

DRUGS ACT 2005

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 4: Miscellaneous and General

Section 20: Anti-social behaviour orders: intervention orders

42. This section amends the Crime and Disorder Act 1998 (the “CDA”) in relation to Anti-social Behaviour Orders (ASBOs) and provides for a new order which can be made alongside an ASBO when drug misuse has been a cause of the behaviour that led to the ASBO being made.
43. *New section 1G, subsections (1) and (2)* set out when an application for an intervention order can be made. It provides that an intervention order can be applied for by a “relevant authority” (as defined in section 1(1A) of the CDA) when it makes an application for an ASBO under section 1 of the CDA or an order in the county court under section 1B of the CDA. The application for the intervention order should be preceded by an assessment and report of the defendant’s behaviour where this relates to the misuse of controlled drugs together with consultation with persons prescribed by the Secretary of State to ensure that the appropriate activities to address such behaviour are available locally. There is also a power for the Secretary of State to prescribe that an intervention order can be made when other factors are influencing the person’s behaviour. *Subsection (3)* provides that the court may make an order if it has made an ASBO and is satisfied that the relevant conditions relating to the intervention order are met. *Subsection (4)* sets out the “relevant conditions”. They are that an order is desirable in the interest of preventing a repetition of the behaviour that led to the order being made, that the appropriate activities to address the behaviour have been identified locally, that the defendant is not already subject to an intervention order or to any other treatment relating to the behaviour which led to the intervention order being made and that the Secretary of State has notified the courts that such orders are available in their area. *Subsection (5)* states that the order should not exceed 6 months and requires the defendant to comply with the requirements of the order, and any directions that may be given under the order. *Subsection (6)* sets out that the order or directions given under the order can require the defendant to participate in specified activities and require attendance at specific times. *Subsection (7)* provides that the requirements of the order should avoid, as far as reasonably practicable, interfering with the defendant’s religious belief and any work or educational commitments. *Subsection (8)* provides that the person responsible for providing or supervising the activities must inform the relevant authority if the defendant fails to comply with the order. *Subsection (9)* provides that the Secretary of State shall prescribe those persons who are responsible for the provision or supervision of the appropriate activities. *Subsection (10)* sets out definitions. *Subsection (12)* provides that an intervention order can be applied for if an ASBO has already been made on an earlier occasion, and the same conditions have been met.
44. *Section 1H, subsection (1)* provides that the court, before making the order, must make the defendant aware of the requirements of the order and the consequences of

non-compliance, and allows the court on application by the defendant or the relevant authority to vary the order. The definition of a 'relevant authority' is the same as that given in section 1(1A) of the Crime and Disorder Act 1998, that is, the council for the local government area or any chief officer of police any part of whose police area lies within that area. *Subsection (2)* sets out that the Secretary of State has power to prescribe cases when *subsection (1)* does not apply, or when the explanation can be made in the absence of the defendant and in written form. *Subsection (3)* provides that if found guilty of a breach, the defendant is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Subsection (4) provides that the order will cease if the ASBO it was made with also ceases. *Subsection (5)* provides that the defendant or the relevant authority can ask the court to vary or discharge the order by way of application. *Subsection (6)* states that an application under *subsection (5)* made in the magistrates' court shall be an application by complaint. *Subsection (7)* allows the court to vary the order if it is varying the accompanying ASBO.

45. *Subsection (2)* of this section amends section 114(2) of the Crime and Disorder Act 1998 to provide that an order made by the Secretary of State under new section 1G of that Act, as inserted by *subsection (1)* of this section, is subject to the negative resolution procedure.

Section 21: Inclusion of mushrooms containing Psilocin etc. as Class A drugs

46. This section inserts into Part 1 of Schedule 2 to the Misuse of Drugs Act 1971 a fungus of any kind that contains the drug psilocin or an ester of that drug. This has the effect of making such a fungus, often referred to as 'magic mushrooms', a Class A drug for the purposes of the 1971 Act. Currently, such a fungus is only a Class A drug where it is in a form which constitutes a preparation or other product containing psilocin or an ester of psilocin for the purposes of paragraph 5 of Part 1 of Schedule 2 to the 1971 Act.

Section 22: Financial provision

47. This section authorises additional expenditure incurred by the Secretary of State as a result of the provisions of the Act and increases in expenditure under existing Acts.

Section 23: Amendments and repeals

48. This section gives effect to the Schedules which set out legislation to be amended and repealed.

Section 24: Short title, commencement and extent

49. *Subsection (1)* sets out the short title of the Act. *Subsections (2) to (5)* provide for commencement. *Subsections (6) and (7)* set out the extent of the Act.