dealers will swallow drugs, suitably wrapped, upon arrest.
27. This section will allow a court to remand a prisoner to the custody of a police officer where it is suspected that the prisoner has swallowed drugs to conceal evidence and avoid prosecution.
28. Currently the police may detain a person in police detention under the Police and Criminal Evidence Act 1984 for a maximum of 96 hours prior to charge. This is not necessarily a sufficient period of time for swallowed evidence to be recovered.
29. Section 152 of the Criminal Justice Act 1988, permits a magistrates' court to commit a person charged with an offence under section 5(2) of the Misuse of Drugs Act 1971 (possession of a controlled drug) or a drug trafficking offence into the custody of a Customs officer for a period of up to 192 hours to increase the likelihood of the evidence being recovered.
30. This section amends section 152 of the Criminal Justice Act 1998 to give magistrates similar powers to remand a person, upon charge, to the custody of a police officer, for a period of up to 192 hours.