



Memorandum to the
Home Affairs Committee
Post-Legislative Assessment
of the Drugs Act 2005



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Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

September 2010

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MEMORANDUM TO THE HOME AFFAIRS SELECT COMMITTEE

POST-LEGISLATIVE ASSESSMENT OF THE DRUGS ACT 2005

INTRODUCTION

1. This Memorandum provides a preliminary assessment of the Drugs Act 2005 (Ch.17) and has been prepared by the Home Office for submission to the Home Affairs Select Committee. It is published as part of the process set out by the previous Government in the document *Post-Legislative Scrutiny – The Government's Approach* (Cm 7320). The current Government has accepted the need to continue with the practice of post-legislative scrutiny as it supports the coalition aim of improving Parliament's consideration of legislation.

OBJECTIVES OF THE DRUGS ACT 2005 (“THE ACT”)

2. The Act received Royal Assent on 7 April 2005 and the first substantive provisions came into force on 18 July 2005.

3. The Act was conceived to:

- Increase the effectiveness of the Drug Interventions Programme (DIP) in getting more offenders into treatment by identifying misusers of specified Class A drugs through drug testing at the point of arrest, and by requiring those who test positive to undertake an assessment of their drug misuse, and, where appropriate, a follow-up assessment;
- Introduce a new civil order to run alongside anti-social behaviour orders (ASBOs) for adults to tackle drug related anti-social behaviour;
- Enhance police and court powers against drug offenders; and
- Clarify existing legislation in respect of fungus of any kind which contains psilocin or an ester of psilocin (commonly known as magic mushrooms).

4. In relation to some provisions under the Act, it has been difficult to make an assessment of their effectiveness as there are no available statistics to enable assessment to be made. This Memorandum, while referring to those provisions in summary, therefore seeks to concentrate on those provisions that were of more significance and whose impact can be more readily determined.

IMPLEMENTATION AND SUBSEQUENT AMENDMENT

5. The provisions were brought into force by means of five Commencement Orders. Sections 1, 3, 5, and 8 came into force on 1st January 2006. Section 2 was not commenced and has now been repealed by the Policing and Crime Act 2009. The repeal came into force on 12th January 2010. Section 20 (ASBOs – Intervention Orders) came into force on 1st October 2006. Section 21 came into force on 18th July 2005.

6. Section 7 (*Testing for presence of Class A drugs*) and section 9, with other provisions in Part 3 (*Assessment of Drug Misuse*) relating to the initial assessment¹, were brought into force by Commencement Order on 1st December 2005. Section 10 (*follow-up assessment*) and the remaining provisions in Part 3 relating to the follow-up assessment were brought into force by Commencement Order on 1st April 2007².

7. Whilst the provisions referred to in paragraph 6 have been brought into force and extend to England and Wales, the powers to drug test and require a person to attend initial or follow-up assessments are dependent on the Secretary of State notifying the relevant chief officer of police that appropriate arrangements for drug testing on arrest have been made for particular police stations within their area (or for the police area as a whole) and that arrangements for conducting initial/follow-up assessments have been made in respect of persons tested at those police stations.

8. Notifications were made in relation to testing on arrest and the initial assessment provisions with effect from 1st December 2005 (Wave 1) in selected police stations within three police areas, Nottinghamshire, South Yorkshire and Greater Manchester (in which adult drug testing on charge was already in operation). The arrangements were then extended with effect from 31st March 2006 to further selected police stations in police areas in the remaining DIP intensive areas (i.e. those with the highest levels of crime) in England operating drug testing on charge (Wave 2). *(Annex B contains details of the 22 police areas in which drug testing on charge was already in operation (in selected police stations) when section 7 was commenced and of the phased implementation of testing on arrest. Full details of the police stations/police areas are set out in Annexes attached to Home Office Circulars 49/2005 and 3/2006 – see Annex A).*

9. As planned, the follow-up assessment provisions were brought into operation separately at a later stage – from 1st April 2007 – in the same police stations where testing on arrest and the initial assessment were in operation. This was to allow for the expanded workforce to be in place and frontline efficiencies to be achieved.

10. Drug testing on charge only was subsequently phased out and ceased in two police areas, Devon & Cornwall and Staffordshire, on 1st October 2008 (when the notifications for drug testing were withdrawn from those areas).

11. Drug testing on arrest and arrangements for both the initial and follow-up assessments were introduced in particular police stations in Wales with effect from 1st April 2009 (alongside the existing arrangements in Wales for drug testing on charge). The provisions were also implemented at that time in Blackpool (Lancashire) and more widely in Bedfordshire (where they were already in operation in Luton).

1 section 9 (*Initial assessment following testing for presence of Class A drugs*), section 12 (*Attendance at an initial assessment*), sections 11 and 15-17, in so far as they related to an initial assessment imposed under section 9, and sections 18-19 (*relating to Orders under Part 3 and guidance, and Interpretation*). The Drugs Act 2005 (Commencement No. 3) Order 2005 (S.I.2005/3053 (C. 128))

2 section 13 (*arrangements for follow-up assessment*), section 14 (*attendance at follow-up assessment*) and sections 11 and 15-17 (to the extent not already in force). The Drugs Act 2005 (Commencement No.5) Order 2007 (S.I. 2007/562 (C.23)).

ENABLING POWERS NOT USED

12. The provisions in the Act relating to testing on arrest and the initial and follow-up assessments (referred to subsequently as “the DIP provisions”) apply to persons aged 18 and above. However, section 7(10) of the Act amended section 63B of the Police and Criminal Evidence Act 1984 (PACE) to provide for the Secretary of State to change by Order the age condition applicable for drug testing on arrest (currently 18) or after charge (currently 14). This would allow for the inclusion of a younger age group to be tested on arrest without the need for primary legislation should it be considered appropriate. Similarly, sections 9(4) and 10(5) of the Act provide for the initial and follow-up assessments to apply to a different age if the Secretary of State so specifies by Order.

13. These enabling powers have not been used to date. The provisions for testing 14-17 year olds after charge (introduced by the Criminal Justice Act 2003) were in the course of being piloted (from August 2004) in 7 police areas alongside adult drug testing at the time of the passage of the Bill but the arrangements were discontinued at the end of March 2007 in the light of independent evaluation evidence which found insufficient evidence to support wider rollout. The notifications allowing testing after charge of those under 18 were withdrawn and the focus of drug testing (with the assessment provisions) has continued to remain on adult drug misusers. However, the enabling powers remain in place should patterns of Class A drug misuse amongst young people justify a change in the future.

ASSOCIATED SECONDARY LEGISLATION IN RESPECT OF THE DIP PROVISIONS

14. No secondary legislation has been made under the Act. Revisions have been made to section 17 of Code C of the PACE Codes of Practice, relating to drug testing, to take account of the introduction of testing on arrest and the police powers to require an initial and follow-up assessment. Amendments have also been made to Schedule 6 to the Criminal Justice and Court Services Act 2000 in respect of the trigger offences applicable for drug testing. (Further information is included in Annex A).

GUIDANCE

15. Details of guidance and other material relevant to the DIP provisions are set out in Annex A.

LEGAL ISSUES

16. The DIP provisions (drug testing and assessment provisions) introduced by the Act have not been the subject of any legal challenge. Where issues have been raised by practitioners or commentators about the legislation or operation of the DIP provisions, they have been considered and, where appropriate, the response has been reflected in the Guidance or Frequently Asked Questions document (FAQs). Examples of some issues raised recently include:

- A request by a solicitor on behalf of a client for evidence of the validity of a confirmatory test in the case of a disputed positive test result (for opiates). This was supplied with evidence that the chain of custody procedure had been correctly followed.

- A query about the legality of testing in the case of a pilot study commissioned by the Home Office in which participating police forces were encouraged to strengthen their consideration of testing in the case of non trigger offences of violence making use of “inspector’s authority” (Section 9(2)). Inspector’s authority is where a police officer of inspector rank or above authorises the taking of a sample on the basis of having reasonable grounds to suspect that the person’s misuse of any specified Class A drug caused or contributed to the offence.
- Clarification about the disclosure of the drug testing results. (*Section 63B(7) of the Police and Criminal Evidence Act 1984 (as amended by the Drugs Act 2005 and by the Criminal Justice and Immigration Act 2008) and section 15 of the Drugs Act 2005 set out when such information may be disclosed*).

PRELIMINARY ASSESSMENT OF THE ACT

17. Taking each of the Parts of the Act in turn, the following seeks to provide an assessment of how the main provisions have been introduced and used. Some sections of the Act apply to Northern Ireland. Contributions from Northern Ireland have been added where appropriate.

PART 1 SUPPLY OF CONTROLLED DRUGS

SECTION 1: AGGRAVATED SUPPLY OF A CONTROLLED DRUG

Background

18. The objective of this section is to protect young people from dealers when they are on or in the vicinity of school premises and to protect them from being used as drug couriers. Prior to the Act, courts had discretion to take into account any aggravating factors when the offence was committed. This section introduced aggravating factors that must be taken into account by courts when considering the seriousness of an offence of supply of a controlled drug. It was hoped that this provision would provide reassurance to parents, send a deterrent message to dealers and offer protection to young people.

Legislation and Regulations

19. Section 1 of the Act inserted a new section 4A into the Misuse of Drugs Act 1971. This section stipulates the circumstances which a court must treat as aggravating factors in respect of the offence of supplying a controlled drug, when the offence is committed by a person aged 18 or over. These factors are:

- a. That the offence was committed on or in the vicinity of school premises at a relevant time.
- b. That in connection with the commission of the offence the offender used a courier who, at the time the offence was committed, was under the age of 18.

Impact

20. The measures were introduced to ensure that courts have a responsibility to take account of these two primary aggravating factors when sentencing, in addition to the range of other aggravating and mitigating factors that may apply in an individual case. The complexity of a final sentencing decision means that an accurate measure of the weight given to an individual aggravating factor is not recorded as a matter of course by the court.

21. There are no statistics currently available from the police, Crown Prosecution Service or the Ministry of Justice that will allow a basic evaluation of the frequency of use of the section since implementation.

22. The Ministry of Justice have advised that Sentencing Guidelines do not offer guidance on how much weight should be given to such factors and the Home Office will work closely with Ministry of Justice officials on the development of future guidance to ensure a greater focus on use and weighting of aggravating factors.

Impact – Northern Ireland

23. From a serious crime perspective, this has had limited application. However, within the scope of community based district policing (and the more strategic objective of reducing drug abuse amongst young people), it is clearly a potent power and deterrent to those considering

supply to young people or using school premises to conduct their business. In interactions with the public this element of the legislation has been received with universal approval.

SECTION 2: PROOF OF INTENTION TO SUPPLY A CONTROLLED DRUG

Background

24. According to the “Final Regulatory Impact Assessment” of the Drugs Bill, which became the Drugs Act 2005, the objective of this section was to remedy the situation of drug dealers using the defence of personal possession or bulk buying when they were arrested/charged with drug supply offences. It was hoped that by introducing this section, which placed the onus on the defendant of proving that he was not dealing when found to be in possession of drugs above a minimum threshold, the police would be assisted in their fight against drug dealers and strengthen their ability to convict dealers.

Legislation and Regulations

25. It is an offence under section 5 of the Misuse of Drugs Act 1971 to possess a controlled drug with intent to supply it to another. Section 2 of the Act amended section 5 by creating a presumption of intent to supply where the defendant is found to be in possession of a particular amount of controlled drugs. Where the presumption applied a court or jury would have to assume that the accused had the drug in his possession with the intention to supply it. The presumption would not apply if evidence was adduced that was sufficient to raise the issue that the accused may not have had the drug in his possession with intent to supply it. The particular amount of drugs that would give rise to the presumption was to be prescribed by the Secretary of State.

Impact

26. This section has been repealed by the Policing and Crime Act 2009 and the relevant repeal (in Part 13 of Schedule 8) came into force on 12th January 2010.

27. Between 30 November 2005 and 3 March 2006, the Government consulted on what the prescribed amounts for the various drugs should be. This provided an opportunity for statutory and non-statutory agencies and for the public to give their views on the provision and on the prescribed levels. The respondents highlighted the potential for misconception amongst the public that possession below the prescribed amounts would be lawful.

28. There was also the concern that the provision might have the unintended consequence of leading to some cases not being assiduously pursued where the amount of the drug found was not above the prescribed limit, even though other evidence supported the contention that it was held with the intention to supply it.

29. It was hypothesised that the provision may not be effective because of the number of cases in which evidence is adduced which is sufficient to raise the issue that the accused may not have had the drug in possession with the intent to supply it, that dealers would modify their behaviour to avoid being found in possession of amounts above the prescribed limit and

because of the small number of cases where the only evidence of dealing is the amount of drugs in a person's possession.

30. The Association of Chief Police Officers (ACPO) of England, Wales and Northern Ireland have confirmed that not introducing thresholds would have no adverse effect on policing. They were confident that existing tactics are sufficient to ensure that dealers are brought to justice. As a result, and following on from the outcome of the consultation, the conclusion was that there was no need to retain the power to set the level above which a court should presume intent to supply illegal drugs. The Government therefore proceeded to repeal this provision.

PART 2 POLICE POWERS RELATING TO DRUGS

SECTION 3: DRUG OFFENCE SEARCHES: ENGLAND AND WALES (AND SECTION 4: DRUG OFFENCE SEARCHES: NORTHERN IRELAND)

Background

31. Prior to the Act, the Police and Criminal Evidence Act (PACE) 1984 allowed for an intimate search of a suspect to be carried out on the satisfaction of certain conditions; consent was not required but as the search was usually carried out by a registered medical practitioner or a registered nurse, the searches would not normally be undertaken without the individual's consent. Some individuals would not consent to the searches in order to avoid the discovery of drugs. The objective of this section was to remedy these deficiencies by enabling the courts to draw an adverse inference if the individual withholds consent without good cause.

Legislation and Regulations

32. Section 3 amended section 55 of PACE, 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/her. This section provides that:

- A drug offence intimate search may only be undertaken where the person to be searched has consented in writing, and a requirement that the person be informed that the search has been authorised and the grounds on which it has been authorised;
- The authorisation for the search, grounds for that authorisation and consent of the person to be searched is recorded in the custody record;
- Appropriate inferences may be drawn by a court or jury where a person refuses without good cause to consent to an intimate search;
- The information that is required to be given to the suspect by section 55 can be conveyed by a constable or suitably designated detention officer or staff custody officer.

Impact

33. The evidence shows that between 2001 and 2008 the number of intimate searches carried out for drugs has fluctuated. The key dates to compare are pre-commencement of the Act in July 2005 and post-commencement of the Act. The number of intimate searches has fluctuated from 73 in 2003/04 to 90 in 2007/08³. However, as the police do not record the number of intimate search refusals we are unable to make an assessment of the impact of this provision. There is no other data available to establish whether a court/jury has drawn an adverse inference from an intimate search refusal.

³ Home Office Statistical Bulletins (2001-2008): "Arrest for Notable Offences and the Operation of Certain Police Powers under PACE"

Impact – Northern Ireland

34. This appears to be a strong element of the legislation. It is particularly relevant in level 3 importation type offences. However, it is not without complication or difficulties as it:

- Relies heavily on the consent of the suspect to fully engage its powers.
- A court extension to 192 hours is also dependent on charge.
- There is a heavy burden placed on the police to ensure the safety and well being of the suspect, which becomes the over-riding priority.
- The difficulties are particularly compounded in the case of a non-cooperative detainee refusing medical examination.

35. This element of the legislation works well in the circumstances of a fully compliant consenting detainee. However, whilst it has consent embedded as a baseline it will continue to be a more complex area to use.

SECTION 5: X-RAYS AND ULTRASOUND SCANS: ENGLAND AND WALES (AND SECTION 6: X-RAYS AND ULTRASOUND SCANS: NORTHERN IRELAND)

Background

36. This section gives the police powers to ensure that people suspected of carrying drugs in their mouths or swallowing the drugs upon arrest in order to conceal evidence do not escape justice, by allowing them to authorise an x-ray/ultrasound of individuals in certain circumstances where the individual consents. This would give the police an indication whether to detain the person to allow the drugs to pass through their body.

Legislation and Regulations

37. Section 5 inserts a new section 55A into PACE giving an officer of at least the rank of inspector the power, if he has reasonable grounds for believing that a person who has been arrested for an offence and is in police detention may have swallowed a Class A drug and was in possession of it with the appropriate criminal intent before his arrest, to authorise that an x-ray is taken of the person or an ultrasound scan is carried out on the person (or both). The procedure must be carried out in a suitable place and by a suitably qualified person. Section 55A provides that an x-ray must not be taken or an ultrasound scan undertaken without the suspect's consent which must be in writing. If the person withdraws consent for such a procedure without good cause then a court or jury may draw an adverse inference.

Impact

Section 55A Police and Criminal Evidence Act (PACE) 1984

38. Section 55A of PACE sets out the statutory requirement for the Chief Constable of every constabulary to collect and publish statistics monitoring the use of x-rays and ultrasound scans. The Act's explanatory notes and Home Office Circular 8/1995 set out the requirement for this information to be included in the Police Chief Officer's annual report. The Home Office

undertook a small informal sampling exercise which showed that recording of these statistics is variable across police forces.

39. Anecdotal feedback suggests that this provision has been used by a number of police forces although the impact of this provision cannot be measured as there is no available court data to establish whether a court/jury has drawn an adverse inference from an ultrasound or X-ray refusal.

40. The National Policing Improvement Agency (NPIA) instructions ‘Guidance on the safer detention and handling of persons in police custody’ does not currently contain any reference to the recording requirements of section 55 of PACE and the Home Office will work with the NPIA and ACPO to ensure that future guidance includes this information.

SECTION 7: TESTING FOR PRESENCE OF CLASS A DRUGS (Drug Testing On Arrest)

Background

41. The provisions in this section were introduced (with the provisions in Part 3 – see below) to increase the effectiveness of the Drug Interventions Programme, which aims to reduce drug-related crime by engaging with problematic drug users and moving them into appropriate treatment and support.

42. The objective of moving to drug testing on arrest is to identify those adults misusing specified Class A drugs earlier in their contact with the criminal justice system so that they may be steered into treatment and away from crime as soon as possible. It increases the volume of drug misusing arrestees identified and ensures that those who misuse drugs but are not charged with an offence are nevertheless helped to engage in treatment and other programmes of help.

Legislation

43. Section 7 and the amendments in paragraphs 1 to 4 of Schedule 1 amend PACE to provide for the introduction of testing for specified Class A drugs on arrest, while retaining existing provisions under section 63B of PACE to test for specified Class A drugs (heroin, cocaine/crack) after charge.

44. As a consequence of the amendments made by the Act, section 63B of PACE now provides for testing in the three situations; adults after charge, under eighteens (14-17 year olds) after charge and adults on arrest, where the relevant arrest, charge and age conditions are met and where the relevant notification has been given by the Secretary of State in respect of the particular group concerned that appropriate arrangements have been made for the police area concerned or for particular police stations. These conditions are defined below:

The **charge condition** – the person concerned has been charged with a trigger offence, or has been charged with an offence and a police officer of inspector rank or above, who has reasonable grounds for suspecting that the misuse by the person of a specified Class A drug caused or contributed to the offence, has authorised the sample to be taken.

The **age condition** – the person concerned has attained the age of 18 if the arrest condition is met, and has attained the age of 14, if the charge condition is met.

The **arrest condition** – the person concerned has been arrested for an offence (but has not been charged with that offence) and either the offence is a “trigger offence” or one where a police officer of at least the rank of inspector has reasonable grounds for suspecting that misuse by that person of a specified Class A drug caused or contributed to that offence, and has authorised the sample to be taken.

The **notification condition** (as set out in section 63B (4A) of PACE) is that:

- (a) the relevant chief officer has been notified by the Secretary of State that appropriate arrangements have been made for the police area as a whole, or for the particular police station, in which the person is in police detention, and
- (b) the notice has not been withdrawn.

For these purposes, as set out in section 63B (4B), appropriate arrangements are arrangements for the taking of samples (under section 63B) from whichever of the following is specified in the notification:

- (a) persons who meet the arrest condition;
- (b) persons who meet the charge condition;
- (c) persons who have not attained the age of 18.

Impact

45. The introduction of testing on arrest as an alternative to testing after charge has achieved the objective of testing a larger sample of people and thereby identifying more problem drug misusers. It has significantly increased the number of those tested, enabling a greater number of drug misusers to be identified at an early stage.

46. A comparison between the 19 police areas where drug testing on charge was in operation in 2004/05 and those same police areas in 2006/07 shows that the number of drug tests successfully conducted (in respect of adults) in those areas increased from just over 70,000 (in 2004/05) to over 211,300 (in 2006/07) – more than treble – with over 203,600 of those tests (over 96%) conducted at the point of arrest⁴.

47. Whilst the data are not directly comparable on a year to year basis, (due to differences in the number of police areas undertaking drug testing (on arrest and/or charge) over the period), the following annual figures provide a strong indication of the effect of the introduction of drug testing on arrest⁵: These show the position in 2004/05 prior to the introduction of testing on

4 Data taken from Drug Interventions Management Information System, (DIMIS) from monthly returns of drug tests provided by police force areas. The 2006/07 figures are a subset of the figures for tests successfully completed and tests attempted at arrest in the table in Annex C

5 Data taken from Integrated Drug Treatment Monitoring Form (IDTMF) and the Drug Interventions Management Information System (DIMIS) – see table in Annex C

arrest; the position following initial implementation (in 3 police areas from 1 December 2005) – known as Wave 1; and the position for the first full year post the wider implementation from 31st March 2006, and subsequently.

- 2004/05: 70,055 tests (after charge) were successfully completed, 33,107 (47%) of which were positive.
- 2005/06: 100,191 tests were successfully completed, 45,965 (46%) of which were positive.
- 2006/07: 218,451 tests were successfully completed, 82,442 (38%) of which were positive.
- 2007/08: 224,468 tests were successfully completed, 86,904 (39%) of which were positive.
- 2008/09: 237,472 tests were successfully completed, 81,680 (34%) of which were positive.
- 2009/10: 229,438 tests were successfully completed, 67,100 (29)% of which were positive⁶.

48. Drug testing as part of the Drug Interventions Programme now takes place in 167 police custody suites within 22 police force areas in England & Wales (as at July 2010). Over 220,000 tests have been conducted each year since 2006/07.

49. Police forces report that drug testing at the point of arrest is the preferred option over testing after charge. This has been found to have a number of advantages, for example:

- Testing on arrest forms part of the booking in process and fits in with other custody suite processes, thereby easing the burden on the police of conducting a drug test at the after charge stage.
- There is a shorter period of time between consumption of the drug and testing, enabling easier detection of the specified Class A drugs present in the samples.
- Testing on arrest enables those misusing heroin and/or crack cocaine to be identified and encouraged into treatment and other support even though they may not be charged.

50. Also, in conjunction with the misuse of drugs assessment provisions, drug testing on arrest has resulted in a greater number of people who test positive attending an assessment.

51. Under the previous arrangements the drug test was always conducted at the very end of procedures within the custody suite, after the person had been charged. The changes made by the Act have reduced the attrition rate between the positive test and assessment. (See Part 3 below).

6 Data taken from Integrated Drug Treatment Monitoring form (IDTMF) and the Drug Interventions Management Information System (DIMIS) – see table Annex C

SECTION 8: EXTENDED DETENTION OF SUSPECTED DRUG OFFENDERS

Background

52. According to the “Final Regulatory Impact Assessment” of the Drugs Bill, which became the Drugs Act 2005, individuals will often swallow or be suspected of swallowing a controlled drug when being arrested on suspicion of possession of a controlled drug or a drug trafficking offence.

53. If swallowed, the police try to wait for the controlled drug to pass through the individual’s body. However, prior to the Act, the maximum time limit for holding a person without charge under PACE was 96 hours. This section permits a Magistrates Court to commit a person charged into police detention or the custody of a customs officer for up to 192 hours, as in practice it often takes longer than 96 hours for drugs to pass through the body. It was hoped that this would ensure that street offenders/dealers do not escape justice.

Legislation and Regulations

54. Section 8 amends section 152 of the Criminal Justice Act 1988 to make provision for a Magistrates’ Court to commit a person charged with possession of a controlled drug or drug trafficking offence into police custody for a period of up to 192 hours to increase the likelihood of any swallowed drugs being recovered.

Impact

55. These measures were introduced to counter the problems of drug users or dealers swallowing wrapped controlled drugs to avoid conviction for their activity by swallowing evidence. Section 152 of the Criminal Justice Act 1988 has been used successfully by UK Border Agency (previously HM Customs and Excise) to tackle drugs couriers who swallow wrapped controlled drugs in order to smuggle them undetected into the UK.

56. The use of section 152, extended detention provisions by the police, is not recorded by the Crown Prosecution Service, the Ministry of Justice or HM Court Service. The police do not record as a matter of course however the merits of this provision are evident in the following Cumbria Police case study:

57. In 2009 Cumbria Police arrested a suspected drug dealer at Barrow train station. Following interview at the local police station the defendant was conveyed to hospital as officers suspected he had swallowed Class A drugs. After refusing an intimate search and X-ray the defendant spent 24 hours in hospital under observation. On return to the police station the defendant was further interviewed and subsequently charged with two offences under the Misuse of Drugs Act 1971. After 11 days post-arrest the police attended the local Magistrates’ Court and were granted a period of extended detention and 12 days after arrest the defendant passed a number of packages containing heroin.

PART 3 ASSESSMENT OF MISUSE OF DRUGS (SECTIONS 9-19)

Background

58. Prior to the introduction of testing on arrest and the assessment provisions, individuals who had tested positive often failed to turn up to their voluntary assessments. However, it was apparent from the voluntary assessment arrangements that around 58%⁷ of drug misusers who did have an assessment and who were assessed as needing treatment went on to engage in treatment. The new assessment requirements provide an opportunity to increase the engagement of drug users with skilled drug workers as a first step into treatment and support. For many, the requirement to attend an assessment may be the first opportunity for the drug misuser to engage with a skilled drugs worker who can help them into treatment and support, which will benefit the drug misuser, their families and those communities affected by drug related crime.

59. The purpose of the initial assessment is to establish whether the individual has a dependency on, or propensity to misuse any specified Class A drug and if thought so, whether they might benefit from further assessment, or from assistance or treatment or both, and, where appropriate, to provide advice and an explanation of the types of assistance/treatment available. The follow-up assessment provision provides a further statutory opportunity for drug workers to engage with drug misusing offenders to discuss their drug misuse, to provide advice relating to that misuse and, if appropriate draw up a care plan.

Legislation

60. Part 3 of the Act introduces a new power (in section 9) for the police to require persons who have tested positive for a specified Class A drug when tested on arrest or charge under section 63B of PACE, to attend an assessment of their drug use (**an initial assessment**) with a suitably qualified person. Provision is also made (in section 10) for a police officer, when imposing this requirement, to also require the person concerned to attend a **follow-up assessment**. (This requirement will cease, if the person is informed at the initial assessment that he no longer needs to attend a follow-up assessment).

61. The person is required to attend and stay for the duration of the assessment in question. If they fail to do so, without good cause, they commit an offence and may face criminal sanctions (sections 12 and 14).

62. The provisions only operate in certain police areas or police stations where the Secretary of State has sent a notification to the chief officer of police confirming that appropriate arrangements are in place.

63. The power to require a person to attend an initial or follow-up assessment can only be exercised at this stage in respect of persons aged 18 and over, (with provision for the Secretary of State to amend this minimum age by an order, which must be approved by both Houses of Parliament). In addition the powers can be exercised only where the relevant chief officer of police has been notified that arrangements for conducting initial (or follow-up) assessments

⁷ 2004/05, based on number of DIR assessments carried out to numbers commencing treatment through DIP for 04/05 to 06/07. Data taken from Integrated Drug Treatment Monitoring Form (IDTMF) (see table – Annex C)

have been made for those (aged 18 and over) from whom samples have been taken (under section 63B of PACE) at the police station in which the person is detained.

64. The assessment provisions work in conjunction with the Drug Users: Restriction on Bail provisions in the Bail Act 1976 (as introduced by section 19 of the Criminal Justice Act 2003). To prevent duplication and unnecessary reassessment of an individual, section 17 allows for the 'initial assessment' to be treated for the purposes of paragraph 6B(2)(b) of Schedule 1 to the Bail Act 1976 as a relevant assessment (within the meaning of that Act). In addition, where a condition of bail is imposed by the court under section 3(6D) of that Act, section 17 allows for the requirement to attend (and remain for the duration of) an initial and/or follow-up assessment under section 9(2) and 10(2) of the Act to cease to have effect.

Impact – Initial and follow-up assessments

65. The introduction of the initial assessment (with the subsequent introduction of the follow-up assessment) has significantly increased the contact between drug workers and those identified as drug misusers and has led to greater numbers entering treatment as part of the Drug Interventions Programme.

66. Anecdotal feedback in June 2006 from the Wave 1 and 2 police areas, about implementing testing on arrest and the initial assessment, indicated that the provisions were being embedded into working practices and had helped to improve working relationships between all partners, especially the police and drug workers. There were some initial data reporting issues but the provisions appeared to be working well and succeeding in identifying and directing into treatment a significant number of drug misusers not previously known to the treatment services. The areas reported that in April 2006 initial assessments were being imposed for almost all of those testing positive, and that attendance rates were around two-thirds.

67. As indicated by the figures below, the implementation of the initial assessment (and follow-up assessment from 1st April 2007) has contributed to the increase in the overall number of assessments carried out under the Drug Interventions Programme in the periods 2006/07 and 2007/08 and to the increase in the overall number of people entering treatment through the Programme, which has risen steadily since the introduction of the Act (from a total of just under 25,000 during 2005/06 to over 58,000 in 2009/10).

Assessments carried out through DIP⁸

2004/05	28,662 ⁹
2005/06	41,580
2006/07	69,634
2007/08	75,069 ¹⁰
2008/09	72,201
2009/10	62,248

⁸ Assessments carried out in the community

⁹ Data taken from Integrated Drug Treatment Monitoring Form (IDTMF)

¹⁰ Data for 2007/08 onwards taken from DIMIS (the Drug Interventions Management Information System)

Total numbers commencing treatment through DIP¹¹

2004/05	16,517
2005/06	24,557
2006/07	39,903
2007/08	46,186
2008/09	57,951
2009/10	58,339

68. There is also good research evidence to suggest that the objectives of the DIP provisions in the Act have been achieved. Research published in November 2007¹² by the Home Office identified the positive effect of the introduction of drug testing on arrest and the initial assessment provisions – by improving the grip exerted on drug using offenders through the Drug Interventions Programme, by getting larger numbers of drug users to face their drug treatment needs and enter drug treatment.

69. The study examined two cohorts consisting of all positive testers in DIP intensive areas in England during two time frames, looking at the situation before and after the introduction of testing on arrest and the initial assessment, which, combined with the roll out of Restriction on Bail, formed part of the expansion of DIP known as the “Tough Choices” project. (The follow-up assessment provisions were introduced subsequently in April 2007 which was also after the time frame of the research).

70. The “testing on charge” cohort consisted of 7,727 individuals who tested positive at the point of charge during the period 1 July to 31 October 2005. The “testing on arrest” cohort consisted of 11,015 individuals who tested positive at the point of arrest during the period 1 April to 30 June 2006.

Key findings showed that:

- Progress through DIP had improved following Tough Choices, with lower levels of attrition as indicated below:
 - 77% of the testing on arrest cohort received an initial contact from a drugs worker within 28 days compared to 53% before Tough Choices.
 - 93% of those available for assessment received one within 28 days – up from 77% before Tough Choices.
 - 35% of all available positive testers received a care plan within 60 days of their test compared to 28% before Tough Choices.

11 through DIP in the community and Prisons (prior to April 2008 the definition referred to numbers ‘entering’ treatment)

12 Skodbo et al “The Drug Interventions Programme (DIP): addressing drug use and offending through ‘Tough Choices’ 2007. <http://www.homeoffice.gov.uk/rds/pdfs07/horr02c.pdf>

- Rates of entry into treatment for DIP referrals were higher than for previous arrest referral programmes.
- Overall, as intended, Tough Choices had broadened the scope and increased the size of the cohort coming into contact with DIP in the custody suite with an average monthly size of 3,672 (compared with 1,932 before Tough Choices).
 - Tough Choices had increased the average monthly numbers of serious offenders, high crime causing users (HCCUs) and Prolific and other Priority Offenders (PPOs) entering DIP.
 - It had increased the average monthly number and proportion of positive testers with lower levels of previous offending.

71. The researchers concluded that use of semi-coercive approaches such as Tough Choices can improve engagement in intervention programmes compared to non-coercive approaches. The research also indicated that offending levels reduced following contact with DIP.

This research is available on <http://www.homeoffice.gov.uk/rds/pdfs07/horr02c.pdf>

OTHER REVIEWS (DIP Provisions)

72. A round-up of local evaluations echoes these findings. These include a study by the Centre for Public Health at Liverpool John Moores University – which found that a different group of drug takers were being identified through the DIP process (i.e. those with a less problematic pattern of drug use) and showed an increase in the number of assessments completed in all areas with testing on arrest, and a reduction in the weekly spend on drugs of clients assessed.

PART 4 MISCELLANEOUS AND GENERAL

SECTION 20: ANTI-SOCIAL BEHAVIOUR ORDERS: INTERVENTION ORDERS

Background

73. The purpose of the Intervention Order is the prevention of anti-social behaviour through the treatment of the perpetrator's drug misuse and the intention of the Intervention Order is that the latter should lead to the former.

Legislation and Regulations

74. Section 20 of the Act amended the Crime and Disorder Act 1998 to allow a court (subject to certain conditions) to make an Intervention Order alongside an ASBO or a similar order in County Court proceedings. Intervention Orders require the perpetrator to comply with positive requirements (e.g. treatment) that tackle the perpetrator's anti-social behaviour through the treatment of their drugs misuse.

Impact

75. The number of Intervention Orders is not routinely collected by central government; however as part of a survey of all Community Safety Partnerships on their use of antisocial behaviour tools and powers during 2009/10, they were asked how many Intervention Orders had been issued in their area since October 2008. Around 85% of CSPs responded and they reported that Intervention Orders had not been used.

Anecdotal Evidence

76. Over the last year we have contacted a number of Community Safety Partnerships to identify areas that use the range of tools and powers to tackle anti-social behaviour with a view to share best practice. Despite trying to identify areas that may have used this power, we have been unable to find one.

77. We have received anecdotal feedback which suggests that this provision is difficult to obtain in practice, because it is difficult to establish that the perpetrator's 'trigger behaviour' is of a direct result of their use of controlled drugs and Intervention Orders can only be obtained if the perpetrator has undertaken a voluntary assessment. It is this assessment which is used to set out requirements of the 'appropriate activities' in the Intervention Order. This provision is being considered as part of a future wider review of anti-social behaviour policy.

SECTION 21: INCLUSION OF MUSHROOMS CONTAINING PSILOCIN ETC. AS CLASS A DRUGS

Background

78. Fungus (of any kind) containing psilocin or its ester psilocybin are known as "magic mushrooms". Prior to section 21 of the Act, a fungus was only a Class A drug when prepared in a form which constitutes a preparation or product containing psilocin or an ester of psilocin. This meant that it was not illegal to possess, supply or cultivate magic mushrooms in their raw state. There was some confusion, however, over when magic mushrooms could be said to be

prepared or to be a product. The law clearly prohibited “prepared” magic mushrooms i.e. those that are dried, crushed, cooked, boiled or frozen, but the law was less clear in relation to freshly picked or packaged and chilled mushrooms. Therefore, there was uncertainty as to whether suppliers of fresh magic mushrooms could be prosecuted. This led to some suppliers using this apparent “legal loophole” to import fresh magic mushrooms in large amounts, and to the development of outlets which sold these fresh mushrooms. Magic mushrooms are a powerful hallucinogen and can cause real harm and so this increase in commercial sale and importation raised serious health concerns. One of the main aims of the Act was to clarify the law by making all magic mushrooms Class A drugs, partly to stop their commercial importation and supply.

Legislation and Regulations

79. Section 21 inserted into Part 1 of Schedule 2 to the Misuse of Drugs Act 1971 the words, “Fungus (of any kind) which contains psilocin or an ester of psilocin”. Therefore, this section makes it an offence to import, export, produce, supply, possess or possess with intent to supply magic mushrooms in whatever form they are in, whether prepared or fresh. Thus, all magic mushrooms are Class A drugs for the purposes of the 1971 Act. The Government hoped that this would act as a deterrent for those wishing to sell or import magic mushrooms.

80. The Misuse of Drugs (Amendment) (No.2) Regulations 2005 (S.I. 2005/1653) which amended the Misuse of Drugs Regulations 2001 provide exceptions from the offence of possession of magic mushrooms. A person does not commit an offence if the mushrooms are growing uncultivated on his premises. Further, a person does not commit an offence if he picks the magic mushrooms for disposal as soon as is reasonably practicable and holds them, or another person holds them, in accordance with that purpose.

Impact

81. In order to assess the impact that the Act has had on magic mushrooms, it is necessary to analyse the initial objectives of the Act. According to the *Drugs Bill: Final Regulatory Impact Assessment*, it was hoped that by clarifying the law, the legislation would prevent the open sale of magic mushrooms and would result in a decrease in the prevalence of magic mushrooms in circulation.

***EMCDDA: Hallucinogenic Mushrooms: An Emerging Trend Case Study (2006)*¹³**

82. This case study was published in 2006, the year after the change in the law in the UK came into force. The case study concludes that the “new legislation appears to have had an immediate impact on both the availability of hallucinogenic mushrooms in the UK and on the general volume of internet sales”.

83. Firstly, the study estimates that “about 300 shops and market stalls across the UK sold hallucinogenic mushrooms (The Economist, 2004) until the change in legal status”. The change in the law seems to have “provoked an emerging interest of retailers in legal types of hallucinogenic mushrooms”. Secondly, the study states the “internet sites stopped selling hallucinogenic mushrooms in 2005”.

13 http://www.emcdda.europa.eu/attachements.cfm/att_31215_EN_TP_Hallucinogenic_mushrooms.pdf

84. From this, it can be seen that the Act has had a positive impact on the market for mushrooms and the internet availability for them.

British Crime Survey 2008-2009

85. The British Crime Survey 2008-2009 provides a prevalence measure for magic mushroom usage. The most useful time points to compare are 2008/2009, being the most recent figures, and 2004/2005, being the period nearest and prior to the Act.

86. The proportion of 16 to 59 year olds reporting use of magic mushrooms in the last year has fallen from 1.1% in 2004/05 to 0.4% in 2009/10. Similarly, the proportion of 16 to 24 year olds reporting use of magic mushrooms in the last year has fallen from 3.0% in 2004/05 to 1.2% in 2009/10¹⁴.

87. The limitation of these figures is that the British Crime Survey does not distinguish between the different preparations of the drug i.e. prior to the Act only prepared magic mushrooms were Class A drugs and post the Act raw magic mushrooms were also Class A drugs. It is therefore not clear whether the trend in magic mushrooms and Class A drug use presented has been affected by the change in the law.

Smoking, drinking and drug use among young people in England in 2008

88. The proportion of pupils (11-15) who have taken magic mushrooms in the last year has tended to decline between 2001 (2.1%) and 2009 (1.5%)¹⁵. However, the survey makes it clear that the questionnaire has never made the distinction between raw and prepared magic mushrooms. Since 2001 (10%) there has been a decrease in the proportion of pupils who had been offered magic mushrooms (2009, 8%).

Ministry of Justice and Prosecutions

89. The Ministry of Justice has confirmed that the available statistics cannot give a realistic evaluation of whether there has been an increase in prosecutions since all magic mushrooms were made Class A drugs. It is not possible to identify which prosecutions related specifically to magic mushrooms because all offences for the less commonly used Class A drugs are grouped together and therefore cannot be separately identified.

HM Revenue & Customs figures

90. Before the Act came into force, HMRC taxed the sale of fresh, unprepared magic mushrooms. Prepared magic mushrooms fell outside the scope of VAT. Now that the Act is in force, HMRC treats the sale of all magic mushrooms as outside the scope of VAT (along with other prohibited drugs). Therefore, HMRC law enforcement deals with the import and export of fresh magic mushrooms in the same way as other prohibited Class A drugs, by seizure and prosecution.

14 "Hoare and Moon, 'Drug Misuse Declared: Findings from the 2009/10 British Crime Survey', <http://rds.homeoffice.gov.uk/rds/pdfs10/hosb1310.pdf> ".

15 'Smoking, drinking and drug use among young people in England in 2009'. http://www.ic.nhs.uk/webfiles/publications/Health%20and%20Lifestyles/sdd2009/SDD_2009_Report.pdf

Anecdotal Evidence

91. Anecdotal reports suggest that the overall availability of mushrooms, including internet sales, has reduced since enactment, but availability figures are not available.

Home Office Statistical Bulletin on Seizures of Drugs in England and Wales

92. According to the Bulletin, there have been a number of changes which have affected the statistics over the period covered in the tables, including the classification of raw magic mushrooms as a Class A drug. Looking at the tables, the number of seizures of Class A drugs in England and Wales has increased from 1998 to 2007/08¹⁶. However, there are no figures provided for magic mushrooms seizures alone. It is therefore not possible to tell whether the legislation has had any impact on the seizures of magic mushrooms.

CONCLUSION

93. The introduction of testing on arrest and the initial and follow-up assessment has significantly increased the number of those tested and those attending an assessment. This has enabled a greater number of drug misusers to be identified at an early stage, increased the contact between drug workers and those identified as drug misusers and led to greater numbers entering treatment as part of the Drug Interventions Programme.

94. Research published in November 2007¹⁷ by the Home Office identified the positive effect the introduction of 'Tough Choices' has had by improving the grip exerted on drug using offenders through the Drug Interventions Programme (DIP) – levels of attrition were seen to have improved and the volume of drug using offenders coming into contact with DIP had increased.

95. The available evidence suggests that clarifying the law by making all magic mushrooms a Class A drug has effectively eliminated the open sale of these fungi, as intended. Their supply has also been curtailed, but it is not possible to quantify this reduction.

96. The extension of police and court powers to combat drug dealing has improved the efficiency of the criminal justice system by increasing the proportion of drug offences brought to justice and increased effectiveness of sentence in relation to crime. There are also longer-term benefits in the form of a deterrent effect. It is however hard to quantify these benefits.

16 Home Office Statistical Bulletins – summary tables: 'Seizures of Drugs in England and Wales 2006/07' and 'Seizures of Drugs in England and Wales 2007/08'.
<http://rds.homeoffice.gov.uk/rds/pdfs08/hosb1208summ.xls> and
<http://rds.homeoffice.gov.uk/rds/pdfs09/hosb1609summ.xls>

17 Skodbo et al "The Drug Interventions Programme (DIP): addressing drug use and offending through 'Tough Choices' 2007. <http://www.homeoffice.gov.uk/rds/pdfs07/horr02c.pdf>

ANNEX A – GUIDANCE AND ADDITIONAL RELEVANT INFORMATION

Drug Interventions Programme (section 7 and Part 3 of the Act)

Operational guidance

The Operational Process Guidance for Implementation of Testing on Arrest, Required Assessment and Restriction on Bail was first issued in October 2005 in readiness for the implementation of testing on arrest and the initial assessment on 1 December 2005 (Wave 1). The Guidance set out the legislative framework and processes for implementation as part of the Drug Interventions Programme and provided full details of the practical and administrative arrangements for implementation and the roles and responsibilities of each partner. (Police officers and drug workers must have regard to this guidance in exercising any functions under Part 3 of the Act (section 18 refers).)

Frequently Asked Questions (FAQs) document

This document provided additional information to practitioners and specific responses to queries raised.

Both these documents were made available on the Home Office website and have been updated and revised as necessary (for example to take account of the introduction of the follow-up assessment provisions and expansion of the arrangements to Wales).

The archived guidance and FAQs document are available from:

<http://webarchive.nationalarchives.gov.uk/20100418065544/http://drugs.homeoffice.gov.uk/publication-search/dip/intensive-guidance-april-2009?view=Binary>

<http://webarchive.nationalarchives.gov.uk/20100418065544/http://drugs.homeoffice.gov.uk/publication-search/dip/DIPOpProFAQs?view=Standard&pubID=498571>

Training material, including for the trainers was also made available as part of the training arranged for Criminal Justice Integrated Team workers, who carry out the assessments, and the police, to ensure that practitioners fully understood the legislative background and processes.

Home Office Circulars

Home Office Circulars were issued to the judiciary, police, probation and other key criminal justice partners to draw attention to the commencement and implementation of the new provisions and key changes to the existing legislation:

Home Office Circular 49/2005 – Testing for presence of (specified) Class A drugs and Assessment of Misuse of Drugs: The Drugs Act 2005 (Commencement Order No.3) Order 2005 (issued 30 November 2005)

<http://www.homeoffice.gov.uk/about-us/home-office-circulars/circulars-2005/049-2005/>

Home Office Circular 3/2006 – Further implementation of the provisions for testing for presence of (specified) Class A drugs on arrest and the Assessment of Misuse of Drugs introduced by the Drugs Act 2005; and the expansion of the Drug Users: Restriction on Bail provisions to all Local Justice Areas in England (issued 13 March 2006)

<http://www.homeoffice.gov.uk/about-us/home-office-circulars/circulars-2006/003-2006/>

Home Office Circular 7/2007 – Drugs Act 2005 (Commencement No.5) Order 2007 – Implementation of the Follow-up Assessment provisions in Part 3 of the Drugs Act 2005 (issued 19 March 2007)

<http://www.homeoffice.gov.uk/about-us/home-office-circulars/circulars-2007/007-2007/>

Home Office Circular 4/2009 – Extension of Testing on Arrest, Required Assessment and Restriction on Bail (issued 16 March 2009)

<http://www.homeoffice.gov.uk/about-us/home-office-circulars/circulars-2009/004-2009/>

ASSOCIATED SECONDARY LEGISLATION:

Revised Codes of Practice

Home Office Circular 56/2005 – Police and Criminal Evidence Act 1984: Revised Codes of Practice and accompanying guidance

<http://www.homeoffice.gov.uk/about-us/home-office-circulars/circulars-2005/056-2005/>

This Circular makes reference to the revised Codes of Practice, (which include Code C section 17). Code C is available from:

<http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/pace-code-c>

Trigger offences for drug testing

Amendments were made to Schedule 6 to the Criminal Justice and Court Services Act 2000 in respect of the trigger offences applicable to drug testing by The Criminal Justice and Court Services Act 2000 (Amendment) Order 2007 (S.I. 2007/2171) with effect from 1st August 2007 following consequential amendments by the Fraud Act 2006.

Information is available in Home Office Circular 28/2007

<http://www.homeoffice.gov.uk/about-us/home-office-circulars/circulars-2007/028-2007/>

ANNEX B – Drug Testing Police Areas – Implementation

Police area	Drug testing on charge commenced / in operation prior to 1 December 2005	Drug testing on arrest implemented (following statutory notification)	Comments
Avon & Somerset	02 September 2002	31 March 2006	
Bedfordshire *	20 May 2002	31 March 2006 01 April 2009	In Luton In Bedford* and Dunstable
Cambridgeshire	01 April 2004	31 March 2006	
City of London	-	31 March 2006	New drug testing area – on charge notification also
Cleveland	01 April 2003	31 March 2006	
Devon & Cornwall*	20 May 2002		Drug testing on charge ceased in October 2008
Greater Manchester	02 September 2002	01 December 2005	(Wave 1)
Gwent	01 April 2005	01 April 2009	
Humberside	01 April 2003	31 March 2006	
Lancashire *	20 May 2002	01 April 2009	Blackpool*
Leicestershire	01 April 2004	31 March 2006	
Merseyside	20 May 2002	31 March 2006	
Metropolitan Police district	02 July 2001	31 March 2006	
North Wales	20 May 2002	01 April 2009	
Northamptonshire	01 April 2005	31 March 2006	
Northumbria	01 April 2004	31 March 2006	
Nottinghamshire	02 July 2001	01 December 2005	(Wave 1)
South Wales	01 April 2005	01 April 2009	
South Yorkshire	20 May 2002	01 December 2005	(Wave 1)
Staffordshire *	02 July 2001		Stafford* Drug testing on charge ceased in October 2008
Thames Valley	02 September 2002	31 March 2006	
West Midlands	01 April 2004	31 March 2006	
West Yorkshire	02 September 2002	31 March 2006	

Drug testing on charge operated in 19 police areas in 2004/05 and in 22 police areas from April 2005 prior to the commencement and first implementation of testing on arrest (Wave 1).

* Former drug testing on charge pilot sites where drug testing on charge only was in operation and continued to operate following the implementation of testing on arrest and Wave 2 expansion on 31st March 2006.

ANNEX C – TABLES

Recorded Data¹ by Financial Year

Drug Tests²

	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10
Tests – total conducted (sum of a+b, or sum of c+d)	71,965	102,644	221,379	227,365	239,877	231,113
a) Tests – attempted for trigger offence ³	67,727	98,717	211,221	212,737	222,794	213,446
b) Tests – attempted for Inspector's Authority ⁴	4,238	3,927	10,158	14,628	17,083	17,667
c) Tests – attempted at charge	71,965	86,607	10,853	8,445	8,420	691
d) Tests – attempted at arrest	–	16,037	210,526	218,920	231,457	230,422
Tests – successfully completed⁵	70,055	100,191	218,451	224,468	237,472	229,438
Tests – total positive	33,107	45,965	82,442	86,904	81,680	67,100
Positive test rate (% positive of successfully completed tests)	47%	46%	38%	39%	34%	29%

Initial Contacts

	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10
Initial Contacts ⁶	106,362	85,796	90,109	–	–	–

Initial and Follow-up Assessments⁷

	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10
Initial assessments recorded ⁸	–	–	–	83,221	79,630	67,801
Initial assessments attended and remained ⁹	–	–	–	78,297	74,131	63,285
Follow-up assessments arranged ¹⁰	–	–	–	43,150	41,277	40,406
Follow-up assessments attended and remained ¹¹	–	–	–	21,183	20,515	22,216

Drug Interventions Record (DIR)¹² Assessments¹³

	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10
DIR assessments carried out – community ¹⁴	28,662	41,580	69,634	75,069	72,201	62,248
Community DIR assessments leading to care plan	21,421	25,616	39,812	39,730	41,785	38,766
DIR assessments carried out – prisons ¹⁵	–	–	–	57,193	61,520	60,617
Prison DIR assessments leading to care plan	–	–	–	43,906	46,446	28,029

Numbers Commencing¹⁶ Treatment (numbers of individuals)¹⁷

	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10
Numbers commencing treatment through DIP (sum of prisons and community)	16,517	24,557	39,903	46,186	57,951	58,339
Numbers commencing treatment through DIP – prisons ¹⁸	–	–	–	2,283	7,074	7,683
Numbers commencing treatment through DIP – community	16,517	24,557	39,903	43,903	50,877	50,656

Notes on data sources

- 1 Data taken from the Drug Interventions Management Information System (DIMIS), a database that holds drug test, assessment and activity data for the Drug Interventions Programme. DIMIS is a live database, the data used within this table is provisional and accurate as of 13th July 2010.
- 2 The Drug Test Recorder (DTR) is used by police forces to capture information about drug tests that were carried out as a result of both trigger offences and inspector's authority. It records data including the offence type, the test outcome (i.e. whether successfully completed) and the screening test result (positive/negative). The data provided here is based on all adults tested.
- 3 'Trigger' offences, which are set out in Schedule 6 to the Criminal Justice and Court Services Act 2000, are those which have been shown to be strongly connected with the misuse of the specified Class A drugs (heroin and cocaine/crack).
- 4 Those arrested or charged with non-trigger offences may also be tested using 'inspector's authority', where a police officer of inspector rank or above authorises the taking of a sample on the basis of having reasonable grounds to suspect that the person's misuse of any specified Class A drug caused or contributed to the offence.
- 5 A small proportion of tests will not be completed successfully; reasons for failure include refusal and equipment failure.
- 6 As recorded by the Integrated Drug Treatment Monitoring Form, prior to the introduction of the Required Assessment form
- 7 From 2007/08 initial and follow-up assessments were recorded on a separate assessment form and on community activity forms (activity forms are used to record significant events for a client). Prior to this point, the Drug Interventions Record (DIR) form only identified whether the DIR assessment was required under legislation following a drugs test; these figures are included in the DIR assessments carried out – community section.
- 8 Recorded on initial assessment form or sections 3 or 4 of the community activity forms by the drugs worker.
- 9 Whether an individual attended and remained in order for the assessment to take place, is recorded on the assessment form or activity form by the drugs worker.
- 10 Records whether during the initial assessment, a follow-up assessment was arranged. Section 3 of the activity form refers to a follow-up assessment being 'required' and section 4 as 'needed'. Reasons for not arranging a follow-up assessment include no further intervention needed, or the individual is on a Drug Rehabilitation Requirement (DRR).
- 11 Section 4 of the activity form does not contain this information, therefore is not included in the figures.
- 12 The DIR form assesses an individual's need for treatment and other forms of support, based on lifestyle information, for example drug use, alcohol use, accommodation status. The DIR minimises duplication of assessments and improves continuity of care for clients when moving between custody and community. Data from this form is used for monitoring and research purposes.
- 13 Data for 2004/05, 2005/06 and 2006/07 taken from Integrated Drug Treatment Monitoring Form (IDTMF).
- 14 Assessments in the community carried out by the Criminal Justice Interventions Teams (CJITs).
- 15 Assessments in prisons carried out by the Counselling, Assessment, Referral, Advice and Throughcare (CARAT) workers.
- 16 Prior to April 2008, the definition referred to numbers 'entering' treatment.
- 17 Based on treatment commencing within 28 days of a care plan being agreed.
- 18 Figures available only from November 2007 to March 2008.



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