



# Crime and Disorder Act 1998

## 1998 CHAPTER 37

### PART IV

#### DEALING WITH OFFENDERS

#### CHAPTER I

##### ENGLAND AND WALES

##### *Offenders dependent etc. on drugs*

#### **61 Drug treatment and testing orders.**

- (1) This section applies where a person aged 16 or over is convicted of an offence other than one for which the sentence—
  - (a) is fixed by law; or
  - (b) falls to be imposed under section 2(2), 3(2) or 4(2) of the 1997 Act.
- (2) Subject to the provisions of this section, the court by or before which the offender is convicted may make an order (a “drug treatment and testing order”) which—
  - (a) has effect for a period specified in the order of not less than six months nor more than three years (“the treatment and testing period”); and
  - (b) includes the requirements and provisions mentioned in section 62 below.
- (3) A court shall not make a drug treatment and testing order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area proposed to be specified in the order and the notice has not been withdrawn.
- (4) A drug treatment and testing order shall be a community order for the purposes of Part I of the 1991 Act; and the provisions of that Part, which include provisions with respect to restrictions on imposing, and procedural requirements for, community sentences (sections 6 and 7), shall apply accordingly.

*Status: Point in time view as at 01/06/1999.*

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- (5) The court shall not make a drug treatment and testing order in respect of the offender unless it is satisfied—
- (a) that he is dependent on or has a propensity to misuse drugs; and
  - (b) that his dependency or propensity is such as requires and may be susceptible to treatment.
- (6) For the purpose of ascertaining for the purposes of subsection (5) above whether the offender has any drug in his body, the court may by order require him to provide samples of such description as it may specify; but the court shall not make such an order unless the offender expresses his willingness to comply with its requirements.
- (7) The Secretary of State may by order amend subsection (2) above by substituting a different period for the minimum or maximum period for the time being specified in that subsection.

#### Commencement Information

- II** S. 61 wholly in force; S. 61 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, art. 2(1) (subject to savings in arts. 5-8)

## 62 Requirements and provisions to be included in orders.

- (1) A drug treatment and testing order shall include a requirement (“the treatment requirement”) that the offender shall submit, during the whole of the treatment and testing period, to treatment by or under the direction of a specified person having the necessary qualifications or experience (“the treatment provider”) with a view to the reduction or elimination of the offender’s dependency on or propensity to misuse drugs.
- (2) The required treatment for any particular period shall be—
- (a) treatment as a resident in such institution or place as may be specified in the order; or
  - (b) treatment as a non-resident in or at such institution or place, and at such intervals, as may be so specified;
- but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a) or (b) above.
- (3) A court shall not make a drug treatment and testing order unless it is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident).
- (4) A drug treatment and testing order shall include a requirement (“the testing requirement”) that, for the purpose of ascertaining whether he has any drug in his body during the treatment and testing period, the offender shall provide during that period, at such times or in such circumstances as may (subject to the provisions of the order) be determined by the treatment provider, samples of such description as may be so determined.
- (5) The testing requirement shall specify for each month the minimum number of occasions on which samples are to be provided.

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- (6) A drug treatment and testing order shall include a provision specifying the petty sessions area in which it appears to the court making the order that the offender resides or will reside.
- (7) A drug treatment and testing order shall—
- (a) provide that, for the treatment and testing period, the offender shall be under the supervision of a responsible officer, that is to say, a probation officer appointed for or assigned to the petty sessions area specified in the order;
  - (b) require the offender to keep in touch with the responsible officer in accordance with such instructions as he may from time to time be given by that officer, and to notify him of any change of address; and
  - (c) provide that the results of the tests carried out on the samples provided by the offender in pursuance of the testing requirement shall be communicated to the responsible officer.
- (8) Supervision by the responsible officer shall be carried out to such extent only as may be necessary for the purpose of enabling him—
- (a) to report on the offender’s progress to the court responsible for the order;
  - (b) to report to that court any failure by the offender to comply with the requirements of the order; and
  - (c) to determine whether the circumstances are such that he should apply to that court for the revocation or amendment of the order.
- (9) In this section and sections 63 and 64 below, references to the court responsible for a drug treatment and testing order are references to—
- (a) the court by which the order is made; or
  - (b) where another court is specified in the order in accordance with subsection (10) below, that court.
- (10) Where the area specified in a drug treatment and testing order made by a magistrates’ court is not the area for which the court acts, the court may, if it thinks fit, include in the order provision specifying for the purposes of subsection (9) above a magistrates’ court which acts for that area.

#### Commencement Information

**I2** S. 62 wholly in force; S. 62 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, art. 2(1) (subject to savings in arts. 5-8)

### 63 Periodic reviews.

- (1) A drug treatment and testing order shall—
- (a) provide for the order to be reviewed periodically at intervals of not less than one month;
  - (b) provide for each review of the order to be made, subject to subsection (7) below, at a hearing held for the purpose by the court responsible for the order (a “review hearing”);
  - (c) require the offender to attend each review hearing;
  - (d) provide for the responsible officer to make to the court, before each review, a report in writing on the offender’s progress under the order; and

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- (e) provide for each such report to include the test results communicated to the responsible officer under section 62(7)(c) above and the views of the treatment provider as to the treatment and testing of the offender.
- (2) At a review hearing the court, after considering the responsible officer's report, may amend any requirement or provision of the order.
- (3) The court—
- (a) shall not amend the treatment or testing requirement unless the offender expresses his willingness to comply with the requirement as amended;
  - (b) shall not amend any provision of the order so as to reduce the treatment and testing period below the minimum specified in section 61(2) above, or to increase it above the maximum so specified; and
  - (c) except with the consent of the offender, shall not amend any requirement or provision of the order while an appeal against the order is pending.
- (4) If the offender fails to express his willingness to comply with the treatment or testing requirement as proposed to be amended by the court, the court may—
- (a) revoke the order; and
  - (b) deal with him, for the offence in respect of which the order was made, in any manner in which it could deal with him if he had just been convicted by the court of the offence.
- (5) In dealing with the offender under subsection (4)(b) above, the court—
- (a) shall take into account the extent to which the offender has complied with the requirements of the order; and
  - (b) may impose a custodial sentence notwithstanding anything in section 1(2) of the 1991 Act.
- (6) Where the order was made by a magistrates' court in the case of an offender under the age of 18 years in respect of an offence triable only on indictment in the case of an adult, the court's power under subsection (4)(b) above shall be a power to do either or both of the following, namely—
- (a) to impose a fine not exceeding £5,000 for the offence in respect of which the order was made;
  - (b) to deal with the offender for that offence in any way in which it could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months;
- and the reference in paragraph (b) above to an offence punishable with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment on the imprisonment of young offenders.
- (7) If at a review hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the order is satisfactory, the court may so amend the order as to provide for each subsequent review to be made by the court without a hearing.
- (8) If at a review without a hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the order is no longer satisfactory, the court may require the offender to attend a hearing of the court at a specified time and place.
- (9) At that hearing the court, after considering that report, may—

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- (a) exercise the powers conferred by this section as if the hearing were a review hearing; and
  - (b) so amend the order as to provide for each subsequent review to be made at a review hearing.
- (10) In this section any reference to the court, in relation to a review without a hearing, shall be construed—
- (a) in the case of the Crown Court, as a reference to a judge of the court;
  - (b) in the case of a magistrates' court, as a reference to a justice of the peace acting for the commission area for which the court acts.

#### Commencement Information

**I3** S. 63 wholly in force; S. 63 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, art. 2(1) (subject to savings in arts. 5-8)

## 64 Supplementary provisions as to orders.

- (1) Before making a drug treatment and testing order, a court shall explain to the offender in ordinary language—
- (a) the effect of the order and of the requirements proposed to be included in it;
  - (b) the consequences which may follow (under Schedule 2 to the 1991 Act) if he fails to comply with any of those requirements;
  - (c) that the order may be reviewed (under that Schedule) on the application either of the offender or of the responsible officer; and
  - (d) that the order will be periodically reviewed at intervals as provided for in the order (by virtue of section 63 above);
- and the court shall not make the order unless the offender expresses his willingness to comply with its requirements.
- (2) Where, in the case of a drug treatment and testing order made by a magistrates' court, another magistrates' court is responsible for the order, the court making the order shall forthwith send copies of the order to the other court.
- (3) Where a drug treatment and testing order is made or amended under section 63(2) above, the court responsible for the order shall forthwith or, in a case falling within subsection (2) above, as soon as reasonably practicable give copies of the order, or the order as amended, to a probation officer assigned to the court, and he shall give a copy—
- (a) to the offender;
  - (b) to the treatment provider; and
  - (c) to the responsible officer.
- (4) Where a drug treatment and testing order has been made on an appeal brought from the Crown Court, or from the criminal division of the Court of Appeal, for the purposes of sections 62 and 63 above it shall be deemed to have been made by the Crown Court.
- (5) Schedule 2 to the 1991 Act (enforcement etc. of community orders) shall have effect subject to the amendments specified in Schedule 4 to this Act, being amendments for applying that Schedule to drug treatment and testing orders.

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#### Commencement Information

- I4** S. 64 wholly in force; S. 64 not in force at Royal Assent see s. 121. In force at 30.9.1998 by S.I. 1998/2327, art. 2(1) (subject to savings in arts. 5-8)

**Status:**

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