

DRUG DRIVING (ASSESSMENT OF DRUG MISUSE) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Drug Driving (Assessment of Drug Misuse) Bill as introduced in the House of Commons by Graham Evans, the Member in charge of the Bill, on 19 June 2013. They have been prepared by the Home Office, with the consent of Graham Evans, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND AND SUMMARY

3. A summary of the Bill is set out below. It consists of five clauses.

4. The Bill closes a gap in existing law in respect of individuals who are being investigated for the commission of offences relating to driving when under the influence of drugs. These offences include the new offence in section 5A of the Road Traffic Act 1988 (inserted by section 56 of the Crime and Courts Act 2013). There is currently no provision which enables the police or courts to require drug drivers who misuse Class A drugs to attend assessments with a drug worker in the same way that other drug users can be required to attend assessments in relation to other offences. This Bill introduces provision which enables the police and the courts to require drug drivers who have tested positive for a specified Class A drug to be required to attend up to two assessments with a drugs worker.

5. The Bill is aimed at drug drivers whose misuse is likely to cause them to commit offences in general. The Bill inserts provision into Part 3 of the Drugs Act 2005 (“the 2005 Act”) to enable the police to require an individual to attend up to two drug assessments with a drugs worker. The Bill also amends section 3 of and Schedule 1 to the Bail Act 1976 to enable the courts to consider bail conditions relating to attendance at these assessments.

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6. Drug drivers may test positive for a range of drugs; these include the specified Class A drugs, heroin and cocaine/crack. The specified Class A drugs are those which research has shown to have the greatest link to drug-related offending behaviour. The police and the courts play an important role in engaging individuals in drug assessment and possible treatment and support with the aim of reducing drug misuse and offending. For example, the Drug Interventions Programme alone – a centrally funded and managed Programme from 2003 to March 2013 - has been estimated to have managed around 88,000 people into drug treatment and recovery in 2011/12 who would otherwise have had to self-present to treatment. This Bill would enable a new group of offenders that use Class A drugs to be referred to drug assessment by the police or courts as a result of driving offences.

7. The Department for Transport has estimated that there will be around 8,800 prosecutions a year under the Government's proposed approach for the new drug driving offence. The Crime Survey for England and Wales (CSEW) for 2010/11 suggests that around 50% will be under the influence of cocaine and 19% of heroin and the Home Office has assessed the impact of the new Bill on the basis of these CSEW figures. However, the Department for Transport estimates that the proportion of drug drivers found positive for heroin under the new offence may be lower than 19%, on the basis of existing evidence from a forensic provider. The existing impairment offence in the Road Traffic Act 1988 will remain in force. There were 2,626 prosecutions for this offence in 2011, and the Department for Transport assumes that prosecutions will continue at a similar level.

TERRITORIAL EXTENT

8. Clause 5(3) sets out the extent of this Bill. The Bill's provisions extend to England and Wales only.

9. The provisions in the Bill relate to non-devolved matters in Wales. The Bill does not affect the powers of Welsh Ministers and does not make different provision in relation to England and Wales.

COMMENTARY OF CLAUSES

Clause 1: Drug assessments for persons under investigation for drug driving offences

10. This clause inserts new sections 11A to 11C into Part 3 of the 2005 Act.

11. New section 11A(1) and (2) enables a police officer to require a person to attend an initial assessment, provided certain conditions are met. Subsection (1) sets out the conditions; these are that the person is aged 18 or over and has provided a blood or urine sample in the course of an investigation into whether an offence has been committed under section 3A, 4 or 5A of the Road Traffic Act 1988 which reveals that a specified Class A drug is present in that person's body. Subsection (2) confers the power on a police officer to require attendance at the initial assessment. Subsection (3) enables the Secretary of State to prescribe by order a different age from that described above.

12. New section 11B(1) and (2) enables a police officer to require a person aged 18 or over, in respect of whom there is a requirement to attend an initial assessment, to attend a follow-up assessment. Subsection (2) also requires the police officer to inform the person that the requirement to attend a follow-up assessment ceases to apply if that person is

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informed at the initial assessment that such attendance is no longer required. Subsection (3) enables the Secretary of State to prescribe by order a different age from that described above.

13. New section 11C makes supplemental provision about the requirement to attend an initial and follow-up assessment. Subsection (1) provides that a person must be given written notice of a requirement to attend an initial assessment. Subsection (2) prescribes the matters which the notice must set out; these include information about the time and place of the initial assessment, the requirement to attend a follow-up assessment and a warning that a failure without good cause to attend an assessment means that the person is liable to prosecution. Subsection (3) enables a police officer or other suitably qualified person (defined in section 19(6) of the 2005 Act) to give a person a further written notice which sets out information about a change in the time of or place at which an initial assessment will take place and a warning that a failure without good cause to attend the assessment means that the person is liable to prosecution. Subsection (4) provides that a notice must be given to a person at least 14 days before the date of the initial assessment to which the notice relates.

Clause 2: Consequential amendments to the Drugs Act 2005

14. This clause makes consequential amendments to sections 9 to 18 of the 2005 Act.

15. Subsection (4) amends section 12 (attendance at initial assessment) of the 2005 Act to, amongst other things, insert an amended definition in subsection (6) of “specified time” and “specified place”.

16. Subsection (7) amends section 16 (samples submitted for further analysis) of the 2005 Act to, amongst other things, insert new subsection (1A) into that section. This makes provision that a requirement on a person to attend an initial or follow-up assessment under the new sections 11A and 11B ceases to have effect if a police officer arranges for a further analysis of the blood or urine sample to be undertaken and this does not reveal the presence of a specified Class A drug in that person’s body. This follows the provision currently in section 16 in relation to assessments under sections 9 and 10 of the 2005 Act.

17. Subsection (8) amends section 17 (relationship with Bail Act 1976) of the 2005 Act to provide that a requirement on a person to attend an initial or follow-up assessment under the new sections ceases to have effect if that person is charged with an offence under section 3A, 4 or 5A of the Road Traffic Act 1988, and a court imposes a condition of bail to the effect that the person must undergo an initial and follow-up assessment. Again, this simply follows the existing provision that applies to assessments under sections 9 and 10.

Clause 3: Consequential amendments to the Bail Act 1976

18. This clause makes consequential amendments to section 3 of and Schedule 1 to the Bail Act 1976.

19. Subsections (2) and (3) amend these provisions in two respects. First, the amendments to section 3 mean that, where a person has provided a sample under section 7 or 7A of the Road Traffic Act which has revealed the presence of Class A drugs in his body, a court granting bail to that person must impose as a condition of bail that the person must undergo an initial and follow-up assessment (as long as the person consents to the assessment and arrangements for drug assessments have been made in the relevant local area). Secondly,

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the amendments to Schedule 1 mean that a court may not grant bail to a person who does not agree to participate in a drug assessment following a positive drug test under the Road Traffic Act 1988 unless the court is satisfied that there is no significant risk that the person will commit an offence while on bail.

Clause 4: Financial provision

20. This clause is self-explanatory.

Clause 5: Commencement, extent and short title

21. This clause is self-explanatory.

COMMENCEMENT

22. The clauses will be brought into force by commencement order made by the Secretary of State. It is expected that a period of at least 2 months will be required between Royal Assent and commencement to allow the police to put in place suitable arrangements. Subsection (1) of clause 5 enables the Secretary of State to bring sections 1 to 3 into force on different days for different areas.

FINANCIAL EFFECTS OF THE BILL

23. The clauses confer a power on the police and/or courts (which they may exercise as they consider appropriate) to refer a driver who has committed a drug driving offence as a result of the presence of a specified Class A drug in the driver's body for assessment, and therefore they will not incur the consequential costs of a referral if they do not exercise this power.

24. The financial benefits of referring individuals who have committed an offence under the influence of drugs should significantly outweigh the cost. It is estimated that the total cost of referring persons to drugs assessment could be up to £14.9m a year. This would include the cost for two assessments which have been estimated to cost £1.6m a year (based on 8,000 persons being referred by the police to drug workers as a result of one of the three road traffic offences identified in this Bill). These costs would be shared between the police, local authority and health services. Most of the additional cost would not fall to the police and would be borne by implementation of care plans by the drugs workers. However, these costs are likely to be cancelled out by the benefits of referring users of Class A drugs to treatment. The main calculable benefits are from savings to health and social care which are estimated at up to £25.4m a year.

EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER

25. There were 129,584 police officers in England and Wales on 31 March 2013. As this Bill provides for an enabling power, police officers have discretion on whether to use it. Therefore there should be a de minimus impact on police officer time.

SUMMARY OF IMPACT ASSESSMENT

26. The provisions of the Bill do not require an impact assessment.

EUROPEAN CONVENTION ON HUMAN RIGHTS

27. Part 3 of the Drugs Act 2005 (“the 2005 Act”) prescribes a framework in accordance with which certain persons may be referred for an initial assessment (and in some cases a follow-up assessment) to establish their dependency and propensity to misuse any specified Class A drug, and whether they would benefit from further assessment, or from assistance or treatment.

28. The Bill will amend Part 3 of the 2005 Act to bring within this referral framework any person who has provided a blood or urine sample during the course of an investigation into whether they have committed certain drug driving offences in the Road Traffic Act 1988¹, and whose samples reveal that a specified Class A drug may be present in their body. A blood or urine sample may be taken under sections 7 or 7A of the 1988 Act². The Bill also amends section 3 of and Schedule 1 to the Bail Act 1976 to enable the courts to consider bail conditions relating to attendance at an assessment.

29. Clause 1 makes provision which broadly replicates the processes which currently apply in Part 3 of the 2005 Act; these include provision governing what notice must be given to a person in relation to their attendance at an assessment and provision that failure to attend an assessment without good cause is an offence. These provisions confer on the police the power to require a person to attend an assessment. The police, as a public authority, will have a duty under section 6 of the Human Rights Act 1998 to ensure that their own actions are compatible with the ECHR.

30. The purpose of an assessment is to establish the person’s dependency and propensity to misuse any specified Class A drug, and whether that person would benefit from further assessment, or from assistance or treatment. The clause clearly engages Article 8(1), but the provision it makes ensures that this is in accordance with the law, and is necessary in a democratic society in the interests of public safety, the prevention of crime, the protection of health and the protection of the rights and freedoms of others.

31. The interference with Article 8(1) which may be justified under Article 8(2) is accordingly the obtaining and processing of a blood or urine sample under the power in this clause. Article 8(2) describes the basis on which such interference may be justified. The interferences will be in accordance with the law because there is clear provision in primary legislation governing what type of sample is required to be provided to the police, the circumstances in which it may be provided and the purpose of its provision. The provisions in the clause are set out with sufficient precision to enable a person to know in what circumstances and to what extent the power to require a person to provide a sample can be exercised. Moreover, the police will apply a policy in accordance with which a person will be informed of the purpose for which the sample is being obtained.

¹ The offences are those under section 3A, 4 and 5A of the 1988 Act (section 5A will be inserted into the 1988 Act by section 56 of the Crime and Courts Act 2013).

² Section 7 will be amended for this purpose by paragraph 5 of Schedule 22 to the Crime and Courts Act 2013.

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32. The interferences with Convention rights caused by the obtaining of a sample by the police will be in pursuit of a legitimate aim, namely the interests of public safety, the prevention of crime, the protection of health and the protection of the rights and freedoms of others. The purpose of referring a person to an assessment is to identify drug misuse and inform local agencies as to how to assist that person. The assessment is expected to lead to structured drug treatment and/or support with recovery from addiction, with the aim of reducing the likelihood of repeat offending. As such, it is intended to prevent or reduce crime, and protect others from the commission of offences relating to drug misuse. The purpose of the assessment³ will serve one or more of these aims.

33. The interferences with this right will also be proportionate. The power may only be exercised in relation to a person who has provided a sample in the course of an investigation into whether that person has committed one of the offences under the Road Traffic Act 1988. The provisions in the clause, as well as those in the 1988 and 2005 Acts, clearly circumscribe the circumstances in which a sample may be required to be provided to the police, and the police must also have regard to their obligations under section 6 of the Human Rights Act 1998.

34. The amendments made by clause 3 are not considered to give rise to any additional interference with Article 8 rights. Moreover, the new powers inserted by those amendments are accompanied by the safeguard that they will be exercised by the courts.

35. The Government considers, therefore, that the provisions in the Bill are compatible with the ECHR.

³ The purpose is described in section 9(3) of the 2005 Act.

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