

THE SOCIETY AND COLLEGE OF RADIOGRAPHERS

DRUGS ACT 2005

1. INTRODUCTION & SCOPE OF ACT

- 1.1 The Drugs Bill received Royal Assent on April 7th 2005 and therefore has now become law. Provisions within the act include use of x-rays and ultrasound scans and diagnostic radiographers and sonographers need to be aware of the implications of this.
- 1.2 The Drugs Act 2005 applies in England, Wales and Northern Ireland but **NOT** in Scotland and there is no equivalent statutory provision in Scotland. The Procurator Fiscal Service advises that where there are reasonable grounds to suspect that an accused person has controlled drugs concealed within his/her person, the police can apply to a Sheriff for a warrant to convey that person to hospital to be examined. The warrant will specify the procedure to be carried out and this may include diagnostic imaging. Since IR(ME)R applies in Scotland it is still necessary for there to be an appropriate referral under IR(ME)R before commencement of the procedure if it involves ionising radiation. In the event of the request being for an ultrasound examination it is considered best practice to obtain an appropriate referral and hence radiographers in Scotland should follow the same procedure for all types of imaging.
- 1.3 The Drugs Act 2005 and accompanying notes can be found on The Home Office website www.homeoffice.gov.uk (click on drugs, then drugs and the law to find Drugs Act 2005). To aid with the implementation of the bill, the Home Office has released a circular (Home Office Circular 55/2005) the relevant section is Annex B Section 5 X-Rays and Ultrasounds – PACE Section 55A and it can be downloaded from Home Office Circular website at
<http://www.knowledgenetwork.gov.uk/HO/circular.nsf/79755433dd36a66980256d4f004d1514/5068b02589aef6c9802570d90052b43c?OpenDocument>
- 1.4 This guidance from the Society and College of Radiographers (SCoR) has been prepared with the help of Mark Viner, Association of Forensic Radiographers and the Medical Exposure Department, Health Protection Agency
- 1.5 An article, '*X-ray and ultrasound used to tackle drugs crime*', was published in March 2005 in Synergy News and highlighted questions and concerns. The Society and College of Radiographers is again grateful to Mark Viner, Chair of the Association of Forensic Radiographers, for his input.

2. GENERAL GUIDANCE

- 2.1 The European Directive 97/43/Euratom (The Medical Exposures Directive) includes the exposure of individuals as part of medico-legal procedures as well as medical exposure. SCoR has been advised by the Medical Exposure Department of the Health Protection Agency that such exposures resulting from referrals under the Drugs Act 2005 **do** fall under IR(ME)R, either because they are part of the patient's

own diagnosis where there is a risk to the health of the patient, or they are for medico-legal purposes where evidence is required.

- 2.2 The College of Radiographer's publication '*Guidance for the Provision of Forensic Radiography Services*' (CoR 1999) provides information to the profession on forensic radiography and the general advice articulated is relevant to radiographers involved in providing diagnostic imaging services under the Drugs Act 2005.
- 2.3 As stated in '*Guidance for the Provision of Forensic Radiography Services*' (CoR 1999), radiographers undertaking forensic radiography must have a working knowledge of relevant primary and secondary legislation and all relevant guidelines.
- 2.4 Radiographers should be aware that making any mistakes during the imaging procedure may have consequences in law. Specifically, the prosecution may fail if procedures are not followed correctly.
- 2.5 Department managers will wish to identify a team of staff to undertake any examinations under the terms of the Act so that these staff can be appropriately trained and made familiar with the legislation as specified in '*Guidance for the Provision of Forensic Radiography Services*' (CoR 1999)
- 2.6 The principle of maintaining continuity of evidence requires that certain procedures must be followed. More detail is given in '*Guidance for the Provision of Forensic Radiography Services*' (CoR 1999) but essential aspects are:
 - 2.6.1 The radiographer should have a colleague with them at all times and should not be left alone with the patient. This requirement may pose a problem "out of hours" if the radiographer is working alone and because of the urgent nature of some of the requests it may not be possible to wait for a second member of the radiographic workforce. The arrestee will be accompanied by at least one police officer and, hence, the radiographer would not be left alone with the patient, however, if at all possible, radiographers are advised to enlist the help of another health care worker to stay with them throughout the examination.
 - 2.6.2 Accurate record keeping is essential to provide an accurate and thorough evidence chain. All records must be written at the time. Specifically, the radiographer must clearly record:
 - (i) The nature and outcome of discussions on consent
 - (ii) Radiographer and colleague should record their details (signed, printed and dated)
 - (iii) Information on image (name, date, orientation and any other information) must be clear
 - (iv) Total number of x-rays, and or total number of ultrasound scans
 - (v) Results of the x-rays and or results of the ultrasound scans
- 2.7 It is good practice that the report should be written at the time of the examination and, therefore, radiographers and sonographers conducting the imaging procedures will need to be able to issue an immediate report. They may, therefore, need to

undergo specialised training to recognise the various types of drug packages which may be encountered and where they might be placed within the body.

- 2.8 The increase in the use of Picture Archive and Communication Systems (PACS) means that hard copy images may not be available. SCoR advice on this topic may be found in *The Filmless Department: use of images as evidence in legal proceedings* (CoR 2006)
- 2.9 For some Diagnostic Imaging Departments it may be appropriate to seek to develop a contractual agreement with the police. This could include issues such as who is responsible for the reports, written and verbal (radiographer, sonographer or radiologist) and timescale for the production of such. The agreement could also include other administrative matters such as expected level of activity and issues such as ownership and format of hard copy images, if required, as well as the written report for evidence purposes.

In addition, the examination will be optimised for the reasons of referral and, therefore, there should be a clear indication of the medico-legal context in which any exposures are made. This is to try and avoid difficulties if there is unrelated pathology present which goes unseen or unrecognised at the time of report, possibly as a result of that optimisation.

- 2.10 The provisions of the Drugs Bill are considered to be compatible with the European Convention on Human Rights.
- 2.11 The use of the term '*authorisation*' in section 5 (1)(1) of the Drugs Act is quite different to its use under IR(ME)R. The guidance from the Home Office is that referrals for these examinations will be made by a Forensic Medical Examiner (FME) who is a registered medical practitioner (and most commonly a GP). This person will need to be entitled under IR(ME)R to act as referrer for these examinations at the site where they are carried out. They will not be '*authorising*' the examination under IR(ME)R and, therefore, not acting as operators or practitioners. There will still be a need for these medical exposures to be justified and authorised.
- 2.12 The Home Office expects that children from the age of 10 years old may be affected by this legislation. This raises issues of obtaining consent from a child who may or may not be considered competent to consent.

3. SPECIFIC GUIDANCE

- 3.1 The article published in Synergy News (March 2005) raised questions, which are reproduced and answered here:

QUESTION

What or whom are "reasonable grounds", "appropriate consent", "appropriate officer" and "a suitably qualified person". Are these defined or regulated anywhere?

ANSWER

The explanatory notes issued with the Drugs Act make it clear that the police can decide that there are reasonable grounds. An appropriate officer is defined as an officer at least the rank of inspector (and, in Northern Ireland, the rank of Superintendent or above).

‘Appropriate consent’ is informed consent to the x-ray and or ultrasound and consent must be given in writing.

A suitably qualified person carrying out the procedure is a radiographer (registered with the Health Professions Council), or sonographer with a recognised ultrasound qualification (i.e. CASE approved) who has received appropriate education and training in forensic imaging .

QUESTION

Does appropriate consent include informed consent; if so who does the consenting (a police or customs officer, radiographer?)

ANSWER

Appropriate consent in the Drugs Act and the Home Office Circular (55/2005) refers to the need for the police or Forensic Medical Examiner (FME) to get and record consent in the detainee’s custody record and is part of the requirement for authorisation under the Drugs Act. In addition to this the radiographer or sonographer would need to obtain consent in the usual way before carrying out the imaging procedure. Special consideration must be given to obtaining consent if the arrestee is a child.

QUESTION

Can these examinations be carried out in private practice? What is “some other place used for medical purposes” and what regulations would apply?

ANSWER

A suitably equipped imaging unit is required; this could be in private practice, or at the airport/dock. All normal regulations would still apply.

QUESTION

Is this information subject to QA; will the number of positive or negative outcomes be recorded?

ANSWER

Police annual reports must contain information about x-rays and ultrasound scans which have been carried out under the provisions of this Act.

QUESTION

Will there be a record of individual personal doses or the number of times a person is imaged and would this information be available to the justifier?

ANSWER

Records on the volume of activity under the Drugs Act must be stated in the police annual reports, however, this would probably not include personal doses. Information regarding previous imaging examinations on an individual may not be available at the time of justification.

References

The College of Radiographers 1999 *Guidance for the provision of Forensic Radiography Services* CoR London

The College of Radiographers 2006 *The Filmless Department: use of images as evidence in legal proceedings* CoR London

The United Kingdom Parliament 2005 *Drugs Act 2005*

Home Office Circular 55/2005

Responsible Officer: Christina Freeman

Date: September 2006