

DIP – Operational Process FAQs

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I. GENERAL

1. What is the Drug Interventions Programme (DIP)?

DIP is a key part of the Government's strategy for tackling drugs and reducing crime. Introduced in 2003, interventions have been put into place which direct adult drug misusing offenders out of crime and into treatment and other support. DIP involves criminal justice and treatment agencies working together with other services to provide a tailored solution for drug misusing adults.

2. Is the ambition of the Drug Interventions Programme to further criminalise drug use?

No. The ambition is to get more drug users into assessment (and then treatment) rather than to prosecute people for non-attendance. However, for the Testing on Arrest, Required Assessment and Restriction on Bail provisions to remain credible, criminal sanctions must exist and be used where required.

3. How was the Tough Choices Project linked to DIP?

Tough Choices was the internal project name given to the expansion of the Drug Interventions Programme in 2005/06. The expansion was made up of three elements; Testing on Arrest, Required Assessment (initial assessment only at this time) and Restriction on Bail, which went live in two phases from 1 December 2005. All three elements play a vital role in identifying and directing individuals into treatment. The Programme was expanded further by the implementation of the second and final part of the Required Assessment provision - follow-up assessment - which was introduced on 1 April 2007.

4. Why were these further interventions introduced?

Testing on charge had been successful at identifying problem drug users and encouraging them to seek help. Before these interventions were introduced, 80% of those that went through an assessment entered some form of treatment. However, a significant number of identified drug users did not attend the then current voluntary assessment. Testing on arrest and Required Assessment was designed to help:

- Identify more problem drug users (by testing a larger sample of people), and
- Encourage more people who test positive to attend assessments (by adding a sanction to failure to attend and remain).

All of these measures are designed to further reduce acquisitive crime.

5. When and where were these further interventions implemented?

1st December 2005 – Three police force areas (called Wave 1 areas) implemented testing on arrest and required (initial) assessment (force wide where indicated). These areas already had restriction on bail in place prior to the 1st December:

1. Greater Manchester (force wide)
2. Nottinghamshire (force wide)
3. South Yorkshire (force wide)

31st March 2006 – Police force areas (called Wave 2 areas) implemented testing on arrest (force wide where indicated). Some, but not all, of these areas had restriction on bail in operation prior to the 31st March:

1. Avon & Somerset
2. Bedfordshire
3. Cambridgeshire
4. City of London (force wide)
5. Cleveland
6. Humberside
7. Leicestershire
8. Merseyside
9. Metropolitan

10. Northamptonshire
11. Northumbria
12. Thames Valley
13. West Midlands (force wide)
14. West Yorkshire (force wide)

Drug testing on arrest was introduced in those custody suites within BCUs that were already testing on charge in DIP intensive-areas (in some areas this is police force-wide but in other areas this is in selected BCUs). These areas were selected on the basis of being those with the highest level of acquisitive crime, which drug misusers commit to fund their drug habit.

31st March 2006 – Restriction on bail activated across England. Any defendant who has tested positive for heroin, crack/cocaine and is both brought before a court in England and resides in England, can be considered for this provision if the court is considering granting bail.

1st April 2007 – The second part of the Required Assessment (follow-up assessment) was implemented in DIP intensive areas which had Testing on Arrest and the required initial assessment.

6. Why was Tough Choices not implemented across all of England and Wales?

DIP operates across the whole of England and Wales; however CJITs have been classified as being either intensive or non-intensive. Intensive status has been given to areas that have the highest levels of drug related acquisitive crime; consequentially, these areas receive greater levels of funding than areas with lower crime levels, making them equipped to handle certain interventions which non-intensive areas are not resourced to complete.

7. What aspect(s) of DIP is available in Wales?

Testing on arrest has not been implemented in Wales, nor do the Police in Wales have the authority to require individuals to attend a Required Assessment. Community Safety Partnerships are however expected to undertake Required Assessments (either initial or follow-up) involving Welsh residents who have been drug tested in England. Discussions are taking place with the Welsh Assembly to see how DIP can be developed further in Wales.

8. Why was follow-up assessment not implemented as part of the original Tough Choices Project?

A decision was taken during the original planning stage that follow-up assessment would only be introduced once the initial assessment processes and associated new working practices became embedded. The reasoning for this was that it allowed an opportunity for testing on arrest, initial assessment and Restriction on Bail to be successfully implemented and all initial problems identified and resolved.

9. What is meant by the term Required Assessment?

Required Assessment is the term used to describe the assessment imposed by a police officer following a positive drugs test by the individual (Part 3 of the Drugs Act 2005). Required Assessment is the overall term to describe the two parts; the initial assessment (Section 9 of the Act) and the follow-up assessment (Section 10 of the Act).

10. Is the Government's current focus of breaking the drugs/crime link being done at the expense of providing voluntary treatment in the community?

No. Figures suggest that only between 20-30% of individuals who access drug treatment in the community enter through the Criminal Justice System.

11. What's the definition of entering treatment? (i.e. when we say over 3,000 people entered treatment in April 2007 what does that mean)?

People entering treatment are those who entered onto the CJIT caseload for the first time during that reporting month. Treatment is indicated on the DIR, Activity Form or NDTMS. Individuals are only counted once, regardless of how many treatment interventions they engage with.

12. How can you justify testing someone who has not even been charged for any offence?

Testing is a screening tool to identify persons within the criminal justice system who are misusing specified Class A drugs so that they can be steered into treatment and other programmes of help. Testing on arrest identifies them at an earlier stage in the criminal justice process. It is part of a range of measures under the Drug Interventions Programme, which delivers an end-to-end system to help individuals address their drug misuse.

It is very likely that a number of those persons arrested but not charged with an offence will be involved in crime. The aim is to reduce their need to engage in crime to fund a drug habit, leading to an overall reduction in crime. It is, therefore, a reasonable and proportionate measure on the grounds of crime reduction and public protection.

13. Is any guidance on the drug testing, Required Assessment or RoB available?

Yes. Operational Guidance has been distributed and placed on www.drugs.homeoffice.gov.uk for dissemination. The latest version of the guidance is dated August 2007.

- The Operational Guidance for intensive areas can be downloaded from: <http://www.drugs.homeoffice.gov.uk/publication-search/dip/guidance-drugsact-2005>
- Operation Guidance for non-intensive areas can be downloaded from: <http://www.drugs.homeoffice.gov.uk/publication-search/dip/non-intensive-guidance>

14. What is the administrative burden associated with DIP?

The aim has been to implement DIP and these interventions in the least burdensome way, whilst also ensuring that the clients' needs are met and the relevant legislation is complied with. New forms and procedures have been introduced. Stakeholder and partner advice was sought throughout the development process to ensure the needs of all parties were met.

15. What is the DIP SPOC?

The DIP SPOC contains four contact lists which are for use by partners when dealing with DIP clients. The CJIT SPOC contains contact details and instructions for each CJIT to arrange an assessment in every CJIT area; the CARAT SPOC is a contact for each CARAT team across the prison estate; the 24/7 lists every area's 24/7 number and the Police Leads identifies the contact name within each drug testing police force area. This list is circulated by the Home Office monthly.

16. Where do stakeholders obtain a copy of the DIP SPOC list from?

The updated DIP SPOC list is circulated electronically on the first working day of every month by DIP to the Government Offices, NTA, Prisons, NOMS and Home Office colleagues. The DIP SPOC contains the CJIT SPOC; CARAT SPOC, Police Lead SPOC and the approved 24/7 client advice line numbers. These lists are circulated to nominated individuals within every organisation, and it is expected that the recipients will forward this document on to their front line staff as soon as possible.

17. Will offences associated with DIP be recorded on PNC?

Yes. Offences for failing to attend and remain at Required Assessments and Restriction on Bail appointments have been allocated PNC codes and have been added to PNLDB.

18. What does it mean when it is stated that for every £1 spent on treatment at least £9.50 is saved in crime and health costs', rather than a £3 saving as previously used?

This new figure is based on the research reported in 'Economic analysis of costs and consequences of the treatment of drug misuse: 2 year outcome data from the National Treatment Outcome Research Study'. Crime and Health costs include the costs of directing individuals through the Criminal Justice System.

19. How can you justify requiring people to attend compulsory assessments?

Requiring individuals to attend up to two assessments following each positive drug test should help them engage with treatment or other forms of help. This is a reasonable and proportionate measure to help prevent crime and ensure public protection. During the initial assessment and any follow up assessment, a screening/triage assessment, together with an initial care plan can be completed. These are the first steps into treatment and help, which will benefit the drug misuser, their families and those communities affected by drug related crime.

20. Does the policy disproportionately target any particular ethnic minority group?

The provision of testing on arrest does not disproportionately target any particular ethnic minority group. All those arrested for a trigger offence (these are the offences which have a demonstrated relationship to drugs misuse) or under Inspector's authority will be tested, regardless of their ethnicity. As part of the DIP's Race, Equality and Diversity strategy, the Home Office will be examining DIR data collected as part of the initial contact and assessment process. This data will be analysed to ensure that any anomalies are identified and addressed, as well as being placed on DIRWeb so that DATs, CJITs and GOs can use for their own purposes.

II. TRAINING & WORKFORCE

1. What extra funding was made available to drugs workers to accommodate the expansion through Tough Choices?

All areas implementing Required Assessment in 2005/06 were asked to quantify the extra number of drug workers required to deliver the policy, and substantial additional funding was allocated. For the implementation of follow-up assessment, an estimate of the number of additional assessments was completed. The findings showed that the expected increase in the number of assessments needed in each area was relatively minor – up to 30 per month in intensive areas and a maximum of 4 in non-intensive areas. In addition, as Required Assessment becomes embedded as standard practice, efficiency improvements, resulting in cost savings, will be expected, and so no extra resources were made available.

2. Were extra resources made available to the police to accommodate these new provisions?

No. Existing Civilian Detention Officers were felt to have sufficient capacity and experience to cope with the increase in drug testing as a result of testing on arrest. No additional testing machines were required and the cost of consumables continues to be funded centrally.

3. Have the Police and drug workers been given any training to help them implement this expansion of DIP and is any additional training available?

A comprehensive training package for both police and drug workers was delivered during 2005 and 2006 when the Tough Choices Project was initially implemented. The purpose of training police and drug workers together wherever feasible was to improve and develop a mutual understanding of their different roles. Awareness sessions were held with senior partners across each Government Office region during January 2007 in preparation for the roll out of follow-up assessment, with the instruction to attendees to pass the messages down to their front line staff.

III. TESTING ON ARREST

A. General information

1. What is testing on arrest?

Drug testing on arrest is an alternative to drug testing on charge where it is currently carried out in police custody in a number of areas; providing an opportunity to screen around three times as many people at some stage of their detention. The test, a non-invasive oral swab, was the same test which was originally used for testing on charge. The test is for specified Class A drugs (heroin and cocaine/crack).

2. What “specified Class A drugs” are being tested for?

The current drug test is for heroin and cocaine/crack.

3. What is the test?

The test is a non-invasive, oral swab produced by Cozart which is also referred to as the RapiScan. The contract to supply the DIP drug testing equipment expires on 31 March 2008, and so the test may change.

4. How will this affect the use of street bail?

If the arresting officer suspects that the use of a specified Class A drug caused or contributed to the offence then street bail should not be issued.

5. Does an individual need to have their rights read prior to the drug test taking place?

Yes. The police have to remind a person that they may access free and independent legal advice prior to a drug test being conducted. Paragraph 17.4(d) of PACE Code C provides that: *“before requesting a sample from the person concerned, an officer must....remind him of the following rights, which may be exercised at any stage during the period in custody....(ii) the right to consult privately with a solicitor and that free independent legal advice is available”*.

Use of the word “remind” emphasises that the obligation applies notwithstanding the fact that the person has already been informed of this right.

6. Can an acting Inspector authorise drug testing for non-trigger offences and authorise a Required Assessment not to be required?

Yes. If a person is acting and fulfilling the duties of an Inspector then he is able to authorise drug testing for non-trigger offences and authorise a Required Assessment not to be required.

7. Should an individual’s testing history be maintained? What can this be used for?

Yes. We would encourage police forces to collate an individual’s testing history as this can be used for:

- Decisions on police/court bail
- Risk assessment and custody information
- Police intelligence purposes
- Supporting or otherwise the credibility of an individual’s claims re their previous drug use, especially where an individual who has been charged is before court and claims that they have never previously taken Class A drugs. The CPS will find previous test results useful in requesting RoB to be applied

8. Is it possible for a positive drug test result arising from a soldier who has been appropriately arrested and drug tested under Section 63B, to be shared with the MoD for disciplinary procedures or good health and safety reasons without the soldier’s consent?

The drug test will not be used as evidence to support the commission of any offences of which the detainee has been charged, or for other investigative purposes. However, s115 of the Crime and Disorder Act 1998 allows the test result to be used specifically for the purposes of

crime reduction. This must be done on a case by case basis for each specific single purpose and be shown to be in the public interest.

B. Who will be tested

1. Who will be tested on arrest/charge?

An individual should be tested for specified Class A drugs if they fulfil ALL of the following conditions:

- Are aged 18 or over.
- Are in police custody.
- Were arrested for a trigger offence or for an offence where a police officer of Inspector rank or above suspects Class A drug use was a causal or contributory factor.

The test can be held once the custody officer has approved their detention.

2. Do all eligible individuals' have to be tested?

Eligible individuals should be drug testing in the vast majority of cases. Only in exceptional circumstances should a test not be completed. There is scope for the police not to require a drug test where there is good cause, demonstrated by the performance indicators requiring 95% testing rate rather than 100%.

3. Is there an upper age limit for who can be tested?

No. The decision to test should be taken on a case by case basis by the police.

4. Can an individual who is 17 when they committed the offence and subsequently turned 18 by the time they are arrested and in police detention for that offence, be tested?

Yes, as at the time of their arrest they have fulfilled the testing criteria. The aim of drug testing is to identify individuals who misuse heroin and/or crack/cocaine, in order to move them into treatment.

5. Can you arrest somebody solely for the purpose of carrying out a drug test?

No. A person must have been arrested for a trigger offence or an offence where an Inspector or above decides that there are grounds to suspect that specified Class A drug misuse by the individual caused or contributed to the offence for a drug test to be carried out under section 63(B) of PACE.

6. Why are prostitution related offences not trigger offences?

This question was last reviewed early in 2007. Consideration was given to the nature of the offence, the low volume of persons proceeded against for this offence in the magistrates' courts and other initiatives being taken forward to tackle the problem. It was concluded that inclusion of this offence at this stage would not be a proportionate response in terms of our policy aim.

The absence of these offences not being a trigger offence does not however prevent DIP from engaging with these drug using individuals who are involved in prostitution. The recently published Government Strategy for tackling street prostitution "Paying The Price", places the emphasis on awareness-raising, prevention and early intervention measures to stop individuals, particularly children and young people, from becoming involved in prostitution. Developing routes out is also emphasised – proactively engaging with those involved in prostitution to provide a range of support and advocacy services to help them leave prostitution. Those women known or thought to be drug users may be offered the opportunity to take up the services of the local CJIT voluntarily. In addition, effective assertive outreach may be able to connect with these individuals before they have actually entered the Criminal

Justice System. Guidance is available for CJITs about how to work with adults involved in prostitution - http://drugs.homeoffice.gov.uk/publication-search/dip/prostitution_guidance.

Drug tests may be authorised by a police officer of Inspector or above (where they decide that there are grounds to suspect that specified Class A drug misuse by the individual caused or contributed to the offence), and the Required Assessment following a positive test may provide the extra push required to encourage the woman concerned to engage. It is therefore vital that those individuals who are believed to be under the influence of Class A drugs on their arrest are drug tested under Inspector's discretion if considered appropriate.

For further information on "Paying the Price": <http://www.homeoffice.gov.uk/documents/cons-paying-the-price>

7. If a prisoner is produced from prison for investigative purposes and is either under arrest for a trigger offence or charged with a trigger offence, should they be drug tested, and if they test positive, should they be required to attend a required assessment?

Yes. Prisoners brought into police custody, under arrest for a trigger offence, should be drug tested on arrest. This information can then be used by CARAT workers. The policy is part of the general approach of making sure we drug test people at every legal opportunity.

If the prisoner is going to remain in police custody for long enough to have an initial assessment carried out, then they should be required to attend and remain at an RA and the information passed back to the prison's CARAT's workers using the DIR. If they are returned to prison before this can be carried out, then they would have failed to attend and remain with good cause. Required Assessments are not held in prison by CARAT workers, but the result of the drug test should be passed to the CARAT team.

8. Can an individual be drug tested for breach of court bail?

Failing to surrender to bail (either police or court) is an offence for which a person could be drug tested under Inspector's Authority if there was reasonable grounds to suspect that the use of specified class A drugs caused or contributed to the offence. Committing a breach of a bail condition is not an "offence" on which a person could be drug tested under Inspector's Authority.

9. Can an individual, resident in England, be tested if they are arrested on behalf of the police in Scotland?

No. The individual is not "in police custody" for the purposes of fulfilling the arrest condition for testing as per the Drugs Act 2005 and the Home Office Guidance, and cannot therefore lawfully be tested. They cannot be drug tested under Section 63B of PACE, and so this should not be counted as a missed opportunity to test.

10. Can an individual be tested under Inspector's authority if they have been arrested for breach of the peace or to prevent a breach of the peace?

Breach of the peace is not an offence, therefore Inspector's authority cannot be used to test the individual even if specified class A drug misuse is suspected and this could have caused or contributed to the breach of the peace.

Ultimately it is down to arresting officers to consider their powers when dealing with this type of public order offence. If drink, drug, violence, threats etc are used there are numerous other arrest powers which may be utilised and provide the opportunity to test the individual. This may be by means of either trigger offence or an Inspector's authority dependant upon the circumstances.

11. Can an individual, arrested for failing to attend and remain at a Required Assessment, be drug tested?

The individual can be tested under Inspector's authority if they fulfil all of the criteria (i.e. if the Inspector has reasonable grounds to suspect the individual failed to attend and remain at the required assessment because they were under the influence of heroin and/or crack/cocaine). Failing to attend and remain is not a trigger offence.

C. Where can testing take place

1. Where is testing on arrest operational?

Testing on arrest is only operational in DIP intensive areas in England.

2. Do any areas still drug test on charge?

Testing on charge occurs in a selected few non-intensive DIP areas. These are (as of April 2007):

- Greyfriars Police Station, North Bedfordshire BCU;
- Torquay, South and West Devon BCU;
- Blackpool, Western Lancashire BCU;
- Newport, A Division Gwent BCU;
- Wrexham, Eastern BCU North Wales;
- Stafford, Cannock and Rugeley, Chase BCU;
- Cardiff, Fairwater, Rumney and Roath, Cardiff BCU;
- Swansea, Swansea BCU.

3. Can someone arrested in a non-intensive area be taken to an intensive area to be tested?

No. A person arrested in a non-intensive area should not be taken to an intensive area *solely* to be tested. However, if the police, in line with normal police practice, decide to take a person arrested in a non-intensive area to a custody suite with testing equipment (i.e. an intensive area) then that person can be tested.

Therefore anyone who is booked in at a police station with testing equipment should be tested, if they have been arrested for a trigger offence or if an inspector or above has authorised a drug test.

4. If an individual is arrested in an intensive area but booked into a custody suite in a non-intensive area (e.g if there is a central custody suite facility) can they be drug tested?

No. An individual can only be drug tested at designated custody suites as authorised by the Home Office in a letter to the Chief Constable.

5. Can testing on arrest be implemented outside of the areas planned by the Home Office?

No. Testing on arrest has been implemented in individual police stations through notification letters to the Chief Constables of affected forces sent from the Home Office. Police stations not named in these notification letters cannot operate testing on arrest unless they apply for permission to self fund their drug tests. Separate Home Office guidance for Police forces looking to fund their own drug testing is now available -

http://drugs.homeoffice.gov.uk/publication-search/dip/DT_Guid_AppIntDIPStatSelfFundBas.

6. Is it possible to set up drug testing facilities for the purposes of obtaining a sample under s63B of PACE at any police station at any time within a police force area?

No. Since 1st December 2005, the way in which the power of drug testing under section 63B is authorised has changed. A Chief Constable of an approved police force area where drug

testing facilities can exist will receive a notification letter from the Secretary of State specifying the addresses of police stations where drug testing under section 63B of PACE is permitted.

7. What if a police station with drug testing facilities closes temporarily and the police wish to transfer drug testing operations to another police station (whose address is not specified in the notification letter)?

The Home Office MUST be notified and, if authorised, a revised notification letter will be issued before the planned transfer of drug testing operations. Contact the Drug Testing Team on: 020 7035 0533.

8. What if, for operational reasons, the police wish to set up an additional police station with drug testing facilities?

The Home Office MUST be notified and, if authorised, a revised notification letter will be issued before the planned date when drug testing in the additional police station starts. Contact the Drug Testing Team on: 020 7035 0533.

9. Can the British Transport Police test on arrest/charge?

A person can only be tested in a custody suite which has been designated to do so by a notification letter from the Home Office. However, if the British Transport Police, in line with normal practice, take a person to a custody suite which is allowed to drug test, and detention has been authorised by the custody officer, then the person can be tested. If they test positive, then the custody officer should require the person to attend a required assessment.

D. Carrying out the test

1. Where will the test take place?

Testing will take place in police custody suites with an approved drug testing facility.

2. Who can carry out the test?

Only staff with a certificate of competency and registered as authorised users with Cozart (the Home Office drug testing equipment supplier) are allowed to take samples and carry out the test. These staff will either be police officers or people employed (directly or via a contractor) for the purpose of taking samples and carrying out drug tests.

3. When is the earliest a test can be taken?

Following arrival in a police custody suite where approved drug testing facilities are available and the detention has been authorised by the custody officer.

4. When is the latest a test can be taken?

- If the individual would otherwise be released on bail without charge, the police can detain an individual for the purpose of carrying out a test as long as the detention period does not last longer than 24 hours from the relevant time.
- If the individual's detention, for the relevant offence, has been extended from 24 to 36 hours by a Superintendent or above a drug test may be carried out during this period. However, an individual's detention cannot be extended beyond 24 hours solely for the reason of carrying out a drug test.
- If the individual has been charged and would otherwise be released (with or without bail) they may be detained for the purpose of taking a test so long as that period does not last longer than 6 hours after being charged.

5. How often can an individual be tested?

Individuals can only be tested once during any single continuous period in police custody and can only be tested if they meet the set criteria. Legislation specifically prohibits testing an individual more than once during the same period of detention as defined by the PACE clock.

6. What is a continuous period of police detention?

The Act only allows for a person to be tested once in a continuous period of detention. In practice this means that a person must only be tested once during any 24 hour period of detention as described in PACE. If a person is tested after arrest but subsequently receives Police Bail, when they return to the police station for that offence they may not be tested again. Nor can a person who has been tested on arrest and subsequently charged, during the same period of detention, be tested on charge.

7. Can you be detained purely to have a test?

An individual who would otherwise be released without charge and without bail cannot be detained purely to carry out a drug test. An individual who is being released on police bail can be detained to carry out the test, as long as the total time in police custody does not exceed 24 hours (PACE clock).

An individual can be detained for up to 6 hours after charge in order to carry out the test. The police should use their common sense when testing to ensure that it does not use up the detention time, thereby preventing interviews from being carried out or the individual being charged.

8. Do individuals who are about to be drug tested (on arrest or after charge) have the right to legal advice prior to the test being carried out?

Yes. Individuals have the right to legal advice before being tested as set out under code C of PACE. This can normally be done via telephone and it is up to the solicitor to determine whether they need to be present while the test is carried out. If the point is reached where the solicitor or duty solicitor has not been in contact and there would remain insufficient time to complete the testing process before the end of the six-hour detention limit (for detaining an individual for test after charge) the test can be carried out without solicitors' advice. Given the time frames available to test, this is unlikely to be a problem.

NOTE: This differs to testing for drink driving offences where the legislation specifically states that the test should not be delayed to enable the individual to seek legal advice.

9. Does an individual who cannot read or write, need to have an appropriate adult to ensure that they are aware of what they are signing when carrying out a drug test or can it be carried out if the individual is aware of the process they are undergoing?

Police officers are required to comply with the PACE codes of practice in relation to appropriate adults. If an appropriate adult has been used for other purposes during the detention period e.g. giving someone their rights and entitlements or being present during an interview, then it would be inappropriate to conduct the drug testing procedure in the absence of an appropriate adult.

E. Refusal to provide a sample

1. What happens if an individual refuses to take the test?

Refusing to provide a sample without good cause is an offence. Force may not be used to obtain a sample.

2. What impact should "refusing to provide a sample" have on the provision of police bail?

Failure to provide a sample may be used alongside other relevant factors to inform police bail. However, failure to provide a sample alone should not automatically lead to a denial of police bail when it would otherwise have been granted. All the relevant circumstances of the case must be taken into account when determining whether to grant police bail.

F. Actions on a negative test

1. What happens if the test is negative?

The drug testing process ceases although the criminal justice process continues. Any individual who has admitted to drugs use but has generated a negative test should still be encouraged to engage with a drugs worker in the custody suite voluntarily.

2. Will the Home Office be changing the "cut-off" set on the drug testing equipment so that more people are detected?

The Home Office has no plans to change the "cut-off", though continues to monitor the latest international scientific opinion. Following advice from forensic toxicology experts, the current "cut-off" is set at the lowest-possible level which is certain to detect people who abuse drugs but excludes people who may innocently come in contact with illicit drugs.

G. Actions on a positive test

1. What happens if the test is positive?

- Police should impose the requirement for the individual to attend and remain both Required Assessments. The initial assessment should be held while the individual is detained in custody whenever possible.
- A positive test can also be used as a factor in determining police bail for the offence arrested and any future police bail decisions
- A positive test will also have implications for the local police and drug workers' duty of care.

2. Should an FME be called when there is a positive drug test?

The Home Office sought the advice of the Department of Health. Their response was: *"In practice such a positive [test] gives no more useful information, in terms of delivering on duty of care, than suspicion or knowledge of use of such drugs)....."*

The duty requires the custody officer to assess the person, and to carry out a risk assessment on the basis of observation of the individual and any advice of a health professional if involved.....

As long as a custody officer applies to any person with a positive result the same principles and appropriate actions described in PACE Code C, no special action is required due to a positive result alone. Such persons should be treated the same as anyone suspected or known to have consumed such drugs."

3. How will a positive drug test affect the provision of police bail?

A positive drug test alone should not automatically lead to a denial of police bail. If the drug test is carried out after charge, previous drug tests can be used to inform a police bail decision.

4. Can a positive drug test be used as evidence of another crime (e.g. driving under the influence)?

No. The drug test is a screening tool and cannot be used as evidence of any other offence.

5. Can an individual's drug test results be used to support an application for an Anti-Social Behaviour Order (to prove drug misuse by the subject)?

No. Although an individual's drug test history can be used for intelligence purposes it cannot be used as evidence of a crime and therefore cannot be used to support an ASBO application.

6. Can a positive drug test be used as evidence of a driving offence (e.g. driving under the influence)?

No. The drug test is a screening tool and cannot be used as evidence of any other offence. The law (Road Traffic Act 1988) already allows for testing of those suspected of driving, attempting to drive or being in charge of a vehicle with a drug in their body or while under the influence of a drug. The testing is done to determine whether a person is fit to drive. Where the Police suspect a person of being unfit they may require a person to cooperate with a preliminary impairment test (failure to do so is an offence). In addition to this, the Police can, as part of the investigation, require a person to provide a blood test which is carried out at the police station.

7. Why does the DT1 ask for a date and time of assessment, when this might not be known at this early stage, and since the RA1 will state this?

Legislation requires that date and time of the initial assessment forms part of the custody record. Stating the date and time on the DT1 will meet this requirement, as the DT1 forms part of the custody record. The DT1 form also acts as a set of sequencing prompts for the police to follow when conducting the drug testing and required assessment process: stating date and time on the DT1 will prompt the police to then complete the RA1 form, so that the legal requirement of the individual receiving a written requirement is met.

8. If an individual is arrested, tests positive to a specified Class A drug but the arrest is then found to be unlawful, can they be required to attend a required assessment? If the requirement has already been made and the individual fails to attend and remain can they be charged?

If the arrest is found to be unlawful then the test is not valid, therefore the individual cannot be required to attend an initial or follow-up assessment nor can they be charged with having failed to attend either assessment. As the individual has tested positive, a CJIT worker may wish to see if the individual would like to take part in a voluntary assessment, however, there is no sanction if the individual does not take up this offer.

H. Disputed test results

1. When should samples be sent to the confirmatory test laboratory?

- 2% of all samples (these are distinguishable by a red form in the testing packs) should be sent for quality assurance monitoring
- Any tests which are disputed
- All positive tests where the individual has taken any medicine in the last 24 hours

2. Who is the confirmatory test provider?

Cozart have been awarded the 07/08 DIP drug testing confirmatory test service contract from the previous providers, *Forensic Science Service (FSS)*.

3. Should disputed negative drug test results be sent to the confirmatory test provider for further analysis?

No. Only disputed positive results, positive results where medication has been declared and the quality assurance samples should be sent to the confirmatory test laboratory. If a person who tests negative claims to have taken heroin, crack/cocaine they should be offered a voluntary assessment. If the test is a QA sample it should be sent to the confirmatory laboratory regardless of the test result.

4. Where a negative result has been disputed, should a further voluntary drug test be offered?

No - not in any circumstances.

5. What happens if the test is positive and the result is sent to the confirmatory test laboratory (for any reason, including QA)- does the RA have to be delayed in all situations?

A required (initial) assessment should normally be set at least five working days from the point when the sample is sent off to the confirmatory test laboratory. This is to allow the outcome of the confirmatory analysis to be known so that, in the event that a result is successfully overturned, the relevant RA can be cancelled. When determining the time of an initial assessment, weekends and public holidays do not count as working days.

However, there is nothing legally to prevent an initial assessment being arranged earlier than the five days if the individual is content to undergo the assessment sooner. In all cases the individual should be asked whether they wish the initial assessment to take place immediately, or to wait until after the outcome of the confirmatory analysis. When the individual chooses to go ahead straight away, this should be recorded on the RA1 along with a clear statement that he was aware of his right to defer the initial assessment until the results of the further analysis were known. It is good practice, in order to avoid unnecessary paperwork, for the custody staff (with the drug worker, where present) to establish the individual's wishes before completing the RA1. Failure to attend and remain in this situation is still an offence.

6. An individual disputes a test result and refuses to have an initial assessment before the test result is confirmed by the confirmatory test provider. However, at Court they agree to have an assessment, does this count as their initial assessment?

If, prior to the assessment taking place, the drug worker issues an RA2 to change the date/time/place of the assessment to the Court, then the assessment would count as their initial assessment. Otherwise the assessment would not and the original initial assessment would stand (although if the individual was given RoB at court, the requirement would lapse).

7. An individual disputes a test result and refuses to have an initial assessment before the test result is confirmed by the confirmatory laboratory. They then test positive on a subsequent occasion and agree to have an initial assessment. Do they need to attend the original assessment if the confirmatory laboratory confirms the positive test result?

Yes. The legal requirement for the individual to attend and remain at the original Required Assessment still stands. If the individual engages after the initial assessment from the second offence, it would make sense to utilise the existing initial assessment from the original offence to draw up the individual's initial care plan.

It would be up to the drug worker(s) undertaking the two initial assessments to decide whether either or both follow-up assessments are needed in this situation.

8. An individual disputes a positive test result. When submitted for confirmatory analysis it fails the chain of custody criteria. If the individual fails to attend and remain at either assessment, can the police enforce non-attendance?

In this situation the police cannot enforce non-attendance as they cannot prove a positive test. It is vital that chain-of-custody procedures are observed and performed correctly at all times.

9. If a positive sample sent off for confirmatory analysis is overturned, how should this be recorded on the Drug Test Recorder?

In the case where a person has disputed a positive test result but the sample was proved to be negative, the result must be recorded as "Overturned" on the DTR. Please note, however, that in the case where a negative, quality-assurance sample is failed due to incorrect chain-of-custody procedures, then the result must be recorded as "Confirmed". This follows the same principle that, where chain-of-custody procedures have been breached, the presumption is that the person who gave the sample did not take an illicit substance.

10. If the test is sent to the authorised confirmatory test laboratory and a positive test is confirmed, do the Police need to reiterate the need to attend the Required Assessments (initial and follow-up)?

No. Once an assessment has been required the onus is on the individual to attend unless directed otherwise.

11. If the test is sent to the confirmatory testing laboratory and a positive test is overturned, what happens?

In the event that a positive test is overturned by the confirmatory test supplier, then the Drugs Act requires that a police officer so informs the individual concerned. It will be for the police to decide the best way to do this. As local circumstances dictate, the police should also inform the local CJIT and CPS. The police should also update the relevant record on the Drug Test Data Recorder to state the fact that the drug test result has been overturned. A new field has been created on the Recorder to enable this.

12. What impact has the introduction of a)RoB and b)ToA had on the number of disputed tests?

The introduction of RoB has no effect on the level of disputed tests. Testing on arrest has resulted in an increase in the number of disputed tests; however, the proportion of tests which are being disputed has not changed.

13. When a test is sent off for confirmatory analysis after being disputed and a different result is returned, would this different result affect the need to have a Required Assessment?

The role of the confirmatory analysis is to confirm the result of the substance which tested positive at the original screening; identifying whether the amount of the substance(s) detected is actually above or below the level set to trigger a positive test result.

If a different substance is detected following finer grain analysis which would have generated a separate positive result, this should not in itself overturn the original test result. For example, if a test result originally was positive for heroin (opiates), but confirmatory analysis overturned this result identifying the level of opiates was below the agreed cut off, the positive test should be overturned. This is the case even where the level of cocaine was found during the confirmatory analysis to should have recorded a positive result. If a Required Assessment had been arranged on the basis of the initial screening result, it should be cancelled by the police, but the drug worker should encourage the individual to have a voluntary assessment to assess their drug use.

IV. Fraud Act 2006 Provisions and CJCSA 2000 (Amendment) Order 2007

1. What is the CJCSA 2000 (Amendment) Order?

The Criminal Justice and Court Service Act 2000 (Amendment) Order 2007 is the Order that amends Schedule 6 to the CJCSA 2000 which sets out the “trigger offences” applicable to the testing of persons for the presence of specified Class A drugs (currently heroin and cocaine).

2. Why was the Amendment Order necessary?

To rectify the drafting omissions in the consequential amendment made to Schedule 6 of CJCSA by the Fraud Act 2006.

The order substitutes a new paragraph in Schedule 6 to the CJCSA 2000 for that specifying attempted offences in relation to the Theft Act 1968. This omits the reference to the attempted offence in relation to section 15 (obtaining property by deception) (which was repealed by the Fraud Act 2006) and adds a reference to the attempted offence in relation to section 1 of the Fraud Act 2006 (fraud) in its place.

3. When did the Order come into effect?

The CJCSA 2000 Amendment Order 2007 came into effect from 1 August 2007.

4. How does the order impact DIP drug testing?

The Order adds “Attempted Fraud” as a trigger offence. The Order removes the reference to obtaining property by deception (which was repealed and ceased to be a trigger offence on 15 January 2007) in relation to attempted offences.

5. How does the Amendment Order impact police operations in regard to DIP drug testing?

Staff in police custody suites authorised to operate DIP drug testing can drug test individuals arrested for/charged with “attempted fraud” as part of normal police operations. There will be only a very small increase in the number of tests conducted (less than 250 per year). The majority of crimes that will be prosecuted under section 1 of the Fraud Act 2006 would previously have been prosecuted under section 15 of the Theft Act 1968 and would therefore already have been captured by a trigger offence. This will also be true for attempts.

6. Isn't this broadening the range for which an individual can be drug tested?

No. DIP internal data indicates that the slightly broader offence of Fraud will lead to an increase of less than 0.5% in the number of drug tests conducted. The new offence of fraud (section 1) in the Fraud Act modernised and streamlined the law on fraud.

7. Why is attempted fraud being included as a trigger offence?

This is to ensure offending which previously would have constituted an attempt of obtaining property by deception – which is being removed from Schedule 6 by this order – continues to be captured by a trigger offence.

8. What offences are covered by section 1 Fraud?

Section 1(fraud) is a new general offence of fraud which can be committed in three ways, fraud by false representation; fraud by failing to disclose information; and fraud by abuse of position as set out in sections 2, 3 and 4 respectively of the Fraud Act.

In each of these three ways, there are two basic requirements to be met – the behaviour of the defendant must be dishonest and it must be his intention to make a gain, or cause a loss to another.

An example of an offence of fraud by false representation (where the representation being made is wrong or misleading, and the person knows that to be the case) would be where a person tendered a stolen or cloned credit card, purporting to be their own, to pay for goods.

9. What offences are covered by section 6 and 7 Fraud?

Section 6 makes it an offence for a person to possess or have under his control any article for use in the course of or in connection with any fraud.

The offence is derived from section 25 of the Theft Act 1968 (which makes it an offence for a person to “go equipped” to commit a burglary, theft or cheat”). Section 6 replaces this in so far as fraud - the “cheat” element.

Examples of the types of articles caught by the offence are lists of other peoples’ credit card details, or software used for producing blank utility bills.

It also applies to articles found in the offender’s home

Section 7 makes it an offence to make, adapt, supply or offer to supply any article knowing that it is designed or adapted for use in the course of or in connection with fraud, or intending it to be used to commit, or assist in the commission of, fraud.

It catches those who supply personal financial information for use in frauds by other people and who, for example, manufacture software programmes for generating credit card numbers to be used in frauds by other people.

10. Will the DTR be updated to reflect the new offences?

A revised DTR was issued in September and contained the Fraud offences which are listed as trigger offences.

V. REQUIRED ASSESSMENT (initial and follow-up assessment)

A. General information

1. What is Required Assessment?

The term Required Assessment refers to the process in Part 3 of the Drugs Act 2005, namely the initial and follow-up assessment, and is the generic name for both. The initial assessment is a triage assessment enabling the drugs worker to establish the person's dependency on or propensity to use specified Class A drugs, to identify any immediate needs and to give any harm minimisation advice. The follow-up assessment allows a second chance for the drug worker to build on any of these issues identified from the initial assessment, and to develop an initial care plan.

2. Is completing the DIR the same as carrying out a Required Assessment?

The DIR is not an assessment tool for CJIT workers. It is a record which, for monitoring and research and continuity of care purposes, gathers core information which the workers will have obtained whilst carrying out an assessment. This applies in all instances, whether the assessment being carried out by the CJIT worker is voluntary or 'required'. The introduction of Required Assessment (initial and follow-up) has no impact on locally used assessment tools.

3. Why is the requirement only to attend and remain at either of the Required Assessments rather than to engage?

The intention behind the legislation was (and is) to encourage drug misusers to take their first step into treatment, rather than to further criminalise their activity. Expectation is that the CJIT workers will be able to engage those who they assess.

4. Are individuals going to have to sign up to information sharing with respect to the information obtained during Required Assessments?

The relevant legislation states that information may be shared without consent in the following situations:

- Communicating to the court that an individual has refused to provide a sample and the reason given for this refusal
- Use of the drugs test result for aggregate monitoring and research purposes
- Use of the drugs test result for the purpose providing a Required Assessment
- Use of the drugs test result to inform Restriction on Bail provisions
- Communicating whether or not the individual attended and remained for the duration of the Required Assessment
- Communicating information from the Required Assessment

However, individuals should always be encouraged to sign up to information sharing to enable continuity of care.

Further guidance on information sharing can be found: http://drugs.homeoffice.gov.uk/publication-search/dip/DIP_PPO_info_share.

5. If a person gives a false identity during their initial assessment, should this assessment be repeated?

There is no need (or power) to require a person to attend a second initial assessment. However, if a follow-up assessment has been arranged, the CJIT worker will want to go back to the person and ask if, given the person has been assessed in a false identity, they wish to change anything said. The CJIT worker may also want to explain that, given the doubt over the validity of their responses in the initial assessment, it will no longer be counted as a relevant assessment for the purposes of RoB and the court may require another assessment unless they agree to have a further voluntary assessment there and then. If the drug worker

decided that a follow-up assessment was not appropriate based on the information given at the original assessment, they should look to contact the individual to see if any information they gave was incorrect and whether they would benefit from any additional voluntary treatment and support.

6. Does an individual have the right to have a solicitor present during a Required Assessment (initial or follow-up)?

No. If both the individual and drug worker agree, a solicitor can be present. However, neither the initial nor the follow-up assessment should be delayed or rescheduled in order for this to happen.

7. What information (with regards to offending) can the drug worker share with the police, without breaking client / worker confidentiality?

The confidentiality agreements between workers and clients remain the same for both Required Assessments as they do for voluntary assessments or any other meetings. There is no absolute standard, as employers set their own, other than the legal requirement around Child Protection issues and serious harm to clients or others. Normal practice is that:

- General references to offending behaviour are not usually disclosed
- Details of specific offences committed or about to be committed are usually disclosed to police
- Whatever the position, it is made clear to the client at the beginning of each meeting what the boundaries of confidentiality are.

Further guidance on information sharing can be found:
http://drugs.homeoffice.gov.uk/publication-search/dip/DIP_PPO_info_share.

8. Where has the power come from for the Required Assessment provisions?

Part 3 of The Drugs Act 2005 contains the Required Assessment provisions. Section 9(2) of the Act grants the power to the police to impose an initial assessment on a drug misusing offender following a positive drugs test, and at the same time, a police officer must impose the requirement to attend and remain at the follow-up assessment under Section 10(2).

9. Will the number and the outcome of the Required Assessments (initial and follow-up) be monitored by the Home Office?

Yes. If an individual is not on the case load, the drug worker will complete the Drug Interventions Record RA Assessment form to record the personal details of each individual having an assessment, together with the outcome of the assessment – for example, stating that a care plan was produced, or if the individual failed to engage during the assessment.

If the individual is on the caseload, an Activity Form, section 3 should be completed.

KPI 2 monitors the instances where the police require an individual to attend and remain at the initial assessment and the percentage of them attending. There is no KPI in respect of the follow-up assessment although it is expected that the local managers will monitor whether follow-up assessments are being required where appropriate.

10. Do individuals who are arrested and are found to already be subject to RoB need to undergo the Required Assessment process?

Individuals who are subject to RoB when arrested should be required by the police to attend and remain at both the initial and follow-up assessments. At the initial assessment, the drug worker should review their care plan and report the outcome to the CJIT responsible for ensuring that the individual is complying with their RoB conditions. If a review of the care plan cannot be done at the initial assessment, then a follow-up assessment should be arranged.

B. Requiring a Initial Assessment

1. Who decides if the individual should be assessed following a positive drugs test?

The decision as to whether an individual should be required to have an Required Assessment (initial and follow-up) following a positive drugs test should be taken by a police officer any rank. We would expect the vast majority of individuals who have tested positive to be required to have an initial assessment and a follow-up where this is deemed appropriate by the drugs worker undertaking the initial assessment. Discretion does exist, however a decision not to require an assessment must be authorised by a police officer of Inspector rank or above and would be in exceptional circumstances.

2. Can a CDO make the requirement to attend and remain at the Required (initial and follow-up) Assessments?

No. A police officer must make the requirement for the individual to attend and remain at the initial and follow-up assessment. A CDO can do the administration (form filling etc) but the requirement must be made and the DT1 and RA1 signed by a police officer.

3. How do the Police need to communicate the requirement for the individual to attend and remain at the initial assessment?

Police need to communicate the requirement to undergo the initial assessment verbally and in writing. The police should issue the RA1 form which will contain the information outlining where the initial assessment will take place. The RA1 carries the written warning to attend both the initial and follow-up assessments, and that an offence is committed if they fail to do so.

4. Why is there a need for written notice of a requirement for assessment?

A written notice is required to comply with the Drugs Act 2005 (see below for the relevant sections). It was included in the Act because the CPS need to have evidence that the individual was warned that they are at risk of prosecution if they fail to attend and remain for the duration of either assessment. Without this warning they would be unable to prosecute.

Drugs Act 2005:

“Section 11(5) – A police officer must give the person notice in writing which –

- a. confirms he is required to attend and remain for the duration of an initial assessment and a follow-up assessment (as the case may be),
- b. confirms the information given in pursuance of subsection (2) [time and place of assessment], and
- c. repeats the warning given in pursuance of subsection (3) [liability to prosecution if fail to attend and remain at initial assessment] and any warning given in pursuance of subsection (4) [liability to prosecution if fail to attend and remain at any follow-up assessment].

11(6) – The duties imposed by subsections (2) to (5) must be discharged before the person is released from detention at the police station.”

The RA1 fulfils the requirement under s11 for the police, by giving full written notice of the need to attend and remain at the initial assessment and the time, date and location of that assessment.

Section 13 refers to the requirement for full written notice in relation to the follow-up assessment.

“13(6) – The initial assessor must also give the person notice in writing which –

- a. confirms that he is required to attend and remain for the duration of the follow-up assessment,
- b. confirms that the information given in pursuance of subsection (4) [time and place of assessment], and
- c. repeats the warning given in pursuance of subsection (5) [liability to prosecution if fail to attend and remain at follow-up assessment].

The RA4 fulfils this requirement and it is for the drug worker undertaking the initial assessment to complete.

5. Is a initial or follow-up assessment, if conducted outside the Police station, by definition a condition of police bail?

No. The assessment provisions of the Drugs Act 2005 are free standing and are not related to the Bail Act and therefore are not a bail condition. A person may be released without charge and still be required to attend an assessment which would not be possible if part of the Bail Act.

6. Can a person be detained solely for the purpose of carrying out a Required Assessment?

No, an individual cannot be detained purely to attend a Required Assessment.

7. If an individual cannot be assessed for an operational reason (i.e. there are concerns it might interfere with the investigation) what action should be taken with the Required Assessment process?

The investigation of the offence for which an individual has been arrested should always take precedent over the Required Assessment process. However, "operational reasons" should not be used as an excuse for the police to avoid an individual requiring a Required Assessment. If there are exceptional reasons and these are known at the start of the process, and an Inspector agrees, then a Required Assessment need not be initiated.

If a requirement to attend an initial assessment has already been made, it may be rescheduled for another time and an RA2 issued. If this is not feasible or appropriate, then the individual would have failed to attend the initial assessment but with good cause and therefore no further action need be taken.

8. Can individuals resident in Wales or Scotland be required to attend a Required Assessment?

Yes. Required Assessments may be imposed on an individual who are resident in Wales or Scotland and who test positive in a custody suite in an intensive DIP area in England.

In Wales, Community Safety Partnerships are able to undertake both initial and follow-up assessments on referral from CJITs in the area of arrest where the requirement was originally made by the police; however the expectation is that they will only have to deal with follow-up assessments, as the initial assessment should have been completed by the CJIT in the area of arrest. For Scottish residents, an initial assessment should be held with the purpose of trying to encourage the individual to voluntarily engage with treatment and/or support either in the area they were tested or in their area of residence. DIP does not operate in Scotland, so unlike in Wales, a follow-up assessment cannot be arranged for Scottish residents.

As with all assessments involving individuals' resident out-of-area, the CJIT worker should be careful not to "over-promise" with regards to the treatment and other services available in the individual's area of residence.

9. Can a detainee's 8 hour rest period (as defined by PACE) be interrupted for the purpose of conducting an initial assessment?

No. Legal guidance states that a rest period, as defined by PACE, should not be interrupted for the purposes of conducting an initial assessment - this period of rest is a safeguard for the detainee's well-being. Ideally the initial assessment should be conducted prior to the commencement of a rest period. If this proves impractical, then efforts should be made to schedule the initial assessment at or after the conclusion of the rest period. This guidance has taken into consideration that an initial assessment may be viewed as not being directly connected to investigative process.

10. If the date, time or place of the initial or follow-up assessment needs to be changed because of drugs worker availability, does it continue to be a legal requirement to attend and remain?

If either the initial or follow-up assessment is changed because it is not possible for a drugs worker to carry out the assessment, the requirement still holds and any failure to attend and remain would be an offence.

11. Are there any instances where an individual does not need an initial assessment?

The expectation is that the Police should always impose the requirement for both the initial and follow-up assessments in all cases where an individual has tested positive for a specified Class A drug. Although the Police have discretion over whether to require a person to attend and remain at the initial and follow-up assessments, a decision not to require the initial and follow-up assessment must be authorised by a police officer of Inspector rank or above.

12. What happens if an individual tests positive but is released on bail (to Court or back to a police station) prior to the requirement being made to attend and remain at the Required Assessments (initial and follow-up)?

The requirement to attend and remain must be made before the individual is "released from detention at the police station". Therefore, if the individual has been released on bail it is not possible to make the requirement either at Court or when the individual answers bail at the police station. It is important that the requirement to attend the Required Assessments (initial and follow-up) is made as soon as practicable once a positive test result is known.

13. An individual is in police custody and tests positive. Due to operational reasons the individual is transferred to another police station prior to the requirement being made to attend a Required Assessment. Can the requirement be made to attend and remain at a subsequent police station?

Yes. The requirement to attend and remain must be made before the individual is "released from detention at the police station". Therefore, the requirement may be made at a police station other than the one where detention was first authorised, providing the individual has not been released from custody e.g. bailed to court or back to a police station.

14. What happens if following a positive drug test the detainee refuses to sign the RA1?

The only legal requirement is for the individual to be informed in writing of the need to attend a Required Assessment – including the actual time and place. In the event of the individual refusing to sign the RA1, the police should sign the RA1 and write 'Detainee refused to sign.' The RA1 should then be served in the normal manner informing the individual of their requirement to attend and remain for the duration of the initial assessment. It is the act of failing to attend the Required Assessment that is the offence. Refusing to sign the RA1 is not an offence in itself. Therefore, should an individual fail to attend the initial assessment, this should be reported to the police using the RA3 form. The Police and CPS should then determine whether to take the matter further using normal procedure. Any decision not to charge ("no further action") must be authorised by a supervising officer. Failure to sign the RA4 for the follow-up assessment should be treated in the same manner.

C. Requiring a follow-up assessment

1. Must a follow-up assessment be required in every circumstance?

The police will always make the requirement for an individual to attend both the initial and follow-up assessments where they have tested positive on arrest for a specified Class A drug. However, while it is expected that an individual will attend and remain at the initial assessment, it will be for the drugs worker to decide at the initial assessment, whether a follow-up assessment is needed.

Examples of where the drug worker may decide a follow-up assessment is not needed are as follows:

- an individual is already on the DIP caseload and a review of the care plan has taken place at the initial assessment;
- an individual is subject to a DRR;
- RoB has been given after the initial assessment but before the follow-up assessment has taken place;
- the drugs worker does not believe further intervention is necessary; and
- where an individual is already subject to another follow-up assessment in relation to another positive test and the drawing up of a care plan could take place at that follow-up assessment.

In all other cases, the expectation would be for the drugs worker to arrange an appointment for a follow-up assessment especially where an individual has not engaged or where the next step would be a further appointment to draw up a care plan.

2. How much discretion does a drug worker have in deciding whether to arrange a follow-up assessment?

The expectation is that a follow-up assessment will be arranged in all circumstances except for those mentioned in question 1 above. The follow-up assessment provides an opportunity for a drug worker to further engage with that individual with the hope of developing an initial care plan and subsequent entry into treatment.

3. If the drugs worker decides that a follow-up assessment is no longer required, how should this be communicated to the individual?

If the drug worker decides that the individual does not need a follow-up assessment, they have to inform the individual orally and in writing using the RA5.

4. Would a follow-up assessment be needed where an individual attends court in between their initial and follow-up assessments?

It all depends what happens at court. The individual would have their initial assessment, hopefully while in custody, and should have a follow-up assessment (if needed) arranged in their area of residence if the drug worker considers it appropriate.

If they appear before court between the initial and follow-up assessments and are:

- 1) Not remanded in custody;
- 2) Not given bail with Restriction on Bail conditions;
- 3) Not dealt with on first hearing and given a community sentence with a DRR; or
- 4) The case against them is not proceeded with;

then the follow-up assessment should go ahead as planned.

However, if they are:

- 1) Remanded in custody;
- 2) Given bail with RoB conditions; or
- 3) Sentenced with a community sentence (DRR);

then the follow-up assessment should be cancelled in advance (if the information can be obtained). If it cannot be obtained, then the drug worker who is due to undertake the follow-up assessment should record the reason for failing to attend on the DIR RA form. Each of the reasons mentioned have their own tick boxes.

5. If the individual cannot speak English and the CJIT cannot fund an interpreter, is that a valid reason not to arrange a follow-up assessment?

The Drug Interventions Programme should be available to meet the needs of all drug misusing offenders irrespective of their race, gender, culture, faith, age sexuality, family and social situation and type of drug misuse.

Being a non English speaker is not a valid reason for deciding not to arrange a follow-up assessment. If the drug worker considers that the individual needs a follow-up assessment, one should be arranged, regardless of the language spoken. Every area should have arrangements in place to provide an interpreter/colleague to speak particularly prominent languages from the local community. If not, services such as Language Line could be used to provide interpretation. If it was not possible to undertake an initial assessment initially because an interpreter was not available, a follow-up assessment should always be arranged with the area responsible for that assessment – that area should be made aware that an interpreter will be needed.

6. An individual tests positive, has an initial assessment and is required to have a follow-up assessment. Does the individual need to attend their follow-up assessment if they are on a DRR and, if the client fails to attend their follow-up assessment despite being on a DRR, should they be reported to the Police?

If a follow-up assessment has been arranged by a drug worker in the arresting area because they did not know that the individual was on a DRR, then, unless the assessment is cancelled, the individual should still attend. If they fail to attend/remain, the police should be informed. However, the assessment should be cancelled by the drug worker due to undertake the assessment if they subsequently find out before the assessment is due to take place that the individual is on a DRR. But if an assessment is not cancelled, then they must attend.

7. If an individual is arrested twice in the same week, do they need to have two initial and two follow-up assessments, especially if the first follow-up assessment still has not been held?

For every arrest and positive test, the individual must have an initial assessment for their drugs misuse. In the scenario given, where an individual is arrested twice within a week, we would expect two initial assessments to be held and also two follow-up assessments if required. It is possible to stage the two follow-up assessments at the same time and date; however this means that a fourth opportunity to engage with the individual is being lost. It would be better to arrange the second follow-up assessment a few days after the first follow-up assessment. If the individual attends the first follow-up assessment and the drug worker is able to complete an initial care plan at this assessment, then the second follow-up assessment can be cancelled. If this doesn't happen or the individual fails to attend or remain, the second follow-up assessment is still available to engage with the individual.

D. Arranging a Required (initial or follow-up) Assessment

1. Whose responsibility is it to arrange a follow-up assessment?

The legislative requirement is for the drugs worker to inform the individual during their initial assessment whether a follow-up assessment is required; and then to arrange the appointment (time and place) for that follow-up assessment and give written confirmation to them before the completion of their initial assessment using the RA4. The individual should not leave the initial assessment without being given confirmation in writing of their follow-up assessment appointment.

2. How should a follow-up assessment be arranged?

Once the drugs worker has decided that a follow-up assessment is appropriate, they should contact the individual's CJIT of residence using the most up to date SPOC list and arrange a

follow-up assessment appointment 4-8 days after the initial assessment. The individual who is subject to follow-up assessment should be informed both orally and in writing (using the RA4) of the time, date and location of the assessment, and also their legal requirement to attend and remain for the duration of that assessment in order to comply with their legislative requirement. The 4-8 day time frame is only a guide and should be decided on an individual basis.

3. How long after an initial assessment does guidance recommend a follow-up assessment should be arranged for?

It is anticipated that a follow-up assessment should be arranged for between 4 to 8 days after the initial assessment to allow a period of reflection following the initial assessment. However, this is ultimately the decision for the drug worker and also depends on drug worker availability to undertake the follow-up assessment. If the individual wishes to engage immediately, then a follow-up assessment can be arranged earlier than 4 days after the initial assessment.

4. What does guidance say is the correct procedure if you cannot contact the SPOC to arrange a follow-up assessment?

The Drugs Act requires that the person conducting the initial assessment is to inform the individual of the time and place at which the follow-up assessment is to take place and confirm this in writing if they consider a follow-up assessment appropriate. This must be done using the RA4 form and before the initial assessment is concluded.

In cases where the drug worker conducting the initial assessment is unable to contact the CJIT SPOC in the individual's CJIT of residence or it is not clear from an answerphone message or the CJIT SPOC list what to do in these circumstances, the drug worker should arrange an appointment five days later at the address listed for that CJIT on the CJIT SPOC list. A copy of the RA4 should then be faxed to the CJIT, and on receipt, if the CJIT identifies that they are unable to complete the appointment, it will be for that CJIT to contact the individual to re-arrange the follow-up assessment appointment for a more suitable time.

This is not ideal and during the follow-up awareness seminars, DIP managers were asked to ensure their entry in the CJIT SPOC list is clear for the police to arrange initial assessments and drug workers to arrange follow-up assessments. If any problems are encountered during the course of arranging any assessment, the matter should be reported to either the local Government Office or to the Home Office.

The Home Office has circulated guidance separately on this topic, which can be found: http://www.drugs.gov.uk/publication-search/dip/CJIT-SPOC-Guidance_2007-06.

5. Where can I find a copy of the CJIT SPOC?

The CJIT SPOC is electronically sent to every CJIT; DAT; selected treatment providers and police leads on the first working day of every month. It can also be obtained from DIRWeb – it is saved in the “help” section. Because of the private nature of the information contained on the SPOC list, it cannot be placed on an open website such as www.drugs.homeoffice.gov.uk.

6. If the individual states that they are of no fixed abode during the initial assessment, whose responsibility is it to undertake the follow-up assessment?

Existing protocols should exist locally on this issue. The individual should be referred to the area that is responsible for them; for example either to the area where they are already on the caseload or where their benefits are paid.

7. If the individual is not due to return to their CJIT of residence for the next three weeks, should the follow-up assessment be delayed until their return?

Commonsense is needed in relation to when and where a follow-up assessment should be arranged for. Although we have stated in guidance that a follow-up assessment should be arranged between 4 and 8 days following the initial assessment, a follow-up assessment can be held before and after this time if the drug worker conducting the initial assessment thinks this is appropriate. It may be appropriate, depending on the needs of the individual, for the CJIT where the arrest took place to take the individual on their caseload until they return to their area of residence.

8. Does legislation stipulate when a follow-up assessment should be held?

The Drugs Act 2005 does not provide any time frames for when a follow-up assessment appointment should take place. However, the guidance suggests that a follow-up assessment should take place between 4 and no longer than 8 days after the initial assessment. These guidelines are entirely flexible, and it is ultimately a decision which should be based on the individual case and drug worker availability.

9. Should a follow-up assessment be re-arranged if the individual is remanded in custody?

If an individual is remanded in custody, there is no need to re-arrange the follow-up assessment. An assessment should not be re-arranged, as it is impossible to know how long they will be remanded in custody for and an assessment would have to be continually re-arranged until they are finally released. If a follow-up assessment is arranged and the individual fails to attend because they are in custody, the drug worker responsible for that assessment should record the failure to attend on the DIR-RA form with the tick box marked that they have been detained in custody. They should also complete the RA3, recording the fact that the individual did not attend because they were in custody.

10. Under what circumstances could a follow-up assessment be conducted for an out of area client in the area of arrest?

The follow-up assessment could be held in the area of arrest if the person is staying there for some time and the area of arrest is likely to take them onto their caseload. In all other circumstances, the follow-up assessment should be arranged in the area of residence.

11. What happens if the drug worker fails to arrange a follow-up assessment during the initial assessment?

Legislation requires that a follow-up assessment is to be arranged during the initial assessment, if the drug worker considers that it is appropriate. This should be done in every situation.

If for whatever reason the time and place for the follow-up assessment is not arranged, and the individual is not served the completed RA4 form before the conclusion of the initial assessment, then the individual is not legally required to attend and remain at any subsequent follow-up assessment. If the individual subsequently fails to attend or remain at any "follow-up assessment", no enforcement action should be instigated.

In these rare cases, the CJIT of residence should be informed, and it would be for them to try and engage with the individual and get them to attend a voluntary assessment if appropriate. In this situation the RA4 should not be used

12. How do you know which CJIT SPOC to call to arrange a Required (initial and follow-up) Assessment?

For police officers and drug workers, working out where a person's address of residence is located will be an everyday job. A number of points may help e.g:

- Keep a map to hand with the SPOC list so you get used to the layout of the areas to which you refer most;
- Most individuals will recognise the name of the DAT nearest to where they live, so ask them;
- If you try one in the broad area and it's not right, the SPOC there should be able to re-direct you – they should have knowledge of the local area and be able to signpost you to the correct CJIT area;
- Try asking the local police;
- If you are unable to speak to SPOC personally, you will usually be making the appointment for at least 5 working days hence, so there will be time for the CJIT to transfer the individual's RA to another area if necessary (it may be sensible to add a note to any paper-only referral to the effect that the CJIT should advise you if the referral was incorrect and individual has been referred on);
- Look at the CJIT SPOC list carefully as a few areas have included the geographical location in which they cover.

13. Does the RA1 form (Written Notice of Initial Assessment) have to be signed by the Police officer and the individual?

The requirement under the Drugs Act is that the information contained on the RA1 is to be given to the client in writing – there is no specific requirement that it has to be signed by either the officer or the individual subject to the requirement. The RA1 therefore remains in compliance with the Act, even if it has not been signed.

14. Does the RA2 (Written Notice of Required Assessment – Vary Appointment Time) need to be signed by the individual?

There is no need for the individual to sign the RA2. The RA2 will often be sent by post to the individual, especially in instances where the CJIT is changing an appointment which has been arranged by the police.

15. Who fills out the RA2?

Either the Police or a CJIT worker may change the time/date/location of an initial assessment and a CJIT worker is able to change the time/date/place of a follow-up assessment. Any change to either assessment must be communicated to the individual through the RA2 form. Where an initial assessment is changed, three copies of the RA2 form must be completed; one for the individual, one for the assessing organisation and one to be placed on the police custody record. 3 copies may be needed for a change to the follow-up assessment – one for the individual, one to the CJIT (for the case file) and one to the assessing organisation if different. There is no requirement for this document to be signed by the individual.

16. Is there a specified/accepted method of service for the RA2 form that will satisfy the CPS if brought to court, i.e. will post suffice?

Legislation simply states that the information must be given in writing; therefore post will suffice.

E. Carrying out a Required Assessment

1. Who can carry out a Required Assessment?

Legislation states that a “suitably qualified person” should complete the Required Assessments (initial and follow-up). This will be in almost all instances a CJIT worker employed to carry out assessments and will have (or be working towards) the relevant DANOS competencies.

2. Can initial assessments be carried out in cells?

There is nothing in law to prevent an assessment being carried out in the cell; however any decision on this should be risk assessed by both the police and the drugs worker together. Greater engagement may occur away from cells.

3. Can the same interpreter be used to complete both the PACE interview with the police and also the initial assessment with the drugs worker while in custody?

Yes, although the drug worker should explain the purpose of the assessment to the interpreter so that it is clear that it is not a police interview.

4. Can a Required Assessment (initial or follow-up) be carried out in the home of the drug misuser?

This is not illegal. However, it is discouraged as a lack of willingness to travel to attend an assessment indicates an unwillingness to engage. If a decision is made to carry out a Required Assessment (initial or follow-up) in a drug misusers' home, then a full risk assessment would need to be carried out.

5. If an individual tests positive but is remanded in custody (i.e. prison) before the initial assessment takes place, will the CARAT workers undertake the assessment?

No. If a person is remanded in custody then the CJIT worker should report to the police non-attendance at the Required Assessment but this will be with good cause as the person was in custody at the time the Required Assessment was arranged. The CJIT should refer the individual to the CARAT as per normal practices.

6. How long should the initial and follow-up assessments take?

This will entirely depend on the individual's needs and their engagement at these assessments.

7. Why and how should drug workers repeat the warning for non-compliance?

The Drugs Act requires that the drug worker warns the individual that if they fail to attend and remain at the follow-up assessment, without good cause, they may be liable to prosecution and this must be repeated in writing. The drug worker will want to make sure that the individual is aware of the consequences of non-attendance at the follow-up assessment and to ensure that the individual knows the consequences of failure to attend and remain. The warning has been included in the RA4 form to meet the written requirement contained within legislation. It is also good practice to repeat the warning about remaining at the start of the follow-up assessment and to stress the need to remain until the assessment has concluded.

It is important for the drug worker to remember that it is the police who imposed the requirement initially, and they would have already given the same warning to the individual when the requirement was originally made. The drug worker would just be repeating what has been said previously.

8. For active clients on the DIP caseload, is it a requirement that the actual care plan must be available to the drugs worker during the initial assessment, or a) is a copy of the care plan viewed via a computer screen acceptable, or b) is "knowledge" of the content of a client's care plan sufficient?

There is no requirement for the physical care plan to be present, however there needs to be a meaningful review of the existing care plan during the initial assessment. Having the care plan on the computer screen is perfectly acceptable, as is having "knowledge" of the care plan. Another possibility is phoning up the case worker (if it is possible to identify one), to ascertain the key issues and conduct a thorough review that way. If the care plan isn't ultimately accessible, then a follow-up assessment should be arranged and every effort should be made for the care plan to be available at that assessment.

9. If the police decide to charge an individual while they are having an initial assessment in the custody suite, does the assessment have to stop?

No. The duty imposed on a custody officer under section 37 of PACE is that once there is enough evidence to charge that this is done "as soon as practicable". In the case where a decision is made to charge happens when the person is having an assessment, the person should be informed of the decision when the assessment is completed – this would fall within the term "as soon as practicable".

F. Definition of failing to attend and remain

1. What is the definition of "failing to attend and remain"?

- Failing to attend the assessment without prior notification and without the agreement of the drug worker or CJIT or,
- Leaving the assessment without good cause before the worker has been able to deliver its key constituents or,
- Displaying behaviour which places individuals at risk of harm or distress.

2. Can a person be charged with failing to attend an assessment if they say that they won't attend before the requirement is made?

No. The requirement to attend both Required Assessments should still be made even if the person says they will not attend. A person can only be charged with the offence once they have actually committed it (i.e. they failed to attend and remain for the duration), not just showing the intent to commit the offence.

3. Is refusal to speak to be counted as a deliberate non-engagement (i.e. should someone who is silent throughout a Required Assessment (initial or follow-up) be charged with having failed to attend and remain?

The individual must attend & remain and although it is hoped that they engage, this is not necessary. Therefore it is possible for an individual to arrive at the assessment, remain silent for the duration and still comply with the requirement. The CJIT worker in this situation would still be able to explain what treatment and support is available, as well as giving harm minimisation advice. If the failure to speak occurred during the initial assessment, we would expect the CJIT worker to arrange the follow-up assessment in order to better assess the individual's dependency or propensity to use specified Class A drugs – lack of motivation is not a reason for not organising a follow-up assessment. The thought that they will have to attend a second assessment may encourage them to engage to avoid that possibility. However, it is expected that the majority of individuals will engage and that this situation will rarely, if ever, occur.

4. If it is unsafe to start an assessment, does this count as failing to attend and remain?

If an individual is deemed unfit to attend a Required Assessment (without good cause) then they have failed to attend and remain and this failure should be acted upon. Drug workers should not be placed in any situation where there is any risk of violence against them.

G. Actions on an individual attending and remaining

1. What happens if an individual attends and remains at an initial assessment?

If the initial assessment has been completed fully, the drug worker has the ability to either arrange a follow-up assessment or end the process. The follow-up assessment would be arranged with the intention of completing a screening/triage assessment and an initial care plan. Following an initial assessment, any recommended treatment or support would be entirely voluntary.

2. What happens following completion of a follow-up assessment?

If the individual attends and remains at their follow-up assessment, they would have completed their legal obligations on this occasion. They should have been offered and

encouraged entry into treatment and support if appropriate, as well as the ability to engage further with the drugs worker if they wish. If they test positive for Class A drugs on another occasion, the process will need to be repeated.

3. If an individual attends and remains, does this need to be communicated to the Police?

The CJIT worker does not need to send routinely this information to the Police. However, the CJIT worker should complete an RA3 form after every assessment thereby maintaining complete records of whether individuals attend and remain at assessments. This information may be requested by the courts or police at a later stage.

H. Actions on an individual failing to attend and remain

1. What happens if an individual fails to attend and remain at a Required Assessment (initial or follow-up)?

The CJIT worker should report failure to attend either assessment to the Police via the RA3 form. The Police and CPS should then determine whether to take the matter further using normal procedure. Any decision not to charge (“no further action”) must be authorised by a supervising officer.

2. Is the procedure different for reporting failure to attend and remain at a follow-up assessment than for an initial assessment?

The procedure is exactly the same for when a person fails to attend and remain at an initial assessment as it is for failure to attend at a follow-up. The CJIT worker should report this to the arresting Police force via the RA3 form. The Police SPOC which is circulated as part of the DIP SPOC outlines who the police lead is across each drug testing police force – the RA3 should be sent to this individual. The Police and CPS should then determine whether to take the matter further using normal procedure. Any decision not to charge (“no further action”) must be authorised by the supervisory officer.

3. Who needs to report a failure to attend and remain at a Required Assessment?

The Drugs Act states that the “assessor” must inform the police of any failure to attend and remain. In practice, legal advice is that either the assessor (i.e. the CJIT worker) may personally complete the RA3 or a CJIT staff member may complete an RA3 on behalf of the assessor. However, the assessor must have personal knowledge of the failure to attend and remain as recorded on the RA3 and be prepared to make an evidential statement and attend court in respects of such a statement if necessary.

4. Who is responsible for informing the police that an individual has failed to attend and remain at a Required Assessment?

It is the responsibility of the CJIT to inform the Police in the area where the RA was originated (rather than in the area of residence), that an individual has failed to attend and remain at the assessment.

It is then the responsibility of the Police in the area of origination to arrest the individual (or ask the police in the area of residency to arrest the individual) for failing to attend and remain.

Note: this differs from the process for informing the police that Restriction on Bail conditions have been breached.

5. Which police force should the drug worker who undertakes the follow-up assessment report any failure to attend to?

The CJIT worker who is responsible for undertaking the follow-up assessment will have to inform the police force area who imposed the requirement that the individual has failed to attend and remain at the Required Assessment (initial and follow-up). Where a follow-up

assessment was held in a different police force area from the one which made the initial requirement, the failure to attend report will still go to the original police force.

For example, Merseyside Police arrest the individual, they test positive and have the Required Assessment (initial and follow-up) imposed. They undertake the initial assessment in Liverpool; the drugs worker arranges the follow-up assessment in their DAT of residence, for example Bury. If they fail to attend and remain at the follow-up assessment, Bury CJIT should inform Merseyside Police rather than Greater Manchester Police (GMP) of the failure to attend/remain using the RA3. Merseyside Police may then contact GMP in relation to arranging the subsequent arrest.

6. If the assessment is refused within custody immediately, can the police complete the RA3 instead of worker?

If the RA1 has been issued to the individual and the time defined for the initial assessment has passed and the individual has refused to attend and/or remain at that assessment; the police can complete the RA3, Basic Evidential Statement and then charge the individual.

7. Is failure to attend and remain at either Required Assessment a recordable offence?

Yes, it is recorded on PNC as such.

8. Who decides whether to prosecute an individual for failing to attend & remain at a Required Assessment?

- If it is anticipated that the individual will plead guilty the Police can make the charging decision.
- In all other cases, a prosecutor will take the decision to charge. This includes where the offence arises out of an arrest for substantive matters that themselves are then required to be submitted to CPS for a charging decision.

In addition, the CPS are available to offer advice on request.

9. Why does the guidance say that the police may only take the charging decision for failure to attend/remain at an Required Assessment (initial and follow-up) if it is anticipated that the person will plead guilty, while in all other situations (including where the offence arises out of an arrest for substantive matters) the police are required to be refer to the CPS for a charging decision?

It was agreed that prosecution decisions for failure to provide a sample or failure to attend/remain would be taken by the prosecutor in the circumstances as outlined in the Director's guidance, i.e. if a not guilty plea is anticipated. If there is an expectation that the person will plead guilty, either because he has made admissions or the circumstances surrounding his arrest, then the decision to charge is one for the custody sergeant.

10. Will the screening test stand up in court as a positive test on its own (i.e. without confirmatory analysis)?

Further analysis is unnecessary as Section 12 of the Drugs Act 2005 applies if a person is required to attend an initial assessment under s.9. Section 9(1)(b) states: an analysis of the sample reveals that a specified Class A drug may be present in the person's body. All that is required is to demonstrate a positive test, as this indicates there may be presence of a Class A drug, and this can be done via exhibiting the DT2. The print-out for the test machine is also attached to these documents. In any event, those tested can always dispute the test, and in such situations, it is sent to the Home Office authorised confirmatory laboratory for confirmatory analysis which will either uphold or overturn the original result.

11. If an individual, resident in an area other than where the requirement was made, fails to attend their Required Assessment (initial or follow-up) and is charged, to which court should they appear?

There is a guiding principle that a case should be heard at the magistrates' court for the local justice area in which:

- 1) the offence is alleged to have been committed or where the subject of the complaint originated or;
- 2) the person charged with the offence resides.

However, the guiding principle can be departed from in individual cases for good reasons or with the agreement of Bench Chairs of Justices' Issues Groups for the relevant local justice areas. This is because, under Section 2 of the Magistrates' Courts Act 1980 as amended by Section 44 of the Courts Act 2003, a local magistrates' court has the jurisdiction to try any summary offence. Therefore an individual charged with the offence of failing to attend and remain at an assessment may be placed before any magistrates' court and it doesn't matter where the requirement was made. It is therefore for the police who have charge the person with failure to attend/remain to decide which would be the most appropriate magistrates' court for the person to appear.

12. If an individual has been charged with either refusing to provide a sample or failure to attend and remain at a Required Assessment, when should the case be taken before court?

If an individual has been charged with either of these offences it is the expectation that the matter will be dealt with as expeditiously as possible within the Criminal Justice system. If an individual is charged immediately with substantive criminal offences then it is most practical for all the charges to be brought before the Court together. However, if an individual is subject to either police bail or long periods of Court bail, then the charges for refusing a drugs test or failing to attend and remain at an assessment should be brought before the Court as a separate matter. This will deliver a strong message to individuals committing this type of offence and will ultimately speed up the process of get drug using offenders into treatment.

13. Do criminal sanctions differ between missing an initial or follow-up assessment?

Criminal sanctions are exactly the same for both offences.

14. Should an individual who has failed to attend and remain at either the initial or follow-up assessment be charged with failure to attend and remain, even if the Police decide to take no further action with regard to the offence they were originally arrested for?

Yes. If the individual fails to attend and remain at either their initial or follow-up assessment, this is a separate offence to the one for which they were originally arrested, so a separate charge should result. This is the case even if the original offence for which the individual was arrested is not proceeded with.

15. What forms should be used to show a person failed to attend their Required Assessment and why?

The RA3 form should be completed after every assessment. This form should be completed to show that the individual failed to attend and remain. The form should be sent to the Police SPOC of the arresting BCU to report the failure to attend/remain. The DIR-RA form, if not on the caseload, or the Activity Form, if on the caseload, should be used to also record whether the individual attended and remained. If using the DIR-RA form, Sections 1,2,3 and 4 should be completed if it is an initial assessment and sections 1,2,3 and 5 if a follow-up.

16. If the offence which the individual was originally arrested for has subsequently been dropped, can enforcement action still be taken against an individual for failing to attend and remain at either their initial or follow-up assessment?

In response to the question which you have asked - where the offence which an individual was originally arrested for (and subsequently positively drug tested) has been dropped or not proceeded against, enforcement action should still be taken against them for failure to attend and remain either their initial or follow-up assessment. The reason for this is that failure to attend and remain at either Required Assessment is a totally separate offence to the original offence with which they were arrested for.

VI. RESTRICTION ON BAIL (RoB)

A. General information

1. What is RoB?

To put it simply, RoB reverses the presumption of bail for those who have tested positive unless they agree to undergo an assessment and any proposed follow-up (treatment and/or other support) unless the court is satisfied that the defendant will not re-offend while on bail. It acts as an incentive for those charged with offences to address any drug misuse or lose the right to be considered for bail pending trial. It has successfully operated in a number of court areas and is being expanded to all areas in England, meaning that everybody who tests positive and lives in England will be eligible to be considered by the courts.

2. What are the benefits?

RoB reduces offending whilst on bail by encouraging defendants who have tested positive to engage in drug treatment and other appropriate assistance following an assessment of their drug misuse. Those who either refuse to agree to these bail conditions or breach them, they then face the likelihood of being remanded in custody unless they are able to convince the courts that they will not re-offend whilst on bail.

3. What role do the police have in applying RoB?

The police play two roles in making RoB work:

- Firstly, they need to ensure that the test results and confirmation of attendance (or otherwise) at a Required Assessment are communicated to the court via the CPS. This is because the court can apply RoB only when they are aware of a positive drugs test.
- Secondly, they need to enforce, and return to court, those individuals who breach their RoB conditions.

4. If an individual is arrested for a trigger offence, tests positive to specified Class A drugs, but is then charged, in the same period of detention, with a non-trigger offence, can RoB still be applied?

Yes. It is up to the courts to decide whether the use of the specified Class A drug contributed to the offence and so the result of a positive drugs test should be put before the court for any charges that occur in the same period of detention in which the test was carried out. The court can then decide whether to apply RoB conditions.

5. When an individual attends court after being arrested, tested positive and charged, how does the court know if the individual has been tested before, and if so what the test results were (i.e. is there a pattern of positive drug tests)?

A comprehensive record of an individual's tests and the results will be kept by the police (process to be decided locally); including all DT2 forms relating to tests the individual has taken, regardless of whether the arrest, for which the drug test was taken, leads to a charge. The DT2 includes information on the test, results and any confirmatory analysis required. Accordingly, the police should wherever possible, provide the CPS with an individual's previous testing history. For this process to operate it is important that a DT2 is completed by custody staff after all tests.

6. Can an individual be given RoB if the results of a disputed test have not been received back from the confirmatory test laboratory at the time of the court bail hearing?

Yes. The positive test result remains a positive test until and unless the confirmatory laboratory analysis returns a negative result. In cases of disputed results (or where medication is claimed to have been taken) the court should be informed that the test has been disputed and it will be for the court to decide whether they wish to impose Restriction on Bail

conditions. They may decide to grant bail without RoB conditions to a date when the confirmatory analysis is known. In these cases, if the positive result is upheld they can impose restriction on bail conditions, if appropriate, at the next bail hearing.

In the rare cases where RoB is imposed and later the confirmatory laboratory analysis returns a negative result, the court should be informed of the fact at the next bail hearing. In these cases, it is open to the defence to seek an earlier court date in order for the restriction on bail conditions to be removed and the bail conditions varied. The drug worker will also need to decide what further interventions may be appropriate – if the defendant has admitted a drug problem they will wish to carry on working with the defendant on a voluntary basis and the Court, at future bail hearings, may use their discretion under the Bail Act to impose a condition of bail that the misuser continue working with the drug worker and remain in any treatment.

7. Should a defendant, who is already on a DRR, be given RoB?

Yes. The Court is obliged to give them RoB (if they are eligible) unless there is no significant risk of them reoffending. If they are on a DRR they can still be given RoB. In this situation it is recommended that Probation and the CJIT discuss the individual and develop a plan that is most likely to result in a successful outcome. That may be the use of RoB with the same or different conditions as the DRR.

8. Can RoB be applied for all offences?

No, RoB can only be applied for imprisonable offences.

9. What impact is RoB having on the prison population?

Evidence suggests that, although RoB has added additional conditions to defendants' bail, this has not resulted in significant increases to the prison population through failure to comply. Almost all defendants accept the additional conditions and most comply with them.

B. RoB implementation

1. Why was RoB rolled out in non-intensive areas?

RoB was rolled out across England so that anyone appearing in court in England who has tested positive and is resident in England will be eligible for RoB. This is because for RoB to be applied it needs to be activated in both the court area where the defendant appears and the court area where they live.

2. Who were responsible for notifying the courts that RoB is in place?

The Home Office sent letters to the courts informing them that RoB can apply from the end of March 2006.

3. If an offender has attended court prior to the 31st March 2006 and been granted unconditional bail but is then brought before court again on or after the 31st March 2006, can RoB be applied?

Yes. If the individual is resident in England and attending court for a bail hearing in England, RoB can be applied regardless of when the individual was arrested, charged or previously attended court.

4. What is the eligibility criteria for RoB?

The criteria for RoB eligibility is that the individual must:

- Be over 18 years of age;
- Be resident in an area where RoB is switched on (i.e. anywhere in England);
- Be attending court in an area where RoB is switched on (i.e. anywhere in England) and;
- Have tested positive to a specified Class A drug during the same period of detention within which they were charged

- Face charges where a custodial sentence is possible.

C. Required assessments and relevant assessments

1. Won't the requirement to attend the Required Assessment make the RoB provision redundant?

No. The Required Assessment provisions are designed to work in conjunction with the Restriction on Bail provisions. Where a defendant has attended their Required Assessments and engaged, these assessments may be treated as a Restriction on Bail assessment and the proposed follow-up treatment and/or other form of support will form the conditions of bail. Therefore, there will be a longer period of time to participate in any treatment or programme proposed to assist with their identified drug misuse problem.

2. What is meant by a relevant assessment for the purposes of RoB?

As defined in legislation a "relevant assessment" means an assessment conducted by a suitably qualified person whether the individual is dependent upon or has a propensity to misuse any specified Class A drug.

3. What takes preference a RoB assessment or a Required Assessment?

The RoB assessment takes preference over any Required Assessment appointment (initial or follow-up).

4. What is the difference between a Required Assessment and a relevant assessment?

A Required Assessment is a relevant assessment for RoB purposes if, by the end of the RA, the worker has been able to identify and propose the appropriate follow-up for the individual. In such cases, the worker will record this in the appropriate box on the RA3. If the court is to impose RoB, the first condition may then be the first follow-up appointment (this should not be confused with a follow-up assessment appointment). If the RA has not enabled the worker to reach a decision on appropriate follow-up, this will be recorded on the RA3. In that case, the court, if imposing RoB, would make a new assessment the first condition. Workers might use the fact that the RA may be considered relevant for RoB purposes, thereby avoiding the need for a second assessment, as one of their arguments in encouraging the client to engage.

5. What is meant by a relevant follow-up for the purposes of RoB?

As defined in legislation a "relevant follow-up" means such further assessment and such assistance or treatment (or both) in connection with the dependency or propensity as the person who conducted the relevant (or any later) assessment considers appropriate for the individual. This should not be confused with the follow-up assessment.

6. What happens if an individual is given RoB before their scheduled follow-up assessment appointment?

RoB takes precedent over the follow-up assessment appointment, just as it does the initial assessment. It is likely that the drug worker will want to attend the pre-arranged follow-up appointment as part of their RoB condition and will not want to cancel the appointment. They should explain this to the individual.

However, if the individual fails to attend and remain at that appointment, enforcement action cannot be taken against the individual for failure to attend and remain at the follow-up assessment. Instead breach action should be taken against the individual for failing to comply with their RoB conditions.

7. Can the courts impose a Required Assessment as part of bail conditions?

No. The power to require a person to attend a required assessment under the Drugs Act 2005 can only be required by a police officer. Where a person appears before a court where RoB applies, the court should consider whether the person is eligible for RoB conditions. If RoB is

applied, the requirement to attend any outstanding Required Assessment appointments in relation to the offences in which RoB was given ceases.

D. Action on breaches of RoB conditions

1. What happens to those who breach their RoB conditions?

Where a defendant fails to comply with the requirement to undergo an assessment or to participate in any relevant follow up such as drug treatment, breach proceedings can be instigated. It is the responsibility of local Criminal Justice Integrated Teams (CJIT) to monitor clients' compliance with RoB and in such cases, the CJIT will inform the police who will then make a decision whether to act on this information and arrest the defendant for breach of conditions.

As in other bail cases, once a defendant is brought back before the court, it is for the court to decide what action to take following a breach. In some cases this may mean the defendant is remanded in custody, whilst in others they may be granted bail again, subject to the same or different conditions.

2. Who is responsible for informing the police that RoB conditions have been breached?

- It is the responsibility of the CJIT to inform the Police in the area of residence that an individual has breached their conditions.
- It is then the responsibility of the Police in the area of residence to arrest the defendant for breach of RoB conditions if they are of the view that there is enough information to enable the defendant to be brought before court.
- Note: this differs from the process for reporting failure to attend and remain at a required assessment, where breaches are reported to the arresting police force rather than the police force of residence.

3. If a defendant breaches their RoB conditions, should the CJIT in the area of residence inform the CJIT in the area where RoB was imposed?

Yes. If a defendant breaches their RoB conditions, the CJIT in the area of residence should inform the local police to action the breach. The CJIT should also contact the CJIT in the area where RoB was imposed as the police may be unable to locate the defendant to action the breach or decide for operational reasons not to action the breach. In these circumstances, it is important that if the defendant returns to court to answer his bail that the court is aware of any failures to attend appointments etc.

4. If a person has breached their RoB conditions and attends court for their bail date but has not been arrested for the breach in the interim period, can the court still deal with the breach?

In this situation the RoB conditions would have expired as the bail period would have ended. The court should be informed of the breach of conditions and, if a further bail decision is required, use this information to determine whether to reapply RoB.

VII. NON-INTENSIVE AREAS

1. How has the introduction of Testing on Arrest impacted the non-intensive areas?

- Testing on arrest has not been introduced in the non-intensive areas and so will not directly impact them.
- There are no plans at present to centrally fund any expansion of drug testing to any new areas. However non-intensive areas can self fund drug testing themselves, providing all other DIP services are also provided. Guidance on self funding can be found at: http://drugs.homeoffice.gov.uk/publication-search/dip/DT_Guid_AppIntDIPStatSelfFundBas.
- The Home Office funds drug testing on arrest in the areas with the highest levels of acquisitive crime. In these areas, around 40% are testing positive for Class A drugs.

2. How will the implementation of Required Assessment affect non-intensive areas?

- The requirement to attend a Required Assessment can only be initiated following a positive drug test. As a result, non-intensive areas will not be able to impose any Required Assessments.
- In the majority of cases, initial assessments will be carried out soon after arrest/charge in the area where the individual was arrested.
- However in a small number of cases, individuals will not be able to be assessed in the area they were arrested and will be referred to their area of residence for their initial assessment.
- Non intensive areas will be expected to undertake follow-up assessments on all individuals who are resident in their area and where the drug worker at the initial assessment considers that a follow-up assessment is appropriate. These individuals would have been arrested and drug tested in an intensive DIP area, recording a positive result.
- Research was undertaken to estimate the number of assessments likely to result in non-intensive areas. The findings were that any impact would be minimal with a number of areas seeing no affect at all.
- The current practices of referring individuals between areas for follow up assessment, treatment or other wrap around services will continue to operate in the same way as now.

3. How has the introduction of RoB affected non-intensive areas?

RoB is now in place across all Local Justice Areas in England (including non-intensive areas) and as such will impact non-intensive areas. As with Required Assessment, the expectation will be that the defendant will have been assessed before they appear in court or while at court, so the first part of the RoB provision (i.e. that a defendant undergoes an assessment) will have been completed. However, it is accepted that in a small number of cases this will not have happened and if the defendant lives in a non-intensive area, it will be the latter's responsibility to undertake the RoB assessment.

In all RoB cases, the area of residence will be responsible for any follow-up, whether that be treatment or any other form of help and support. They will also be responsible for compliance with the RoB conditions and must deal with any breach of those conditions. This will include informing the local police and dealing with any breach hearings at their local courts.

The Operational Guidance for non-intensive areas covers this in greater detail.

4. What Guidance will be produced for non-intensive areas?

- Separate guidance has been produced for all non-intensive areas, reflecting the different approach and responsibility that these areas are faced with compared to intensive areas.
- This Operational Guidance was originally released in March 2006, but has been updated to reflect the implementation of follow-up assessment. This version was distributed in March 2007 and is available for download from: <http://www.drugs.gov.uk/publication-search/dip/non-intensive-guidance>.

VIII. YOUNG PEOPLE

1. Do the Drugs Act 2005 provisions apply to those aged under 18 years?

No. The Drug Testing on Arrest and the Required Assessment provisions in the Drugs Act 2005 apply to those aged 18 years and above only.

2. Will Drug Testing on Arrest and Required Assessment be extended to include those under 18 in the future?

No. Drug testing on charge for under 18s was a pilot intervention in 10 areas that was commissioned to identify young people at risk of problematic Class A drug use to help them to reduce their drug use and related crime. The drug testing on charge pilots came to an end on March 31st 2007 when Home Office Ministers decided not to continue drug testing. An independent evaluation into drug testing on charge found insufficient evidence to support Class A drug testing for under 18s.

IX. CHARGE WORDING

1. Charge wording for “Detainee fail / refuse to provide a sample for Class ‘A’ drug test”

OFFENCE WORDING

On ****(..SPECIFY DATE..)** at ****(..SPECIFY TOWNSHIP..)**, being a person in police detention, arrested for/charged with

(A)_[an offence, namely ****(..SPECIFY THE OFFENCE..)**, contained within Schedule 6 to the Criminal Justice and Court Services Act 2000.],_

(B)_[an offence, namely ****(..SPECIFY..)**, and a police inspector has authorised the taking of a sample,]_

failed without good cause to provide a

(C)_[sample of urine]_

(D)_[non intimate sample]_

for the purpose of ascertaining whether you had a class 'A' drug specified in Part 1 of Schedule 2 to the Misuse of Drugs Act 1971 in your body

LEGISLATION

Contrary to sections 63B(8) and 63C(1) of the Police and Criminal Evidence Act 1984.

POINTS TO PROVE

- date and location
- failed/refused
- while in police detention
- without good cause
- to provide a sample of urine/ other non-intimate sample
- for the purpose of ascertaining whether
- there was any specified Class A drug in their body

Detainee fail/refuse to provide fluid for test for class 'A' drug

Offence Code PL84001 PNC Code 9.2.26.1

PNLD reference number: H100

2. Charge wording for “Failure to attend and/or remain”

OFFENCE WORDING

On ****(..SPECIFY DATE..)** at ****(..SPECIFY TOWNSHIP..)**, a sample having been taken from you under section 63B of the Police and Criminal Evidence Act 1984 and analysis of that sample revealed that a Class A drug, namely ****(..SPECIFY THE DRUG..)**, may be present in your body, you failed to

(A)_[attend]_

(B)_[remain for the duration of]_

an initial/follow-up assessment to establish whether you were dependant upon or had a propensity to misuse a Class A drug

LEGISLATION

Initial assessment - Contrary to section 12(3) and (4) of the Drugs Act 2005;

Follow-up assessment – Contrary to section 13(3) and (4) of the Drugs Act 2005.

POINTS TO PROVE

- date and location

- a sample having been taken under section 63B of PACE
- analysis of that sample revealed that a Class A drug
- may be present in your body
- a requirement having been made by a police officer to attend failed to
- attend/remain for the duration of an initial/follow-up assessment to establish whether
- you were dependant upon/had a propensity to misuse a Class A drug
- fail to attend for/ remain for duration of initial/follow-up assessment following test for class A drug

Initial assessment:

CJS Code - DA05001

ACPO Code - 9.2.29.1

PNLD reference number - H8141

Follow-up assessment:

CJS Code DA05002

ACPO Code 9.2.28.1

PNLD reference number – H8146

X. SERIOUS AND ORGANISED CRIME AND POLICE ACT, 2005 (SOCAP)

1. Following the amendment of section 24(5) of PACE by section 110 of SOCAP for which offences can the police arrest a person?

The police can arrest a person whom they have reasonable grounds to suspect of committing, being about to commit or having committed any offence if they consider it necessary to do so for any of the reasons listed in section 24(5) of PACE, as amended by SOCAP (which came into force on 1st January 2006).

Paragraph 2.9 of Code G sets out the criteria for making an arrest without a warrant (in addition to suspicion of involvement in an offence). These criteria are lifted from section 24(5) of PACE, as amended by SOCAP. The list set out in paragraph 2.9(e) of Code G are examples only – and are not exhaustive – but are meant to be helpful and further explain the criteria in section 24(5)(e) of PACE.

2. What if drug misuse was suspected as causing or contributing to the offence, should the person be arrested?

The police would need to consider whether the conditions of section 24(5) of PACE have been met.

3. Can the police arrest a person for begging or soliciting?

Yes. The police can arrest a person for any offence if they consider it necessary to do so for the reason(s) listed in section 24(5) of PACE.

4. Does failing to attend and remain at a Required Assessment become an offence for which you can be arrested, following the implementation of the Serious and Organised Crime and Police Act 2005 (SOCAP) on the 1st January?

Section 24(5)(e) of PACE as amended by section 110 of SOCAP states an individual may be arrested "to allow the prompt and effective investigation of the offence or of the conduct of the persons in question;". Code G of the PACE Codes which comes into force at the same time as SOCAP explains what this might include, and is therefore not exhaustive:

(i) *Where there are reasonable grounds to believe that the person:*

- *has made false statements;*
- *has made statements which cannot be readily verified;*
- *has presented false evidence;*
- *may steal or destroy evidence;*
- *may make contact with co-suspects or conspirators;*
- *may intimidate or threaten or make contact with witnesses;*
- *where it is necessary to obtain evidence by questioning;*

or

(ii) *when considering arrest in connection with an indictable offence, there is a need to:*

- *enter and search any premises occupied or controlled by a person*
- *search the person*
- *prevent contact with others*
- *take fingerprints, footwear impressions, samples or photographs of the suspect*

(iii) *ensuring compliance with statutory drug testing requirements.*

Nearly everyone arrested for a trigger offence is likely to fall into (i) or (ii). Those who fail to attend or remain at an assessment do not easily fall into the above criteria, but as paragraph 2.7 and 2.8 of Code G also says:

2.7 The criteria below are set out in section 24 of PACE as substituted by section 110 of the Serious Organised Crime and Police Act 2005. The criteria are exhaustive. However, the circumstances that may satisfy those criteria remain a matter for the operational discretion of individual officers. Some examples are given below of what those circumstances may be.

2.8 In considering the individual circumstances, the constable must take into account the situation of the victim, the nature of the offence, the circumstances of the suspect and the needs of the investigative process.

Therefore there is discretion for the officer to make a judgement whether (s)he arrests a person or not.

5. For reference: Section 24(5) of PACE

In all situations, in order to arrest an individual they must fulfil one of the following conditions (section 24(5) of PACE):

- “(a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name);
- (b) correspondingly as regards the person's address;
- (c) to prevent the person in question-
 - causing physical injury to himself or any other person;
 - suffering physical injury;
 - causing loss of or damage to property;
 - committing an offence against public decency (subject to subsection (6)); or
 - causing an unlawful obstruction of the highway;
- (d) to protect a child or other vulnerable person from the person in question;
- (e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question; or
- (f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question.”

XI. CONTACTS

Please send in the questions you have or hear from others

Stephen Polly

CJIT: Development, Implementation and Improvement Team

Drug Interventions Programme

Home Office: 020 7035 0522 stephen.polly@homeoffice.gsi.gov.uk