HM PRISON SERVICE

Prison Service Order

ORDER NUMBER 3601

Mandatory Drug Testing

Date of Update: 06/03/07

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Date of Issue	**18/11/2005**
Issue Number	**250**
	This replaces PSO 3601 issue 219 (December 2004)
PSI Amendments should be read in conjunction with the PSO	
Date of further amendments	
11/08/2022	Following the Prisons (Substance Testing) Act 2021 which gives HMPPS the ability to adjudicate when prisoners test positive for additional substances introduced by the Act, the following Prison and YOI Rules have been amended: PR 51 (9), YOI R 55 (10); PR 51 (24) / YOI R 55 (27); Rules 52 / 56 (see PSI 05/2018 for details). This makes amendments to paragraph 8.2 of the MDT PSO.
06/03/2007	PSI 11/2007 – Amendments to MDT contract (incorporated into this version of PSO 3601)
15/08/2006	PSI 24/2006 – Removes reference to F254 and F256. Updates Appendices 7 and 16. These changes have been made to the intranet version.
20/04/2005	PSI 16/2005
September 05	MDT Bulletin 38

MANDATORY DRUG TESTING FOR PRISONERS

MANUAL OF POLICY AND PROCEDURES

NOTE: ALL SIGNIFICANT CHANGES FROM BULLETINS ONE TO THIRTY-EIGHT ARE INCORPORATED
THIS VERSION REPLACES ALL PREVIOUS EDITIONS OF THE MANUAL AND PSO 3601 AND INCORPORATES PSO 3605

Drug Strategy Unit
November 2005

Librarians must remove and destroy the contents of PSO 3601, which was issued in a ring binder (issue 219) and replace it with this amended version. (issue 250).

EXECUTIVE SUMMARY

STATEMENT OF PURPOSE

This PSO updates and consolidates requirements and procedures for the conduct of mandatory drug testing (MDT). It replaces PSO 3601 and revises the Manual of Policy and Procedures issued in January 1997. The former PSO 3605 - relating to Independent Analysis procedures - is subsumed as an Appendix. All significant changes from MDT update bulletins 11 to 42 are also incorporated.

DESIRED OUTCOME

Consolidation of good practice and mandatory requirements in relation to all aspects of MDT. Providing answers to a range of questions on procedures raised consistently by operational colleagues. Ensuring all relevant information on MDT is readily accessible from one source document.

MANDATORY ACTIONS

The PSO contains guidance and instructions. Key mandatory requirements include:

Establishments with an average population in the previous 12 months of 400 or more must random test at least 5% of their population each month. Establishments with an average population of less than 400 must test at least 10% of their population each month. No more than 15% of population per month may be random tested. Targets levels of testing must be achieved every month, not just over a period of twelve months.

At least 14% of random tests must be carried out at weekends. Weekend testing must not take place less frequently than once in every three weekends.

All prisoners appearing on the main random list must be tested, except those declared by Healthcare to be unfit for testing and those already discharged. They can be drawn in any order. The reserve list may be used when the main list is exhausted, but names from this list must be drawn in strict order of appearance on the list.

Governors and Area Managers must agree the target level for random MDT positives, taking into account the national Key Performance Indicator target.

Strict adherence to the instructions given in the Manual. These cover all aspects of the process, including legal requirements, sample collection, chain of custody procedures, response when prisoners test positive, health and safety, healthcare matters and independent analysis procedures

All prisoners found guilty on adjudication of administering a Class A drug, for example, heroin, cocaine or methadone, must be placed on a programme of mandatory frequent testing. The number, frequency and period of frequent tests remain at governors' / directors' discretion.

Establishments must ensure as far as possible that diversity monitoring information is recorded when completing MDT Chain of Custody forms.

Establishments must ensure that procedures are in place to ensure prisoners have had the opportunity to have their samples analysed by an independent laboratory before any related disciplinary proceedings are completed.

Establishments are required to provide information about MDT to prisoners on reception and those charged with administering a controlled drug. The leaflet "MDT Information to Prisoners" and booklet "Information to Prisoners on Mandatory Drug Testing" are included at Appendix 3.
RESOURCE IMPLICATIONS
This PSO consolidates current good practice, and therefore no additional resources are necessary. Area managers and governors/directors may wish to consider if resources, outcomes and the balance of testing need to be reviewed within their own areas and establishments.

IMPLEMENTATION DATE:	1 January 2006
Director : Michael Spurr	Director of Operations

Further advice or information on this PSO can be obtained from:

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[Updated 06/03/07 in accordance with PSI 11-2007]

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CHAPTER 1 - MANDATORY DRUG TESTING IN CONTEXT

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Introduction

1.1 Powers to require prisoners to provide a sample for drug testing purposes were introduced as part of the Criminal Justice and Public Order Act 1994 (Appendix 1).

1.2 On its own, mandatory drug testing (MDT) cannot solve the problem of drugs within prisons. It can, however, contribute to the overall objective of reducing drug misuse when used as part of a wider and more comprehensive drug strategy. The Prison Service Drug Strategy Tackling Drugs in Prison, published in May 1998, seeks to provide a more balanced and consistent approach with much greater emphasis on the provision of treatment and support programmes. This can only be done by implementing mandatory drug testing as part of a wider anti-drug misuse strategy.

1.3 Mandatory drug testing impacts upon many areas of prison life and raises a complex series of legal, procedural and ethical questions.

1.4 The specific objectives of mandatory drug tests are as follows:

- to increase significantly the detection of those misusing drugs and to send a clear message to all prisoners that if they misuse drugs they have a greater risk of being caught and punished;
- to help prisoners to resist the peer pressure often placed on them to become involved in drug taking, due to the increased possibility of detection;
- to help to identify prisoners who may need assistance to combat their drug problems with assistance offered to those who want it;
- to provide, by means of the random testing programme, more accurate and objective information on the scale, trends and patterns of drug misuse, allowing prisons to manage and target more effectively their resources for tackling drug problems; and
- to enable the proportion of prisoners testing positive for different drug types on the random testing programme to be used as one performance indicator of drug misuse.

1.5 As part of the wider drug strategy, the Prison Service is committed to making available a voluntary testing programme for all those suitable prisoners requesting a place. One of the elements of voluntary testing is a regular drug testing programme using an in-house screening device. Whilst the objectives of mandatory and voluntary testing are quite distinct, there is much common ground in the practical aspects of delivering the initiatives; for example, in sample taking, ensuring continuity of practice and the interpretation of test results. Whilst voluntary testing is seen by many as requiring less rigorous practice, many of the elements of the MDT process should be regarded as good practice no matter what the drug testing environment.

About this manual

1.6 **What is the purpose of the manual?** This manual describes policy, procedures and good practice relating to mandatory drug testing and forms the basis for the delivery of the MDT programme. The manual is not intended to replace the designated MDT training courses.

1.7 **Who should read the manual?** The manual is intended for use by those who have a direct or indirect role in the planning and operation of MDT within establishments. It is also a useful reference source for those with policy responsibilities which are affected by MDT.

1.8 What is contained in the manual?

Chapter 2 – Legal provisions for drug testing within prison, provides an overview of the legal basis for mandatory drug testing and an outline of the main human rights issues.

Chapter 3 – The management of MDT programmes, a brief overview of the key elements required to manage an effective MDT programme.

Chapter 4 – Types of drug test and exemption from testing, describes the five areas where mandatory drug testing powers can be applied and considers grounds for exemption.

Chapter 5 – Planning and organising a drug testing programme, describes the key steps required to run a mandatory drug testing programme, including selection of staff and finding a suitable location for taking samples.

Chapter 6 – Taking and despatch of samples, provides the information necessary for the successful operation of the drug testing programme ranging from the selection of prisoners for sample taking through to despatching the sample to the laboratory.

Chapter 7 – Screening and confirmation tests, describes the analytical process, the action to be taken on receipt of a screen test report and the circumstances in which a confirmation test should be requested.

Chapter 8 – Laying charges and adjudication procedures, the procedures to be followed for taking disciplinary action against prisoners under Rules 50 (YOI Rule 53) and 51 (YOI Rule 55) for administering a controlled drug are significantly different in a number of areas to other disciplinary offences. This chapter provides details on the procedures to be followed.

Chapter 9 – Responding to a positive test result, outlines the requirement on governors/directors to develop responses to those testing positive which can offer support to drug misusers as well as responses which can act as punishments to deter any future misuse.

Chapter 10 – Healthcare issues, whilst for ethical reasons prison Healthcare departments are not directly involved in MDT, there are, nonetheless, some issues which involve their indirect participation.

Chapter 11 – Record keeping and MDT performance data, this chapter gives details of record-keeping requirements and provides advice on the production of accurate MDT data.

CHAPTER 2 – LEGAL PROVISION FOR DRUG TESTING

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Types of drug testing within prison

2.1 There are three main types of drug testing in operation within prison establishments. It is important to understand the application and limitations of each.

Testing for clinical purposes

- can only be carried out by Healthcare staff with the informed consent of the prisoner;
- the results of tests are confidential, never disclosed outside of the Healthcare department without the informed, written consent of the prisoner. The sole purpose of the test is to assist in formulating the appropriate treatment for the prisoner;
- clinical test samples can only be sent to the MDT laboratory by prior arrangement and only at direct cost.

Non-clinical voluntary drug tests

- often undertaken as part of a voluntary agreement or compact with the prisoner;
- *the informed consent of the prisoner to the tests must be obtained. The prisoner must sign to agree to the terms of the compact, and it must be clear what he/she is signing for (i.e. types of test, likely frequency, response to a positive test, etc.);*
- *prisoners must not be coerced into "volunteering" for tests and they must be free to opt out of the tests with no significant penalty* (e.g. stopping temporary release for anyone who did not "volunteer" for tests could amount to a significant level of coercion and as such could be unlawful);
- the response to one or more positive tests may ultimately be exclusion from the compact and/or other administrative action agreed as part of the compact;
- disciplinary action for drug misuse cannot be taken on the basis of a voluntary drug test result alone. *The sanctions for testing positive on a voluntary drug test alone must be limited to administrative measures;*
- drug screening may also form a part of the framework for drug rehabilitation programmes. Such testing is the responsibility of treatment providers.

Mandatory drug tests

- are carried out under the terms of Section 16A of the Prison Act 1952 and Prison Rule 50 (YOI Rule 53);
- disciplinary action may result from a positive test (under Prison Rule 51(9) or YOI Rule 55(10);
- *certain conditions must be fulfilled when samples are taken for use in mandatory drug tests. These are outlined in the remainder of this chapter.*

Warning: If the drug test sample is not collected under mandatory provisions, and/or the prisoner has not given true voluntary consent for a sample to be taken, then it is highly likely that the drug test procedures are unlawful and the prisoner would be within his/her rights to bring an action for technical assault against the prison.

The Prison Act

2.2 Section 16A of the Prison Act 1952 (see Appendix 1) provides powers for testing prisoners for drugs. The powers came into force on 9 January 1995. Section 16A allows prison officers in any prison to require prisoners confined in the prison to provide certain samples for testing for the presence of drugs:

- samples authorised by Section 16A for drug testing include urine (an intimate sample), the most common sample used in drug testing, and any non-intimate sample, including saliva, hair (non-pubic) and sweat. Other intimate samples such as blood are not allowed;
- *before samples can be required, the governing governor of the prison must issue a written authorisation in order for the process to be lawful (example shown at section 5.15);*
- it is possible to require more than one sample type from any prisoner provided that there is a justifiable reason for this and the governor's authorisation includes the different sample types;
- *any prisoner confined in a prison can be required to provide a sample, whether they are unconvicted or convicted. The sample must be provided within the prison itself*;
- only a prison officer (or prison custody officer) can require (i.e. give the order for) a prisoner to provide a sample although other staff might assist in the process; and
- arrangements for authorising any requests from prison officers to require samples from prisoners must be in place (see Chapter 5).

2.3 For the purposes of the Act, the common-sense definition of a prisoner is held to apply – a prisoner is anyone who is required to be held in prison. Dedicated prisons holding immigration detainees are no longer the responsibility of the Prison Service. However, immigration detainees may from time to time be held within the main prison system, even though such detainees have not been charged or convicted of a criminal offence, they are by virtue of detention subject to the same range of prison rules that apply to remand prisoners, including the mandatory drug testing programme.

Prison Rules

2.4 Prison rules covering arrangements for mandatory drug testing, together with a disciplinary offence of administering a controlled drug, came into force on 9 January 1995. (See Appendix 1.)

Prison Rule 50 (YOI Rule 53) describes certain requirements which are necessary for the provision of a sample under mandatory drug testing arrangements – see sections 2.5/2.6 below;

Prison Rule 51(9) (YOI Rule 55(10)) contains the disciplinary offence of, in effect, misuse (administration) of controlled drugs; and

Prison Rule 52 (YOI Rule 56) outlines the three express defences to the disciplinary offence. Sections 2.10 and 8.43 describe the operation of express defences more fully.

2.5 Mandatory drug tests can be used in a number of ways, including on reasonable suspicion of drug misuse, as part of a random programme of testing, or prior to certain risk-related activities such as temporary release. Chapter 4 of this manual describes these areas of application more fully.

2.6 *Rule 50 (YOI Rule 53) sets out certain conditions which must be followed if a requirement to provide a sample for drug testing purposes is to be considered lawful.*

Before the sample is taken a prisoner shall be informed, as far as is reasonably practicable:

- that the sample is required under Section 16A of the Prison Act 1952 [Prison Rule 50(3)a/YOI Rule 53(3)a];
- of the reason why a sample is required (e.g. random test, on-suspicion test, etc);
- of the consequences he/she may face should the sample show the presence of a controlled drug in his/her body;
- that refusal to provide a sample may lead to disciplinary proceedings being brought against him/her [Prison Rule 50(3)b/YOI Rule 53(3)b]; and
- that if they are unable to provide a sample of urine when told to do so they may be confined for up to five hours to facilitate the process [Prison Rule 50(7)/YOI Rule 53(7)].

2.7 As a result of the Russell judgement (see sections 2.31-2.34) where a prisoner challenged the randomness and legality of the MDT process, it is necessary to inform prisoners of points one and two above **before** escorting them to the MDT unit. Test authorisation forms should be taken with you when you collect prisoners for testing to simplify this stage.

2.8 The mandatory drug testing authorisation form (Appendix 2) contains all this information; a copy must be given to every prisoner required to provide a sample. Other information to be to be made available includes:

- The booklet Information to Prisoners on Mandatory Drug Testing (Vocab. No. HF025) - to be available on request at prison libraries, within MDT units and to be given to prisoners following a positive screen (Appendix 3a)
- The leaflet MDT Information to Prisoners (Vocab. No. HF023) - to be given to prisoners at reception and be available widely throughout prisons (Appendix 3b); and
- *A poster (Vocab. No. HF024) – which must be displayed within MDT units and on each wing, as well as at other sites at the discretion of the MDT co-ordinator.*

Rule 50 (YOI Rule 53) also specifies that:

- an officer shall require a prisoner to provide a fresh sample (i.e. not one provided previously or by another prisoner), free from any adulteration (such as that which might mask the positive result) (Rule 50 (4) (YOI Rule 53(4)) [this does not include the consumption of very excessive amounts of fluid in an attempt to mask a positive result by diluting unnaturally the urine sample. The provision of more than one such dilute sample may, however, lead to further on-suspicion testing];
- an officer requiring a sample shall make such arrangements and give the prisoner such instructions for its provision as may be reasonably necessary in order to prevent or detect its adulteration or falsification ((Rule 50(5) (YOI Rule 53(5)); and
- a prisoner required to provide a sample of urine shall be afforded such degree of privacy for the purposes of providing the sample as may be compatible with the need to prevent or detect any adulteration or falsification of the sample; in particular, a prisoner shall not be required to provide such a sample in the sight of a person of the opposite sex (Rule 50(8) YOI Rule 53(8)).

2.9 Rule 51(9) (YOI Rule 55(10)) specifies the disciplinary offence of administering a controlled drug:

- is found with any substance in his urine which demonstrates that a controlled drug has, whether in prison or while on temporary release under Rule 9 (YOI Rule 5), been administered to him by himself or by another person (but subject to Rule 52 (YOI Rule 56)).

2.10 Rule 52 (YOI Rule 56) contains the express defences to Rule 51(9) (YOI Rule 55(10)).

"It shall be a defence for a prisoner charged with an offence under Rule 51 (9) (YOI Rule 55(10)) to show that:"

- **proper medication:** "the controlled drug had been, prior to its administration, lawfully in his possession for his use or was administered to him in the course of a lawful supply of the drug to him by another person;"
- **tricked or accidentally took drug:** "the controlled drug was administered by or to him in circumstances in which he did not know and had no reason to suspect that such a drug was being administered;" or
- **forced to take drug:** "the controlled drug was administered by or to him under duress or to him without his consent in circumstances where it was not reasonable for him to have resisted."

2.11 Instructions on the laying of charges for this offence, the general procedures to be followed at adjudication, and the interpretation of express defences are explained in Chapter 8.

Prisoners who refuse to provide a sample

2.12 Prisoners are required to provide a fresh and unadulterated sample for drug testing purposes when required to do so. Prisoners refusing to comply with this order may be charged under Rule 51(22)/YOI Rule 55(25) **–** disobeys any lawful order.

2.13 Legislation does not allow the use of physical force either to compel the prisoner to attend the sample-taking room or in requiring the prisoner to provide a sample.

2.14 A prisoner who is caught trying to substitute or adulterate a sample after being given the order to produce a (fresh and unadulterated) sample should also be charged with disobeying a lawful order.

2.15 A prisoner who is caught attempting to cheat (by, for example, concealing a bottle of urine) should be charged either with attempting to disobey a lawful order (Rule 51(22)/YOI Rule 55(25)) or preferably (if appropriate) with possession of an unauthorised article (Rule 51(12)/YOI Rule 55(13)).

The European Convention on Human Rights (ECHR)

2.16 Provided that the requirements set out above are followed, mandatory drug tests are lawful under domestic law. In addition to domestic law there is a requirement to maintain a prisoner's rights as set out in the various ECHR articles incorporated into the Human Rights Act 1998. The best defence to a challenge under the provisions of the Human Rights Act 1998 is to ensure that MDT processes and adjudications procedures are carried out strictly in accordance with the guidance. It is important also to ensure that any response to drug misuse is proportionate to the harm caused and the circumstances of the individual prisoner. Patterns of behaviour often provide firmer grounds to take robust action than one-off incidents. A fixed and inflexible response gives the impression of a "tariff" approach not designed to match individual circumstances.

2.17 The most significant elements in relation to drug testing are discussed in the following paragraphs.

Human Rights Act Schedule 1 – Article 3

- "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

2.18 Legal advice has been sought on this matter and a requirement to provide a sample of urine (sections 6.25-6.29) in the direct view of a prison officer of the same sex would amount to inhuman or degrading treatment. Indirect observation is more appropriate. It should be stressed, however, that Prison Rule 50(8)/YOI Rule 53(8) requires prison officers to provide prisoners with a level of privacy consistent with the need to prevent or detect adulteration or falsification. *As such, the level of observation must be justified as a proportionate measure to the risk of cheating. Establishments must agree as a matter of policy the levels of privacy that may be afforded to those prisoners suspected and those not suspected of cheating rather than leaving this to the discretion of individual officers.*

Human Rights Act Schedule 1 – Article 6

- *"A hearing must be conducted by an independent and impartial tribunal."*
- Paragraph (3)(c) confers the right to defend oneself in person or through legal assistance of one's own choosing.
- Paragraph (3)(d) gives the right to examine or have examined witnesses against the person accused and to obtain the attendance and examination of witnesses on the person's behalf.

2.19 *Following the European Court of Human Rights judgement in the case of Ezeh and Connors, any disciplinary hearing which is likely to result in the award of additional days must be handled by an independent adjudicator with prisoners having the right to legal representation should they request it.* The independent adjudication system has been in operation since October 2002 and is now widely used.

2.20 Article 6 also contains a privilege against self-incrimination. It has been argued that the requirement to provide a urine sample is in breach of this provision. The Scottish High Court of Justiciary ruled that the privilege against self-incrimination did not apply to samples of body fluids, etc, such as breathalyser tests, since the content of the sample was outside the conscious control of the person giving it, and was not the same as an admission made as a result of coercion which sapped that person's will to remain silent or make denials. This can be taken as good authority.

Human Rights Act 1998 Schedule 1 – Article 8(1)

- "Everyone has the right to respect for his private and family life, his home and his correspondence."

2.21 Requiring a prisoner to provide a sample against their wishes is *prima facie* a breach of this article. However, given the significant problems experienced with drug misuse within prisons, it would be argued that the United Kingdom Government have the power to interfere with the rights of prisoners under Article 8(1) using the provisions set out in Article 8(2).

Human Rights Act 1998 Schedule 1 – Article 8(2)

- "There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

2.22 The particular problems arising from misuse of drugs within prisons include disorder and crime, risks to health and the intimidation and undermining of the rights and freedoms of those prisoners (and sometimes their families) who wish to stay away from drugs. The Prison Service has a duty of care to those held in custody. The mandatory drug testing programme is a proportionate response to the threat posed by drugs within prisons.

2.23 *The extent of mandatory drug testing undertaken within a prison must be maintained at a level proportionate to the problem experienced with drugs. In other words, the level of mandatory testing must be kept to the minimum necessary to meet objectives and to address (or attempt to address) the problems of drug taking within prison. Prisoners must not be subjected needlessly to drug tests.*

2.24 This applies particularly to random forms of testing where prisoners innocent of drug misuse are required to provide a sample. Chapter 3 details the levels of random mandatory testing necessary to deliver MDT objectives, at the same time defining an upper limit of 15% for the total volume of random mandatory testing. Testing on grounds of reasonable suspicion of drug misuse can always be more easily justified as a proportionate response.

Prison response when faced with a Human Rights challenge

2.25 It is occasionally argued that one part or another of the MDT and subsequent adjudications processes is in breach of the Human Rights Act. At times, solicitors use Human Rights arguments as the opening shot in an attempt to halt adjudication proceedings. Authoritative looking documents setting out how MDT breaches Human Rights occasionally circulate in prisons.

2.26 *Whilst adjudicators must consider the strength of the arguments in each case, legal advisers have concluded that there is a strong case to be argued in support of our current procedures and practices.* Adjudicators should therefore not be deflected from enforcing MDT procedures, properly carried out. Ultimately, it is a matter for the courts to decide whether any of our procedures and practices are in fact in breach of Human Rights legislation.

2.27 There are various routes of appeal open to enable prisoners to challenge both the MDT process and the findings at adjudication. The outcome of the appeal process can set a precedent for MDT procedures and help in developing good practice.

High Court judgements

Wynter judgement

2.28 In 1998 there were a number of appeals against the MDT process. They were on the grounds that laboratory screening and confirmation reports were hearsay evidence. The Prisoners' Advice Service, who were responsible for the applications, argued that if a prisoner contested the accuracy of a laboratory report, the adjudicator would be obliged either to call the laboratory scientist to give evidence or to dismiss the case.

2.29 On 3 May 1998 the case of R v Governor HMP Swaleside *ex parte* Wynter was heard in the High Court. The court found that the laboratory screening and confirmation reports are hearsay evidence but as classified as expert evidence are of a higher quality than other forms of hearsay evidence. Therefore the confirmation test could continue to be used in evidence when the prisoner disputed the result of a test and there would be no automatic right to call the laboratory scientist as a witness.

2.30 The judge also ordered that screening reports should state that they are preliminary tests, that more information would have to be provided to prisoners who tested positive and that the level of drug detected at the confirmation stage should be included in the report. As a result of the judgement, information explaining the testing procedures and checks used to ensure their accuracy was required to be issued to all prisoners who were charged with drug misuse offences.

Russell judgement

2.31 A prisoner, Russell, on a number of occasions refused to submit to a random mandatory drug test on the grounds that the order to do so was unlawful since the prison could not prove that the selection was made on a truly random basis. The prisoner was charged with and subsequently found guilty of failing to obey a lawful order.

2.32 The case was complicated by the adjudicator, somewhat ingeniously, seeking to differentiate the MDT process into two stages **–** making a lawful order to go to the MDT unit and, once there, the order to provide a urine sample. This would have avoided the need for the adjudicator to take fully into consideration the question of randomness (or indeed any technical aspects of the MDT process).

2.33 In brief, Mr Justice Lightman ruled that:

- the order to submit to a mandatory drug test is a single continuous process and cannot be sub-divided into constituent processes;
- *to bring a charge of disobeying a lawful order, the Prison Service must prove that the order itself is lawful;*
- randomness is an essential prerequisite of submission to a random MDT test;
- the process used for random selection was satisfactory but that in future the Service must provide sufficient information on randomness in advance of the test to enable prisoners to make an informed judgement on the lawfulness of the order (and by implication the entire MDT process); and
- even though, on the evidence now available, the MDT was conducted lawfully, the fact that no information was made available to the prisoner at the time meant it was not unreasonable for him to both question the randomness of the test and believe the order to comply unreasonable. The finding of guilt should be quashed accordingly.

2.34 The Russell judgement led to the production of new mandatory information to prisoners in the form of booklets, leaflets and posters. Information on how to obtain these is given at paragraph 5.17.

Points arising from Ombudsman's cases and appeals

2.35 A number of points have been raised by cases over the years. The most relevant are as follows:

2.36 Cocaine retention by prisoners of Black African or Black Caribbean origin. A prisoner appealed after reading an article, which claimed that cocaine is retained for longer in people of Black African or Black Caribbean origin. Some research revealed that this was only true in the case of hair, where the high levels of melanin can cause benzoylecgonine (the metabolite of cocaine) to be retained for longer than in the hair of other ethnic groups. This increased retention of benzoylecgonine has no bearing on urine testing and therefore MDT.

2.37 Sterile nature of transport vials. A prisoner who saw his sample decanted into vials from an already opened collection kit disputed that his sample had been transported in sterile conditions. The response was that while the vials should have been taken from a sealed kit, provided the collection officers had demonstrated that the tamper-evident tags were in place, then the adjudication could be upheld. It should be stressed, however, that this was not ideal procedure and should be avoided.

CHAPTER 3 – MANAGEMENT OF THE PROGRAMME

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3.1 The best MDT programmes are those subject to imaginative and proactive management. The MDT programme is not simply about achieving random MDT targets as a means of providing information for the Prison Service key performance indicator (KPI). An impactive MDT programme can act as a considerable deterrent to drug misuse, thereby reducing the supply of drugs. Many of the problems experienced with the MDT process and subsequent adjudications arise through inattention to detail and, at times, more radical departure from the defined procedures. Good management should reduce considerably the chance of this happening.

3.2 A member of staff at senior level should be nominated to oversee the programme. Traditionally, this role has been vested in a manager within the Security Department. Given the broader scope of the drug strategy and the commonality of issues with the voluntary testing programme, there is a strong case for the overall control and direction of the MDT programme to rest with the prison drug strategy co-ordinator.

3.3 There are a number of key factors in the effective management of the MDT programme:

- ensure that MDT is fully integrated as one element of the wider local drug strategy, matched to the local drug problem;
- ensure that the appropriate MDT infrastructure is in place, staff properly trained and that proper procedures as set out in this manual are followed;
- ensure that MDT targets – levels of testing and positivity rates – are achieved. Targets for improvement should be sufficiently challenging;
- ensure that a balanced and timely programme of MDT is delivered, making best use of the available types of MDT. Drug testing programmes that create windows of opportunity for drug taking should be avoided;
- ensure that appropriate resources are available to deliver the agreed programme;
- ensure that the impact of MDT is maximised; for example, rapid and comprehensive follow-up of security information reports, effective use of frequent testing programmes;
- ensure that MDT data is properly analysed, appropriately and regularly disseminated and used to inform the wider development of the drug strategy. Long-term trends should always be considered;
- *targeted drug testing must be conducted in a non-discriminating manner with patterns of testing monitored on a regular basis; and*
- ensure local audit procedures are in place.

3.4 The detailed guidance given in this manual should assist considerably in the effective management of the MDT programme.

Setting the levels of testing

3.5 Prison Service Order 3601 – now subsumed by this PSO – defines the levels of mandatory drug testing required:

- the level of random testing at your establishment may be altered, with the area manager's agreement, no more than once per year. If your establishment's average population in the previous 12 months was below 400, you may not reduce your level of random testing below 10%. Where the average population was greater than 400,

random MDT samples tested may not be reduced below 5% of your establishment's population. No more than 15% of population per month may be random tested;

- prisons which should otherwise be collecting fewer than 20 random samples per month at 10% random testing are not required to random test more than 10% of their population, but may not reduce their level of random testing below 10% of population per month;

- *there must be a programme of mandatory frequent testing for all prisoners found guilty at adjudication of misusing Class A drugs, including opiates, cocaine, methadone, or LSD.* The level of testing will be determined by the circumstances of the case;

- *at least 14% of random mandatory drug tests must be carried out at weekends*. Weekend testing will not take place less frequently than once in every three weekends;

- levels of non-random mandatory drug testing which do not contribute to the random testing KPI and for which there is no upper limit are subject to agreement between the governor and the area manager. All establishments were originally provided with sufficient baseline funding to test approximately 15% of all prisoners every month under a combination of the five strands of MDT (random, on suspicion, risk, reception and frequent testing).

- those prisons that were permitted to reduce random MDT from 10% to 5% are expected to make up the shortfall with a balanced programme of targeted testing.

3.6 The size of the sample of an establishment's population tested each month is crucial to the accuracy of random testing as an indicator of levels and trends of misuse. For example, 30 prisoners out of a population of 100 are drug misusers – If five prisoners were random tested each month results of 0% and 100% positive would both be likely. Either result would be an extremely inaccurate representation of the scale of drug misuse in the establishment. By doubling the sample size to 10 prisoners, the two extreme results are still possible, though much less likely, and a more accurate representation of the scale of misuse will be obtained.

3.7 Expert advice is that a threshold of statistical reliability is crossed when 20 samples per month are tested. For our smallest establishments, testing 20 samples per month would represent an increase in random testing. The minimum levels of testing therefore represent a compromise; safeguarding the reliability of statistics from most establishments, whilst reducing to a minimum the burden of testing. Where test numbers fall below the minimum prescribed levels of random testing, the data obtained becomes much less reliable, although longer-term trends are still useful.

3.8 Prisons with an average population below 200 will, based on the 10% testing rule, fall below the minimum number of tests per month necessary to cross the statistical threshold of reliability. Where resources permit, such prisons should set a target of random testing 20 prisoners per month to improve the reliability of data. For the handful of prisons with an average population below 150, it would be defensible to breach the 15% ceiling on random testing.

3.9 While MDT has shown some success in deterring cannabis misusers, it has made less impact on the misuse of hard drugs. However, research by the National Addiction Centre (NAC) suggests that repeated mandatory drug tests can have a significant deterrent effect on hard drug misusers. An examination of prisoners' mandatory drug test histories revealed significant reductions in the percentage testing positive for opiates with each successive test, until, by the seventh test, there were no positive tests. The sample of prisoners on which the

NAC findings were based was small. Nonetheless the potential importance of this finding is so great that it cannot be ignored.

Planning a balanced MDT programme

3.10 Governors have more latitude in planning the levels of non-random mandatory drug testing. The balance of test types best suited to each establishment is dependent on the type of establishment, the mix of prisoners housed and any known patterns of drug misuse. For instance, there is greater potential use for risk assessment testing in an open prison than in a high security prison. Drug test positives in young offender institutions are overwhelmingly for cannabis, so the introduction of mandatory frequent testing for hard drugs may require fewer resources than elsewhere.

3.11 A low percentage of positive tests is not necessarily a reason for reducing the level of testing. It should be borne in mind that the frequency of those tests may be a factor in keeping the percentage positive low. Only in on-suspicion testing is a low percentage positive a cause for concern. If the percentage of positive tests in which suspected drug misusers are targeted is consistently no higher than for random tests, then something is wrong. It may be that tests are being authorised on the basis of poor quality intelligence or that prisoners are being tested too long after the incident which caused suspicion.

3.12 In prisons where MDT staff resources are stretched, it is common practice to afford on-suspicion testing low priority. This may prove to be a false economy. There is some evidence to suggest that prisons with a more proactive approach to on-suspicion testing achieve lower random MDT positive figures by increasing the deterrent effect of MDT. At times, on-suspicion tests are conducted some considerable time after the trigger security information report. With the possible exception of cannabis, there is little to be gained by conducting on-suspicion tests more than two days after the trigger reported incident. Ideally, the test should be conducted as close in time as possible to the report.

3.13 The national average positivity rate for on-suspicion testing in 2005-06 was 35.5 per cent. The most effective prisons achieve positivity rates of over 50%. Lower rates may be due to delays in conducting the tests or ineffective targeting of prisoners.

3.14 An essential element in providing a balanced MDT programme is to ensure that no set pattern of random testing develops, e.g. testing largely occurring on Mondays to Wednesdays, or never in the last week of the month. Pressure on staff resources can lead to testing being undertaken only on certain days of the week. In extreme cases the monthly quota may be completed, for example, in the first week. Predictability of random testing patterns creates windows of opportunity for drug taking. This is exacerbated for those drugs present in the body for short periods, particularly the opiates and can lead to an underestimate of the level of misuse. In turn, this reduces considerably the deterrent effect of the programme. An important element in an effective drug testing programme is the unpredictability of when testing will take place. Regular drug testing in cycles of two to three days is much more likely to detect opiate misuse.

Weekend testing

3.15 A two-day window each weekend, when testing is less likely, does not make for an effective programme. The theory that many prisoners confine their drug misuse to Friday nights to minimise their chances of detection exaggerates the self-control of heavy users but much less so for occasional or opportunistic users. A limited amount of weekend testing is certain to catch some prisoners who would have escaped detection and send a message that there is no safe period to take drugs.

The outcome of testing

3.16 Prisons have not always used MDT results to best effect in targeting treatment and support programmes. One of the key objectives of the MDT programme is to provide a means of identifying prisoners with ongoing drug problems and ensure they are offered the appropriate treatment. Referring all positive tests to CARATs (Counselling, Assessment, Referral, Advice and Throughcare) will enable an assessment to be undertaken, treatment needs identified and the appropriate care plans developed.

The blind performance challenge programme

3.17 To help ensure that MDT procedures are carried out properly, both at the analytical laboratory and in prisons, the NOMS quality assurers carry out a blind performance challenge (BPC) programme. This involves sending via selected prisons, "dummy samples", which may contain drugs or administrative flaws, to the analytical laboratory, who will treat them like real samples. The results are sent back to the establishment code noted on the chain of custody form of the sample concerned. *Where a positive result is received on a BPC sample following a screening test, the prison must immediately inform the quality advisor, who will ask the establishment to request a confirmation test on that sample.* The Prison Service's quality assurers send each prison involved in the BPC trial a fax or email containing barcodes for the samples in the BPC programme. *This form must be completed with the results of screen tests and confirmation tests where relevant and faxed or emailed back to the Prison Service's quality assurers,* who will compare the result with the original BPC sample and record any differences. The BPC process is summarised in more detail at Appendix 4. The BPC programme will not prejudice the prison's figures. There is a tendency for some prisons not to participate fully in the BPC programme. Prison participation is not onerous and is essential if the integrity of the MDT process is to be maintained.

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CHAPTER 4 – TYPES OF DRUG TEST AND EXEMPTIONS FROM TESTING

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Introduction

4.1 There are five areas where mandatory drug testing may be applied. All prison establishments are required to conduct a random testing programme with a fixed proportion of the prison population being tested every month. In addition to the random programme, governors may vary the nature and frequency of MDT in any of the four non-random areas to match specific local drug problems and in support of the local drug strategy.

Random testing

- Prisoners will be selected for this test on a strictly random basis.

Reasonable suspicion

- Prisoners will be selected for this test where there is reason to believe that the prisoner has misused drugs.

Risk assessment

- Prisoners will be selected for this test when they are being considered for a privilege (such as release on temporary licence), or a job, where a high degree of trust is to be granted.

Frequent test programme

- Prisoners will be selected for this programme because of their previous history of drug misuse.

Testing on reception

- Prisoners may be selected for testing on reception on a routine or occasional basis.

4.2 The MDT testing framework covers all eventualities. It is important to ensure that the correct form of testing is chosen for the purpose intended. *The prisoner must be informed at the outset which category of test is being applied. If, for example, a risk assessment test is carried out when the grounds for testing were, in reality, "on-suspicion", it is unlikely that MDT procedures would survive a challenge.* Test category cannot be justified retrospectively.

4.3 There is a wide range of mandatory testing options outside of the random programme. There are no centrally set minimum or maximum for non-random testing. The levels of testing locally should be linked closely to the objectives of the wider drug strategy. One of the limiting factors in delivering a testing programme is the level of staffing resources available to take samples. The best programmes make full use of the available testing options in the delivery of a comprehensive programme. Given that this part of the programme is non-random, there is a need to demonstrate that selection for testing is proportionate and non-discriminatory. It is particularly important therefore to ensure that the grounds for testing are defensible and set out clearly.

Random testing programme

4.4 The random testing programme will provide objective management information on the scale, nature and trends of drug misuse within each establishment. This should assist in the development of effective local and national drug strategies.

Selection of prisoners for random testing

4.5 *To satisfy legal and statistical requirements, prisoners must be selected for testing on a totally random basis, using lists of prisoners generated by the LIDS computer (as described later in this chapter).* The random testing programme will include all prisoners, unconvicted as well as convicted, and will test a pre-determined proportion of the population of each prison every

month. The only prisoners exempted from MDT are those who are medically unfit to be tested, where their condition is corroborated by Healthcare staff.

4.6 *The MDT co-ordinator must check that the correct procedures have been followed in generating random lists of prisoners and will provide authorisation for these tests on behalf of the governor.* To maximise the deterrent effect, random tests should be spread as evenly as possible throughout the month and not all undertaken at the beginning or end of the monthly period, or on particular days in the week.

Procedure for generating random lists

4.7 The process for the selection of prisoners for testing for the presence of drugs needs to be demonstrably fair, particularly with random testing, to reduce to a minimum the possibility of legal challenge. *Local Inmate Data System (LIDS) must be used to generate the names of prisoners selected for random testing.* The process runs, and is capable of running, only once a month and can only be run by the MDT co-ordinator or a designated deputy. Before running the selection process there is no way to identify which prisoners will be selected. Since it can be run only once a month, it cannot be "repeated" after the first list is produced, even if an error is made in selecting the length of the list.

4.8 It is necessary to program in the percentage selection required, with a percentage selected for the reserve list provided at the same time. It is advised that the reserve list be selected as 50% of the main list, although in the case of local prisons or others with a rapid turnover of prisoners it would be advisable to increase the size of the reserve list as required. The process is based on a random number generator, with a system built in to remove any duplicate selections. The final lists are printed out in the order the numbers were generated. The system makes no reference to previous runs of the program and it is therefore possible to generate the same prisoner on a number of subsequent occasions, as with any random process.

4.9 It is important to distinguish between randomness and probability. Randomness is the condition where, before the exercise is performed, it is not known which event will result. Each subsequent event is independent, since the outcome of any one event cannot influence the outcome of others. But it is possible to calculate the chance of an event happening – probability is the expected or relative frequency. In order to make a judgement on probability, the event has to be conducted on many occasions. A good example is throwing a dice, where after a sufficient number of throws, the numbers should occur in equal proportions. It is not unusual or untoward for a prisoner to be selected on more than one occasion over comparatively short periods of time.

4.10 Only one list can be produced each month. Any subsequent attempt to produce a list during the month will simply result in the user being returned to the menu – once generated, the list should be stored carefully. A new list can be generated on or after the first of each month. The random lists generated on LIDS are stored on the computer. The number of prisoners on the random list should equate to the nearest higher whole number above the 5% or 10% level, as the exact percentage will rarely be a whole number. For example, a prison required to test 10% of an average population of 385 would test randomly 39 prisoners each month.

4.11 Prisons with a high turnover of prisoners sometimes find difficulty in meeting their random MDT target even when utilising the reserve list to the full. A particular problem occurs when prisons fail to update the LIDS system on a timely basis. This can lead to prisoners discharged some time ago (especially those discharged from court) appearing on the testing list. Prisons with a high turnover should always select a comparatively large reserve list. In order for the LIDS random number generation system to function effectively, it is absolutely essential that governors comply with the existing requirement to keep prisoner information on the LIDS system fully up to date.

4.12 In order for the element of surprise to be retained, the random list, once generated, should be subjected to highly restricted access. Only the MDT co-ordinator, the sample takers and senior managers should have access.

4.13 There are very few grounds for exemption from random MDT. The general exemptions described from 4.60 onwards apply. Prisoners should not be exempted simply because they are due shortly for release as this would create a window of opportunity to misuse drugs. Nor should prisoners be excluded if they recently tested positive under either the mandatory or the voluntary drug testing programmes. If prisoners previously tested positive under the MDT programme, *the appropriate waiting period must be applied to further positive results.* All prisoners appearing on the random list must be tested unless one of the exemption categories applies.

Selection of prisoners from the lists

4.14 Two lists of random numbers should be generated on a monthly basis:

a) a main list consisting of the percentage of the establishment's population to be tested each month; and
b) a reserve list normally half the size of the main list.

A step-by-step guide on how to generate the lists is at Appendix 5.

4.15 The requirement is to test all prisoners on the main list and use prisoners from the reserve list only as a last resort if replacements are needed to reach the random target. Prisoners selected for random testing should be tested within one month of the list being produced. In exceptional circumstances, if workload during any month does not allow this, an additional two weeks may be allocated during the following month in order to complete testing on the main list. This will, however, mean a heavier workload the following month.

4.16 A prisoner from the reserve list replaces one from the main list if the prisoner from the main list:

a) has left the prison before the test could be carried out;
b) is otherwise unavailable (e.g. sick) throughout the entire period allowed for the random tests; or
c) is exempted from testing for some reason (e.g. mental health grounds).

4.17 A random sample that is spoiled due to a chain of custody error does not count towards the monthly testing target. *The prisoner who provided the spoiled sample should not be re-tested. Instead, a prisoner from the reserve list must be tested. The same applies in cases where the sample has been adulterated to the extent that testing is not possible.*

4.18 Prisoners may be selected for testing from the main list in any order. However, it makes sense to test those due to leave prison as soon as possible, to test newly received prisoners later in the month and to work around periods of temporary release (this will reduce as far as possible the need to use the reserve list). To exclude as far as possible the possibility of drug use prior to custody counting positive; newly received prisoners should not be tested until they have been in custody for at least 14 days. *To preserve the randomness of MDT, all names on the main random list must be used or exempted in the month to which the list relates*. Provided all prisoners appearing on the main random list are tested, randomness is maintained no matter in what order the prisoners are tested.

4.19 *Not all of the prisoners on the reserve list will be tested, so prisoners must be selected from the reserve list in strict order*, i.e. starting from the top of the list and working downwards sequentially. This will protect the co-ordinator against any accusation that prisoners are being targeted and selectively picked from the reserve list. Failure to follow this rule may also give cause for a prisoner to challenge the process.

4.20 In order to maintain a balanced programme of testing throughout the monthly period, it is acceptable practice to test simultaneously a mix of prisoners from the random and reserve lists in circumstances where it is clear that the MDT target will not be met from the random list alone and provided by the end of the month all those prisoners on the random list who were available were in fact tested.

4.21 It is important to meet the monthly random testing target (5/10%). In the following instances where a result cannot be obtained, a further sample should be obtained from the reserve list:

- where a prisoner refuses a random test;
- where a sample is not suitable for testing either due to extreme dilution or adulteration;
- where a sample is spoiled; and/or
- where a sample is lost in transit.

Testing on reasonable suspicion

4.22 Testing of prisoners on reasonable suspicion will enable governors to focus attention on areas of highest risk.

Selection of prisoners for testing on reasonable suspicion

- Any prisoner reasonably suspected of misusing drugs may be required to provide a sample for testing at any time.
- *Care must be exercised to prevent any abuse of authority in testing prisoners under this programme.* Past history of misuse of drugs does not alone constitute either practical or reasonable grounds for suspicion of current misuse.
- Ethnic origin or religious belief do not constitute acceptable grounds to test.
- *Authority to require prisoners to provide samples for testing on these grounds must be delegated no lower than first line manager level.*
- The following are examples of acceptable grounds for requiring prisoners to provide samples for testing on reasonable suspicion:

  - recent evidence of otherwise unexplained violent or unpredictable behaviour;
  - intelligence which, on evaluation, demonstrates an association with drugs;
  - evidence consistent with attempts to falsify MDT, including finds of known MDT adulterants in abnormal quantities, e.g. denture cleansing tablets found in the cells of prisoners who do not own dentures or where otherwise there is good evidence of an attempt to interfere with sample provision (including possession of quantities of urine);
  - discovery of drugs or drug-taking implements on the prisoner or in an area over which the prisoner has some access or control;
  - discovery of drugs in locations such as workshops or multi-occupancy cells where only limited numbers of prisoners have access and the element of "control" would be difficult to prove for any charge of possession. In circumstances where one of a number of prisoners might have committed an offence against prison rules, but where suspicion does not fall uniquely on any one prisoner, and where a mandatory drugs test might help to resolve the issue – for example, staff noticing the smell of burnt heroin or cannabis on unlocking a double or treble cell or theft of MDT samples from the secure store, since every prisoner who might have something to gain could reasonably be considered a suspect. In these circumstances of collective suspicion, it is not necessary to prove that suspicion falls on particular individuals. Nor should individual prisoners take the inference that the finger of suspicion points at them alone. Where the on-suspicion testing is a matter of the prisoner's record, it should be made clear that the grounds are one of collective suspicion to an unattributable act;
  - a single failed dilution test is not regarded as sufficient grounds for on-suspicion testing. However, if a prisoner's sample fails a dilution test on two or three occasions, thus establishing a pattern, an on-suspicion test may be justified. It is important to ensure that medical grounds are excluded as the cause of dilution;
  - reasonable suspicion of adulteration of samples; and
  - where a positive test cannot result in an adjudication under the waiting period but where reasonable suspicion of drug misuse continues.

  All selection of prisoners on grounds of reasonable suspicion must be evidenced by evaluation within a recognised intelligence system, eg. 5X5 system advocated by the National Security Framework.

4.23 *All requests for a test to be carried out on grounds of reasonable suspicion must be submitted in writing on a standard form agreed locally or on a security information report (SIR) form. All copies of requests must be filed for future auditing purposes or in case of legal challenge.*

4.24 The best results from on-suspicion testing will be obtained when tests are conducted as soon as possible after the action that gave rise to suspicion. A number of prisons have reported conducting on-suspicion testing weeks after the suspicion was highlighted. Clearly, it is much more difficult to justify a test so long after the event. Whilst prisons may have resource difficulties in scheduling tests, unless there are exceptional circumstances, on-suspicion tests should not be conducted more than three days after the SIR was logged.

4.25 There are conflicting views as to the value of a positive test in highlighting drug dealing. Positive drug tests do not provide much intelligence one way or the other. As in the community, drug dealing takes place on different scales. Lower-scale drug dealers tend to sell drugs to fund their own habit and may therefore test positive. At the highest scale, drug dealers tend not to use drugs personally.

4.26 *A prisoner must not be targeted for an on-suspicion test as a result of approaching a member of staff seeking help for a drug problem.* Nor does participation in a drugs rehabilitation programme or engagement with CARAT drug workers constitute grounds for conducting an on-suspicion test. Similarly, clinical history (where known), such as completion of detoxification programme, does not constitute reasonable grounds. However, prisoners who have asked for help and those who are receiving treatment for drug problems are not exempt from the disciplinary offence of drug misuse nor from mandatory drug testing. Hence, if such a prisoner meets one of the grounds for an on-suspicion test listed above, he/she may be tested.

4.27 *A prisoner must not be targeted for an on-suspicion test as a result of a positive voluntary drug test or if he/she refuses any form of non-mandatory drug testing unless exceptional circumstances apply.* There may be occasions when a failed voluntary drug test demands a more legally defensible response; for example, prior to temporary release of prisoners using heavy machinery or motor vehicles. If, following a positive voluntary drugs test, there is perceived to be a potential significant risk to the health and safety of the prisoner, staff or public, the test result should be regarded as reasonable grounds for a suspicion MDT and as sufficient to take action to curtail release on that occasion, pending the result of the suspicion MDT*. Prisoners' VDT compacts must specify clearly those circumstances in which an establishment would invoke such an exceptional course of action.*

Risk Assessment

4.28 Prisoners may be required to provide a sample for testing as part of any risk assessment process. Risk assessment might include aspects such as release on temporary licence, allocation to outside working parties, re-classification and/or operating machinery.

4.29 Tests may be carried out either on every prisoner who is being considered for such opportunities or on a set proportion, depending upon the extent of the drug problem within the prison and the degree of trust to be granted**.** Evidence related to the misuse of drugs is an extremely important factor in any risk assessment but should be seen as part of, rather than the sole factor, in any assessment.

4.30 Risk assessment tests may also be conducted as part of the assessment process to inform selection for admission to a mother and baby unit and acceptance on any programme where drug misuse might be a considerative factor, including eligibility for home detention curfew.

4.31 In order that risk assessment should provide the greatest degree of reassurance, tests should be conducted without prior warning and as unpredictably as possible. Risk assessment testing should not necessarily be seen as a one-off process but conducted as part of a wider initial assessment. Where the potential for drug taking presents a continued risk to the undertaking of any activity, further risk assessment drug tests are justified, proportionate to the degree of risk and the elapsed time since the last test.

4.32 Some prisons are resorting to locally conducted indicative voluntary drug test kits for risk assessment. Such an approach can prove attractive, not least for the immediacy of results. However, where a prisoner challenges the result of a screening test, the voluntary testing process cannot provide evidence of drug misuse beyond reasonable doubt. The only way of conducting risk assessment tests and avoiding any challenge is through the MDT process.

Frequent testing programme

4.33 *A prisoner who is found guilty at adjudication (local or independent) of misusing Class A drugs, i.e, opiates (if heroin) amphetamines (if MDA, MDEA or MDMA), cocaine, methadone or LSD, must be placed on a frequent testing programme. For other drug offences, a frequent testing programme may be considered as an option. Authority to require prisoners to provide samples for testing on these grounds must be delegated no lower than the MDT co-ordinator or a manager of at least one grade higher than that of the MDT co-ordinator.*

4.34 While MDT has shown success in deterring cannabis misusers, it has had a less dramatic impact on the misuse of hard drugs. Research by the National Addiction Centre (NAC) suggests, however, that repeated mandatory drug tests can have a significant deterrent effect on hard drug misusers. An examination of prisoners' mandatory drug test histories revealed significant reductions in the percentage testing positive for opiates with each successive test, until by the seventh test there were no positive tests. The sample of prisoners on which the NAC findings were based was small. Nonetheless the potential importance of this finding is so great that it cannot be ignored.

4.35 A frequent testing programme will permit the focus of drug testing resources on those prisoners who are more likely to misuse drugs. *Prisoners selected for frequent testing must be offered appropriate support and treatment in parallel with the testing programme.* Referral to the CARAT team is essential. Without this support, the frequent testing programme is less likely to succeed on the basis of deterrent effect alone.

4.36 There is no single prescribed framework for a frequent testing programme, which should be structured to match individual circumstances. Factors to consider include the nature of drug misuse, the willingness to undergo treatment, and the persistence of breaking prison rules. The period of frequent testing should be time bound, with some indication given of the number of tests that might be conducted within that period*. A frequent testing programme must be sufficiently flexible so as to be as unpredictable as possible. When considering the results from frequent testing programmes, the waiting periods must be applied.* For example, if the drug of misuse is opiate-based, it may in the severest of cases be appropriate to test at five- to six-day intervals. If so, any cannabis positive results after the first cannabis positive, for example, would need to be discounted for the following 30 days. But this need not preclude continuing with opiate testing at more frequent intervals.

Grounds for selecting prisoners for frequent testing

4.37 The evidence to support grounds for requiring a prisoner to submit to a substantial frequent testing programme has to be defensible. Justification for a substantial programme of frequent tests requires firm evidence (not just suspicion) of drug misuse, as may be provided in the following circumstances:

- following a finding of guilt following a positive test for a Class A drug;
- where the prisoner has been found guilty more than once at adjudication for a drug related offence.

4.38 Frequent testing may also be considered for persistent misuse of drugs other than Class A drugs, where regular use is known to cause harm, for example, non-Class A amphetamines, benzodiazepines, dihydrocodeine, buprenorphine.

4.39 The programme of frequent testing should reflect the severity of the problem. If the intention is to monitor a prisoner with an intractable problem of drug misuse, a high frequency of testing is advisable – in terms of drug waiting times, the optimum period to guarantee a drug-free condition is every five to six days.

4.40 Arrangements for conducting tests under the frequent testing programme:

- Prisoners selected for testing under this programme may be required to provide a sample for testing at frequent intervals over a fixed period or until they provide evidence through the test results that they have stopped misusing drugs.
- *Tests need not necessarily be undertaken at random intervals but they must not be undertaken at fixed intervals,* otherwise the prisoner will be able to predict when the next test is scheduled – unless testing is undertaken so frequently that any drug misuse will be detected.
- There is little to be gained from conducting further tests within the waiting period for the target drugs.
- *Prisoners must be provided with details in writing of the programme including the reasons why they have been placed on frequent testing,* the (approximate) frequency of the tests, and when or under what conditions they will be removed from the programme.

Decisions requiring prisoners to provide samples for frequent testing must be reviewed at regular intervals and at least every month.

Repeat offenders

4.41 If, whilst on a frequent testing programme, a prisoner again fails a test and thereby once again meets the grounds to be placed on a frequent programme, the need for frequent testing should be assessed afresh. The simple addition of further frequent tests in a consecutive way is likely to be regarded as a tariff and potentially disproportionate to the problem faced.

Prisoners who seek to volunteer for frequent testing

4.42 Sometimes prisoners have come forward to admit drug misuse and have asked to be placed on a frequent testing programme. The apparent reason behind this is that some prisoners may consider that they need the threat of disciplinary action to act as a deterrent in order to help them to give up their habit. Voluntary testing provides a far better way of accommodating the needs of this type of prisoner. As the voluntary drug testing (VDT) programme has expanded, MDT testing should no longer be required to meet this specific need. Where a voluntary testing programme exists, prisoners requesting frequent mandatory testing should be referred for consideration to be accepted on the VDT programme.

Mandatory frequent testing as a substitute for voluntary testing

4.43 Voluntary testing can only be said to be truly voluntary where a prisoner readily agrees to a testing programme. In certain circumstances, for example, in a resettlement prison, is it entirely reasonable to expect prisoners to remain drug-free and appropriate for prisoners to agree to participate in a voluntary drug testing programme. However, if regular drug testing is made a compulsory element for entry into such a prison, legal advisers warn this approach could be open to challenge, the main concern being that resettlement regimes would become inaccessible to those who do not wish to undergo voluntary drug testing. This could be held as unreasonable at judicial review.

4.44 In the albeit rare instances where a prisoner refuses to sign a voluntary testing compact prior to entry to a resettlement prison, a programme of frequent mandatory testing could be substituted for the voluntary programme. The frequency of testing should be the same as for the voluntary testing programme. A positive result from a frequent MDT, unlike a positive voluntary test, would entitle the prison to take immediate disciplinary action. However, where

frequent MDT was used as a substitute for a voluntary programme, prisons should use wider discretion in responding to a positive result. Whatever approach is adopted, details should be made available to the prisoner in advance.

Repeat testing

4.45 There will be occasions when additional testing is required but to an extent that stops short of a full frequent testing programme.

4.46 Some prisons use repeat drug tests for prisoners who test positive, perhaps for the first time, as a means of diversion from the disciplinary process. If the prisoner admits to misusing drugs or if the positive result is confirmed at the laboratory, the establishment may warn the prisoner, outside of adjudication, about their offending behaviour. The prisoner is offered assistance to help him/her in addressing their problems and the prisoner is required, under the frequent testing provisions, to provide a second sample approximately one month later (the prisoner should not know the exact date) as a way of checking if the prisoner is refraining from using drugs (for at least that period of time). The prisoner should be warned that if they test positive a second time they will be taken to adjudication.

Testing on reception

4.47 Testing of prisoners immediately after their reception and before location into prison accommodation reinforces the message to prisoners at point of entry that the establishment will not tolerate misuse of drugs and is making every effort to eradicate the problem. It also has the potential to provide useful information on the extent of the drug problems amongst new prisoners entering the prison and to assist in the design of local strategies to combat the problems. *Those identified by the reception testing programme as drug misusers must be offered assistance initially by referral to the CARATs team.*

4.48 Such testing may be undertaken either on new receptions into prison or on transfer from one prison to another. The value, relevance and practicability of each of these options will vary between prisons. Whilst the testing of every prisoner on reception may prove resource intensive, this can provide information of drug misusing patterns immediately prior to reception. Prisons with fewer receptions may find it proportionally easier to achieve full testing. Governors may want to consider whether reception testing might have a place in supporting CARATs assessments.

4.49 Increasingly, as part of the initial healthcare assessment on reception, prisoners undertake voluntarily a clinical drugs test. The test results can on a generic basis be used to provide background information on the extent of the drugs problem faced by prisons. To a large extent this reduces the need for on-reception testing. But individuals' clinical test results cannot be used for security purposes.

4.50 Urine samples taken on reception may not be wholly effective at detecting hard drug use since prisoners may have been held for some days in police custody (and away from their drugs supply) prior to arrival at prison.

Options for testing on reception

4.51 Randomness is not an essential prerequisite of on-reception testing and need not be demonstrated. *Prisons may choose any means of selection but must be able to demonstrate that selection is non-discriminatory by:*

- testing all prisoners;
- testing every prisoner received into the prison on selected days; and/or
- testing a semi-random selection of prisoners, for example, every fifth prisoner.

4.52 Whilst prisoners newly received into prison may be required to provide a sample for testing (and may be charged with disobeying a lawful order if they refuse), they cannot be subject to discipline or other control measures if they test positive since any drug taken would almost certainly have been administered outside of the prison. It would be possible, however, to take disciplinary or other control measures against prisoners transferring between prisons or returning from court in circumstances where the prisoner has been held in continuous custody. The sending prison should be informed in all instances where a new reception tests positive.

4.53 The objectives of on-reception testing are only achievable if the test is conducted shortly after reception into prison. To determine drug misusing status at point of entry to the prison, the test should be conducted as part of the reception process, before the prisoner makes contact with other prisoners. Logistically, this can prove difficult in prisons where there is a high throughput of new receptions.

4.54 The aim should be to conduct on-reception tests within 24 hours of admission and certainly no longer than 48 hours, beyond which point it becomes increasingly difficult to classify a test as on reception. It is particularly important to avoid the use of on-reception testing where it is difficult to find any other legitimate means of testing. Where on-reception testing is undertaken after the new prisoner has passed from reception into the main prison, misuse of drugs within the prison cannot be excluded from causing the positive result, even if the prisoner cannot be charged with an offence against discipline.

4.55 The MDT programme provides the full range of powers necessary to conduct on-reception testing and, in cases where the prisoner transferred from another prison, to take any form of proportionate action against a prisoner testing positive. Voluntary drug testing (if, indeed, it could properly be defined as voluntary in these circumstances) severely limits the action that might be taken following a positive test. Under no circumstances should prisons seek to substitute voluntary drug testing procedures for on-reception MDT.

Mother and baby units

4.56 *Governors must ensure that procedures are in place for urine testing for drugs to take place for those prisoners confined in mother and baby units.* Tests may take place under the following circumstances:

- to assess eligibility for admission to a mother and baby unit;
- as part of random MDT for the whole prison;
- where there is reasonable suspicion that the mother is misusing drugs;
- risk assessment in order to satisfy the requirements for other prison procedures, e.g. release on temporary licence.

4.57 Before a mother moves to a unit she must first provide a negative urine sample under risk assessment testing.

4.58 As an exception to usual disciplinary procedures, a positive result for a test to determine admission to a mother and baby unit should not result in any disciplinary charge. It could, however, be used as legitimate grounds for a suspicion MDT. Staff need to ensure that applicants for mother and baby units are aware of this before they apply.

4.59 Mothers on a unit who are found guilty at adjudication following a positive MDT result should be removed from the unit. PSO 4801 – *The Management of Mother and Baby Units and the Application Process* explains in more detail what should be done in these circumstances.

Exemption from mandatory drug testing

Health grounds

4.60 If a prisoner is fit to be in prison and is not segregated from other prisoners on grounds of physical or mental health then he/she is usually fit to take a drugs test. A drugs test is unlikely to place significantly more strain on a prisoner than is placed on them already by being in custody. Prisoners who believe they may test positive could experience pressure from the MDT programme but that alone is not a good reason to desist from testing. There may be some circumstances where individual prisoners should be excluded from testing on health grounds.

The drug test co-ordinator should take the lead in reaching a decision in close consultation with the Healthcare department:

- Prisoners may be excluded from testing on health grounds if they are unfit to attend at the sample collection area for drug testing purposes.
- Wherever possible, the drug test co-ordinator should liase with Healthcare to identify these individuals in advance so that they can be excluded from random tests, either for that month alone or for all subsequent tests.
- *If any prisoner selected for random testing is temporarily located in the healthcare centre the drug test co-ordinator must liase with Healthcare staff about the availability and fitness of the prisoner.* If any prisoner is unavailable throughout the entire month then the prisoner should be excluded from the random programme and substituted from the reserve list of prisoners.
- Healthcare staff cannot, in any circumstances, divulge confidential information about a prisoner's treatment or condition without permission from the prisoner.
- If a prisoner suffers from a physical disability, for example, is confined to a wheelchair but is capable of getting round the prison, (for e.g. to receive social visitors) there are unlikely to be grounds for exclusion from MDT.

Dangerous prisoners

4.61 A pragmatic approach should be taken with dangerous prisoners selected for testing under the random testing programme. Prisoners already segregated from the rest of the prison may be considered too dangerous to themselves, staff or other prisoners to take part in the mandatory programme, if selected. Such prisoners may be excluded, based on the decision delegated no lower than first line manager level.

Pregnant women

4.62 *Pregnant women must not automatically be excluded from drug tests*. *Pregnant women, particularly those in the later stages of pregnancy, who are unable to provide a sample quickly, must not be held for lengthy periods in confinement cells.* In these circumstances, women should be held in their own cells or a suitable holding area, with appropriate supervision, until they are able to provide a sample. It is particularly important to take fully into account healthcare issues. The prison Healthcare department should be consulted prior to test, particularly in the later stages of pregnancy. *Any pregnant women testing positive for drugs must be referred immediately to the prison healthcare department.*

Menstruation

4.63 Menstruation is not to be considered as an acceptable defence for not providing a sample. Contamination of the sample by menstrual blood is a possibility but is seldom seen in urine sample collection programmes. If this does happen, the laboratory will advise on whether it is still possible to analyse the sample.

Religious and cultural grounds

4.64 Advice has been taken from the Chaplain General's office and from religious faith advisers working for the Prison Service. It has been agreed that there are no valid exclusions from providing a urine sample for MDT purposes since this assists the prison in maintaining good order. Some religions (Sikhs, Muslims and those of the Jewish faith) will not allow viewing of the genitalia. But this is consistent with the requirement to ensure only indirect observation of sample provision.

4.65 If a prisoner refuses to provide a sample on religious grounds and is charged with disobeying a lawful order, then the adjudicator will need to consider each individual case on its merits and decide to what extent a genuine religious belief can be used as mitigation at adjudication.

4.66 Women from the Muslim or Jewish faiths would be strongly opposed to exposing blood and therefore to providing urine samples if this contained traces of blood (as may happen occasionally during menstruation). This does not mean that such prisoners should be excluded automatically from drug tests. If a woman prisoner from one of these faiths declines to provide a sample on such grounds, perhaps following an attempt to provide a clean sample if this can be done in privacy, it would be inappropriate to bring disciplinary proceedings

4.67 The Religions Manual (PSO 4550) states that prisoners may only be prevented from attending corporate worship if:

- there are exceptional and specific concerns for the prisoner’s mental or physical health;
- the governor judges that they have misbehaved at a time of worship or meditation;
- the governor judges that their presence would be likely to cause a disturbance or a threat to security or control.

4.68 MDT is therefore not sufficient reason to prevent a prisoner from attending corporate worship. In the first instance of a prisoner requesting to be released from the MDT unit to attend legitimate corporate worship, they should be permitted to do so and tested at a later date.

4.69 This does cause the potential for minor disruption to the MDT programme. Where corporate worship is known to be an issue for the prisoner, in most instances it should be possible to conduct random testing around attendance at worship but not reduce the chance of detecting drugs. You may find it useful to keep records of prisoners who are known regularly to attend religious services.

Ramadan

4.70 It was in the month of Ramadan (the ninth month of the Islamic year) that the first revelation of the Quran took place*. During Ramadan all practicing Muslims must not eat, drink, smoke or have sexual relations between dawn and sunset for the 29 days from one new moon to the next.* Muslim festivals are determined by the lunar calendar, and Ramadan falls 10-11 days earlier each year. A Prison Service Instruction is issued annually, providing details of all religious festivals including Ramadan.

4.71 All prisoners provide details of their religion at initial registration and those Muslims observing Ramadan will inform the prison in advance of the start of the festival so that their special dietary needs can be met during the period. This will help staff conducting tests to identify those who are fasting.

4.72 Muslims may break their daytime fast for a number of reasons, for example, vomiting or sickness, and return to fasting on subsequent days. It should not be assumed that because someone has broken their fast they are no longer genuine.

4.73 The lists for those subject to random testing are produced for the calendar month and as Ramadan follows the lunar calendar, there will normally be some days within the calendar month (at the beginning or end) when prisoners will not be fasting. It is possible, therefore, that Muslim prisoners who have been selected for testing will be able to be tested in the days before or after the festival has taken place, without affecting the randomness of the testing programme.

4.74 Muslims are not forbidden to give a urine sample during Ramadan. However, there may be practical difficulties in obtaining a sample from a prisoner who is fasting. Guidance on testing Muslim prisoners during Ramadan (where it is not possible to test outside of Ramadan) is as follows:

- they should not be excluded from mandatory drug testing;
- if at all possible, tests on Muslim prisoners who are fasting during Ramadan should be scheduled first in the day as they will drink more before dawn. As the day progresses, it will be more difficult for a fasting prisoner to provide a sample;
- a Muslim prisoner who is unable to provide a sample should not be offered water, and unwillingness to drink water during confinement should not be viewed as unco-operative;
- if, as suggested above, a Muslim prisoner is scheduled to be tested first thing in the morning, but after four hours the prisoner appears genuinely unable to provide a sample, confinement for an extra hour is pointless. The prisoner should be warned he/she will be required to provide a sample at a future date and then released from confinement. Confinement later in the day is unlikely to serve any useful purpose, as the prisoner will not be able to provide a sample if fasting; and
- *prisoners must not be manoeuvred into a position whereby it appears they are refusing to obey a lawful order.* However, any prisoner who is blatantly unco-operative despite warnings – except in not drinking water – may be charged with disobeying a lawful order.

4.75 These rules ought also to be considered in relation to other religious festivals, which involve total fasting.

CHAPTER 5 – PLANNING AND ORGANISING A DRUG TESTING PROGRAMME

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Introduction

5.1 Prisons have been running a mandatory drug testing programme since 1996. The following chapter describes the infrastructure necessary to run the MDT programme and against which prisons should benchmark current provision.

Key elements in the planning of a local drug testing programme:

- selection and training of staff;
- maintenance of sample collection site;
- clear procedures for drug testing;
- provision of up-to-date information to staff and prisoners; and
- publication of governor's authorisation.

Staffing

5.2 The delivery of mandatory drug testing requires the careful selection of staff and the provision of appropriate support for each of the key operational roles: drug test co-ordinator, authorising officer and sample collector. Outline job descriptions for each of these roles is provided in Appendix 6. In addition to these, someone of sufficient seniority should be appointed to oversee the delivery of MDT and to help resolve the complex issues which arise from time to time. This may be the local drug strategy co-ordinator or the chair of the local drug reduction strategy committee. The role of Healthcare staff in the mandatory drug testing programme is discussed in Chapter 10.

Sample collector training

5.3 Only staff who have completed a two-day sample collector's course and passed the course assessment are authorised to collect MDT samples. It is strongly recommended that non-sample collecting drug test co-ordinators and administrative staff closely involved in the programme attend the same course. Only associate trainers attached to regional training units are accredited to provide sample collector training. To arrange training, contact your local regional training unit. The MDT training co-ordinator's name and phone number are included in the MDT contact list at Appendix 7 and is attached to each MDT update bulletin. Prisons should display a list of accredited sample takers and maintain a pool of staff sufficient to deliver the testing programme. Area drug strategy co-ordinators have a role to play in co-ordinating training requirements across the area.

***NOTE** – if a sample collector has not carried out MDT over a six- to 12-month period, they must act as the second officer during an MDT sample collection session in order to refresh their knowledge. They must undergo retraining if the period since they last participated as either the prime sample collector or the second officer exceeds 12 months.*

Support

5.4 Support may be provided to assist with the administrative work associated with the collection and testing of urine samples, e.g. routine correspondence with testing laboratories, preparation of disciplinary charges arising from positive test results, maintenance of files, production of statistics, etc.

The sample collection site

5.5 *Consideration must be given to a range of factors in the provision of a site for the collection of urine samples, including:*

- design;
- location;
- size;
- equipment;
- hygiene.

The site selected should ideally provide adequate arrangements for all the key tasks associated with the collection of urine samples.

The sample collection site should be designed to be:

- **Functional** – the site should contain:
  - toilet allowing appropriate observation if required;
  - wash-basin not accessible to unsupervised prisoners;
  - area to conduct a full search of prisoners; and
  - work surfaces and storage facilities for ease of working.

- **Secure** – the minimum security arrangements should include:
  - unique class 3 suite key with restricted issue;
  - secure frosted windows;
  - lockable cupboards for storage of test results;
  - lockable refrigerator for storage of sample at 4°C;
  - alarm bell; and
  - secure storage for all testing materials.

- **Easily supervised** – the location and layout of the site should:
  - provide good visibility into and between each part of the site while protecting the privacy of the prisoner during any full search and the provision of the sample;
  - be sufficiently central for staff support to be readily available and to minimise time spent locating and escorting prisoners; and
  - overall, be selected and designed to minimise staffing costs.

- **Offer strict control of access to staff and prisoners** – the site should be designed to:
  - provide strict control of access to staff and prisoners in order to protect the chain of custody of samples both during and after the completion of the collection process.

- **Hygiene** – the site should be designed to:
  - ensure that all walls, floors and working surfaces are easily cleaned and disinfected.

5.6 Appendix 8 provides examples of the layouts of sample-taking rooms used by prisons. These range from purpose-built suites, completed as part of existing building work, through to ad-hoc adaptations of little-used toilets with adjacent space to accommodate the administrative and storage facilities required.

The confinement area

5.7 The confinement area should ideally be situated close to the collection site to enable the sample collection officers to have ready control over the entire process and to avoid the need for excessive movement between different sites.

The confinement area, whether close to the collection site or elsewhere, should provide the following:

- the basic security required for any confinement, including the ability to segregate prisoners and control of all movements to and from the area;
- controlled (i.e. limited) access to water at a rate of approximately one third of a pint at the beginning of every hour;
- adequate supervision of prisoners with checks and procedures in place to enable prisoners to be brought back to the sample taking area as soon as they are ready to provide a sample; and
- appropriate suicide prevention measures.

Equipment and supplies required for the collection of samples

Equipment

5.8 The sample collection site should be equipped with sufficient facilities for each of the key tasks involved in the collection of samples:

- holding prisoners prior to the provision of the sample and, preferably, confining those prisoners who are temporarily unable to provide a sample for up to five hours
  – notice board for information to prisoners;
  – cell call-bell;
  – adequate seating;
  – observation arrangements;
- conduct full search of prisoners
  – normal facilities to ensure privacy and decency;
  – working surface to assist in the search of prisoner's clothing during any strip-search;
- provision of the sample
  – toilet with staff control of water flow;
  – hand-washing facilities;
  – suitable supervision arrangements to allow varying levels of privacy/supervision whilst providing the sample, depending upon the risk of adulteration;
  – work surface for completion of records and chain of custody paperwork;
- maintenance and storage of records
  – secure cupboards for storage of test results;
  – secure cupboard for storage of sample collection equipment.

Supplies

5.9 Enterprise and Supply Services, Corby supply the MDT items listed below. Items should be ordered via your supplies office as part of your establishment's normal monthly order for clothing, equipment and stationery. There is no need to stockpile as Enterprise and Supply Services will provide stocks as required. They can be contacted on 01536 274 500.

Table 5.1 – Kits and forms available from Enterprise and Supply Services

ITEM NUMBER	DESCRIPTION	COMMENTS
2428MED	Sample collection kits and forms	1 pack contains 75 kits, outer packaging, authorisation forms and chain of custody forms
HF014	Gate staff acknowledgement of MDT packages	1 pad contains 100 forms
HR015	MDT register	1 book

Other equipment

5.10 In maintaining local arrangements for mandatory drug testing, a number of items of equipment will be required. Some of the more important items are listed below together with some suggestions of possible sources. All of the equipment listed below should be obtained through local budgets.

Table 5.2 – Equipment necessary for MDT

Item	Comment	Source
Protective gloves	Standard powder free latex rubber gloves.	Normal supplier of healthcare equipment.
Protective coats	Standard laboratory-type coats as used in healthcare.	Obtainable from Branston stores.
Disposable apron		Normal supplier of healthcare equipment.
Refrigerator	Laboratory standard capable of maintaining a temperature of 4 degrees Centigrade and offering at least 5 cubic feet. Samples may be held safely in these conditions for no more than seven days before being sent for testing.	Purchase through the Buying Agency.
Bio-hazard waste bags and boxes	Items should conform to normal health and safety standards.	Contract already in place within healthcare should be extended to include all waste produced from the sample collection site.
Blueing agents	Required to colour the water supplies accessible by prisoners in the sample collection area.	Normal suppliers.
Antiseptic handwash with hands-free dispenser	Products such as Hibiscrub.	Healthcare supplier.
Paper towels	For use by both prisoners and staff during the collection process instead of normal towels.	Normal suppliers.

A3-size landscape binder	Used to hold A3-size MDT register sheets. 4-hole, D-type binders.	Available from stationery suppliers.
Fax	Standard paper fax required to communicate quickly with the testing laboratories.	Through outside purchase.

Freezer

5.11 Earlier versions of the manual suggested the purchase of a freezer for storing samples beyond the seven-day maximum that is recommended for refrigerator storage. Latest advice is that freezing and defrosting a sample is likely to do more harm than leaving it in a refrigerator for more than seven days. Samples should therefore be sent to the analytical laboratory within seven days of sample collection.

Fax machine/email

5.12 It is important to act on screening and confirmation reports quickly because of the 48-hour rule for charging (see 8.20). If reports are received by fax, and they are received at a dedicated machine, the chances of them being misdirected, delayed or lost are minimised. There is a good case for the MDT unit to have a dedicated fax machine in a room with restricted access provided that it is checked regularly for incoming reports. In view of the pressures on establishment budgets and the lack of central funds to pay for fax machines, this should only be seen as good practice.

5.13 If reports are received by email, access should be restricted to staff who have responsibility for processing those reports.

Publication of governor's authorisation

5.*14* *Before testing can be undertaken within an individual prison establishment, the governor must publish a formal notice authorising the use of drug testing. The model for a governor's authorisation is included below. When drafting the formal notice of authorisation, governors must keep strictly to the wording shown below.*

Authorisation of sample taking for drug testing purposes

5.15 In exercise of the powers conferred by section 16A of the Prison Act 1952 (as inserted by section 151 of the Criminal Justice and Public Order Act 1994), I hereby authorise any prison officer to require, at HMP {prison name}, any prisoner confined in HMP {prison name} to provide a sample of urine for the purpose of ascertaining whether he [she] has any controlled drug in his [her] body.

Expressions used in this authorisation which are also used in section 16A have the same meaning here as in that section.

{Governor's Name}

Governor, HMP {prison name}

{Date}.

Notes:
Governors should not bring into force any authorisation to collect saliva, hair or sweat samples without the procedures for these being approved by headquarters*. If urine alone is authorised and there is subsequently a requirement to collect saliva, hair or sweat, then a new authorisation must be issued.*

The governor's authorisation must be signed by the governing governor and published. A copy must be displayed in the MDT suite and a copy may be placed in the library.

Information to prisoners

5.16 Prisoners should be informed about the MDT process as part of their induction into prison. Prisoners will need access to comprehensive information about mandatory drug testing, specific information on each occasion when they are requested to provide a sample for testing and to be reminded of the available information on each occasion they are charged with administering a controlled drug. The timeliness of this information will be of particular importance where prisoners are required to provide samples for testing on reception into prison.

5.17 *In addition to the governor's authorisation described above, the leaflet MDT Information to Prisoners (Vocab. No. HF023) must be given to prisoners on reception and be available widely throughout prisons. The attention of the prisoner should also be drawn to the booklet Information to Prisoners on Mandatory Drug Testing (Vocab. No. HF025) which provides detailed and necessary information which must be provided to prisoners following a positive screen and be made available on request, and the Prison Discipline Manual, which includes all the necessary information and advice they require about the interpretation of Prison Rules 51(9) and 52/YOI Rules 5 (10) and 56. Information available to prisoners is included at Appendix 3.*

Note: There is no requirement to provide full copies of the MDT Manual to prisoners.

Notice to be issued to prisoners required to provide samples

5.18 The mandatory drug test authorisation form, shown at Appendix 2, is specifically designed to be given to prisoners on each occasion they are required to provide a sample for testing. It contains information describing:

- the legal authority and grounds for the requirement for the sample;
- who authorised the requirement for the sample;
- the type of sample required;
- the action to be taken by the prisoner to preserve the chain of custody; and
- the consequences of a positive test result or any refusal (or failure) to provide a sample when required to do so.

Information to staff

5.19 The key to successful communication to prisoners about mandatory drug testing is investment in the provision of accurate information to staff. There has been some evidence indicating that both staff and prisoners have, on occasion, been influenced in their approach to mandatory drug testing more by anecdote than fact. The most effective method for communication of accurate information to staff will be by a well designed information notice. An example of a notice to staff is attached at Appendix 9.

5.20 The notice to staff should contain information describing:

- names of the drug strategy team and the sample collection staff;
- targets and performance indicators defined in the drug reduction policy statement;
- the legal authority and grounds for requiring prisoners to provide samples;
- who can require prisoners to provide samples;
- the local arrangements for the collection of samples;
- the importance of the chain of custody procedures;
- what action staff should take if they suspect a prisoner is misusing drugs;
- who will test the sample and, in simple terms, how it will be tested;
- how prisoners may attempt to undermine the testing procedures and what can be done to prevent them doing so;
- the consequences for prisoners who test positive or refuse or fail to provide a sample;
- the arrangements for placing prisoners on report under Rule 51(9)/YOI Rule 55(10);
- symptoms indicating misuse of drugs; and
- the balance of the overall drug strategy.

Information to others

5.21 In addition to the information given to prisoners and staff, governors should consider which other persons/organisations should be given information about the MDT process.

5.22 Other groups or individuals to whom information could be provided include:

- family and visitors of prisoners;
- any local solicitors serving the prison;
- local police liaison officer;
- Independent Monitoring Board;

- local media;
- local staff associations;
- Area Manager's office;
- feeder prisons.

Health and safety

5.23 The infectious risk from urine is very low; there is a slight possibility of Hepatitis B infection but no indication of HIV risk. Where urine is contaminated with blood, the infection risk does increase. Blood contamination may not always be visible. PSO 3845 outlines the basis of universal precautions. Precautions are summarised in a leaflet produced by the occupational health adviser (Appendix 10). The collection and handling of urine samples for testing for the presence of controlled drugs is undertaken safely by non-medical staff in industrial settings, sports testing and prisons throughout the world. Urine samples can be collected with safety provided that staff are properly trained and reasonable hygiene precautions followed.

5.24 *The governor must ensure that a risk assessment is carried out and a safe system of work drawn up.* Appendix 10 contains more information and advice on the health and safety issues related to the collection of samples and the following table summarises the action required.

Table 5.3 – Health and safety arrangements

Item	Action
Protective clothing	Obtain supplies of disposable gloves and laboratory coats to be worn by staff directly involved in the collection of samples or those cleaning the sample collection site. **Note:** a fresh pair of gloves will be required for each sample collection and disposable plastic waterproof aprons may be used instead of laboratory coats.
Sample collection equipment	Obtain a supply of plastic trays capable of containing any spillage to be used as a working surface during the packaging of the urine sample.
Disposal of contaminated waste	Obtain bio-hazard boxes and bags for the disposal of contaminated equipment. Organise arrangements for the safe disposal of contaminated waste.
Cleaning	Obtain supply of disinfectants (such as hypochlorite) for dealing with spillage and for cleaning the collection site.
Immunisation against Hepatitis B	The Prison Service already recommends that all prisoners and staff are immunised against hepatitis B virus. No additional immunisation is recommended in this instance.
Food and drink	No food and drink to be provided/consumed in MDT suite apart from fluids given to prisoners in the confinement area.

Latex gloves

5.25 PSI 05/2000 provides advice on the use of latex gloves. Latex gloves should be used whenever body fluids such as urine are handled. There is, however, one exception. Latex allergy is a growing problem and can lead to a variety of reactions ranging from localised or systematic skin conditions to, in extreme cases, anaphylactic shock. *The use of gloves must therefore be subject to a full risk assessment. Individual members of staff who experience low levels of irritation must immediately stop using the gloves and seek medical advice.*

5.26 Latex gloves are recommended for use only as a health and safety measure. The use of gloves does not have any bearing on the potential for cross-contamination of urine samples. In the unlikely circumstances of urine from a positive sample contaminating the hands of an MDT officer, this would not lead to cross-contamination of a subsequent urine sample to the extent that a positive result would otherwise be returned on a negative sample. Failure to wear latex gloves, for whatever reason, does not constitute a breach in the MDT procedure.

CHAPTER 6 – SAMPLE COLLECTION AND DESPATCH OF SAMPLES

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Introduction

6.1 This chapter describes the procedures to be followed for the collection of urine samples.

Chain of custody

6.2 The chain of custody provides a legally defensible system which controls the progress of any sample from the point of collection to the declaration of the results. It is designed to link beyond reasonable doubt the sample with the donor, and the sample with the result. *To ensure that the results of any positive urine tests can be relied upon and defended against legal challenge, all samples must be collected and packaged for despatch to the testing laboratory strictly in accordance with the chain of custody procedures described in this section.* Failure to complete any part of the process and failure to complete any part of the chain of custody form correctly may be sufficient to cast doubt on the validity of the collection procedure and the test result.

6.3 Urine samples from only one prisoner may be processed at any one time – the entire sampling process must be completed, from start to finish, before a sample is taken from the next prisoner. This will avoid the risk of the mixing or contamination of samples and enable adjudicators to rule out any such allegations. However, if a prisoner is unable to provide a sample and is being held in confinement, another prisoner may be tested. This process must be completed before returning to the prisoner in confinement.

Preparation of sample collection site

6.4 MDT samples must only be taken at a designated sample collection site. Only a properly equipped and maintained sample collection site provides the necessary conditions, free of potential contaminants and interference from other prisoners, with facilities for confinement with and controlled access to water (see 6.51).

6.5 Prior to the collection of any urine samples:

- *the site must be searched, cleaned and any potential contaminants removed (e.g. soap, cleaning fluids, salt);*
- *the notice describing sample collection procedures must be displayed clearly;*
- *prisoners must not have unsupervised access to water in the sample collection room, and if necessary taps should be taped up, blueing agent should be added to the cistern and/or toilet in order to prevent water from the toilet being added to the sample.*
- *the kit required for the collection must be made readily available (but not unpacked until the prisoner is ready to provide a sample); and*
- *all other collection kits and urine samples must be securely put away so there is no possibility of samples or kits accidentally being interchanged.*

Equipment required for the collection of a sample:

6.6 Each sample collection kit must include only the following:

- *one chain of custody procedure form;with integrared barcodes and two peel off sample tube seals*
- *one test authorisation form;*
- *one MDT sample collection kit:*
  - *one collection cup and two sample tubes;*
  - *one bubble wrap bag;*
  - *one chain of custody bag containing one sheet of absorbent paper;*
- *one pair of latex gloves;*
- *the MDT register.*

Selection of prisoners

6.7 The officer responsible for conducting the exercise should ensure that the prisoner has been required legitimately to provide a sample within one of the categories prescribed for MDT.

6.8 Before requiring any prisoner to provide a sample of urine for drug testing, the collection officer must ensure that:

- *the grounds and authority for the test meet the specification approved by the governor. (see 5.15);*
- *the prisoner has not been formally excluded on health grounds from these procedures (see 4.60);*
- *the prisoner has been clearly identified by photograph and/or verification by a member of staff to whom the prisoner is known (this should occur before the prisoner is escorted to the collection site but must be double-checked formally by the officer responsible for the collection of the urine sample).*

Escorting of prisoners to sample collection site

6.9 Prisoners must be given a clear order to go to the sample collection point to provide a sample of urine for drug testing; they must also have the reason for testing explained to them.

The order should be a single order that relates to the entire process – going to the MDT suite and providing an appropriate sample. Any prisoner who refuses to come when required to do so should be charged under Rule 51(22)/YOI Rule 50(19) "Disobeys a lawful order".

Arrangements must be made to ensure that prisoners are escorted to the site for the collection of samples without having any opportunity to conceal false samples/adulterants on their person or to drink large quantities of liquid just prior to the sample being taken (drinking large quantities of water will dilute any drug traces in the urine).

6.10 To minimise the opportunity for prisoners to provide diluted, adulterated or falsified samples, the sample collection process should be made as unpredictable as possible:

- varying the time of day when samples are collected;
- ensuring that the collection programme is spread out over the month to provide the maximum deterrent effect;
- not warning the prisoner that he/she has been selected;
- escorting prisoners immediately to the sample-taking area so as not to give them an opportunity to pick up false samples or adulterants; and
- ensuring that the information about the planned programme of tests is kept secure and limited to only those staff who need to know.

Presence of staff in the MDT suite

6.11 *Throughout the process from the point when the prisoner is searched through to the point when the sample is sealed and packed securely, the officer taking the sample and a second officer as witness must be present and able to observe all procedures throughout the collection process. Officers must be of the same sex as the prisoner. If either officer has to leave the room for any reason, the process must be halted temporarily and continued on return of the second officer.* From time to time officers on MDT duty may be called away to attend to urgent business elsewhere. Where a period of lengthy confinement is involved, officers may approach the end of their shift. Whilst it is desirable for the two MDT duty officers to remain for the entire period, it is possible in certain very limited circumstances for a change in staff to be made midway through the process:

- *one of the two officers must remain throughout the entire process in order to maintain continuity;*
- *staff change must not be made midway through any critical process, for example, decanting, labelling and sealing the sample;*
- a staffing change should be considered only in the most exceptional of circumstances; and
- *where a prisoner has still not provided a sample and a shift change is imminent, the process must be concluded unless continuity (at least one member of staff being the same throughout) can be maintained.*

6.12 No one else, apart from a member of the Independent Monitoring Board, a nominated auditor, or a manager exercising a supervisory function (all of the same sex as the prisoner) should normally be present during the collection of a sample.

Requiring the prisoner to provide a sample

6.13 Prison Rule 50/YOI Rule 53 provides the basic conditions that must be satisfied if a requirement to provide a sample is to be considered lawful.

On the arrival of the prisoner at the collection site the sample collection officer:

- *must identify clearly the prisoner by photograph and/or verification by a member of staff to whom the prisoner is known;*
- *must issue the test authorisation form giving the reason, grounds and authority for the requirement to provide the sample of urine (as an alternative and if practical, this may be issued at the point when the prisoner is ordered to go to the MDT suite);*
- *must confirm with the prisoner that he/she has read and understood the form and issue the prisoner with a translation if necessary;*
- may confine the prisoner in a secure holding area for up to one hour without access to fluid, in accordance with Prison Rule 50(6)/YOI Rule 53(6), in order to allow preparation to be made for collection of the sample;
- *must ask the prisoner to complete the consent to medical disclosure at the bottom of the authorisation form indicating whether he/she has taken medication prescribed by Healthcare in the last 30 days and, if he/she has taken medication, to give consent for this information to be disclosed by Healthcare.* Where a prisoner refuses to allow disclosure of his/her medical notes to show whether or not a positive test is due to prescribed drugs, then a positive test result can lead to a finding of guilt.
- The prisoner should be advised that no approach will be made to the prison Healthcare department for information from his/her inmate medical record (IMR), unless a positive screening test result is received, and that any information that is provided will be treated in confidence.

Finally, the officer collecting the sample must:

- *Complete the details in the box at the top of the chain of custody form (prisoner name, prisoner number and test reference number and in the MDT register. (See* Appendix 11.)

6.14 The prisoner must be allowed to observe all procedures throughout the collection process. If, however, the prisoner refuses to co-operate further and demands to leave after handing over the sample, this will not invalidate the collection process. The actions of the prisoner must be recorded on the chain of custody form.

Search procedures

6.15 ***Prisoners must be searched prior to being required to provide a sample***. The search may vary from a thorough rub-down through to a complete strip-search, depending on the level established by the governor as necessary to prevent the adulteration of samples (most prisons favour a complete full search). In all cases the prisoner will be required to remove all bulky items of clothing, and to empty and turn out their pockets completely to ensure that they do not contain any potential adulterants such as powders. It is good practice for staff to ask prisoners prior to the search whether they are in possession of any articles that may be used to interfere with the MDT process. Failure to declare such articles would help inform the decision whether to place on report or not (see 8.93).

6.16 The search of the prisoner must always:

- *comply with the procedures set out in the national security framework and the local searching strategy;*
- *be proportionate to the risk of adulteration/falsification of the sample; and*
- *respect the privacy and dignity of the prisoner as far as possible.*

6.17 Prisoners must not as a matter of routine be ordered to squat. However, where MDT staff have reasonable suspicion that a male prisoner has secreted an item or items in the anal or genital area, then an order to squat is a proportionate part of the search procedure. Female prisoners must not be ordered to squat.

6.18 If a female prisoner is strip-searched she may be given a gown to wear whilst providing the sample. *If this is done then a fresh gown must be provided for each prisoner.* Gowns should be laundered after use. If a prisoner's clothes are searched thoroughly then the use of gowns is unnecessary.

6.19 Any attempts by prisoners to subvert the procedures must be recorded, as such evidence may justify the application of more stringent search procedures in the future to any particular prisoner.

Hand washing

6.20 The prisoner must then be required to wash his/her hands and fingernails to remove any potential contaminants. This must be done without using soap as traces of soap on the hands or under the fingernails could adulterate the sample. Care must be taken that the prisoner rinses all his/her fingernails under running water. The prisoner should be allowed to dry his/her hands under an electric hand-drier or with clean paper towels.

Explanation of requirements

6.21 The collecting officer must ask the prisoner if he/she is now able to provide a sample. Only if the prisoner believes that he/she is able to provide a sample straight away, open the foil on the sample collection cup and show the prisoner that it and the sample tubes are empty. collecting officer must also show that the security seals (plastic mini-anchors) are in place to demonstrate that the tubes are secure and uncontaminated. This must be done sufficiently clearly to ensure that the prisoner is unable to allege at a later date that his/her sample could have been contaminated by any substances concealed in the containers.

6.22 The collecting officer should give the collection cup to the prisoner and require him/her to provide a sample containing no less than 35 millilitres of urine, subject to the limited discretion outlined at 6.40-6.41. The prisoner should be instructed where to stand and told where the officer will stand to supervise the provision of the sample.

6.23 The officer should remind the prisoner that if he/she is observed adulterating/falsifying the sample, he/she will be liable to be placed on report and will be required to provide another sample.

6.24 Any attempts by prisoners to subvert the procedures must be recorded, as such evidence may later justify the application of more stringent levels of supervision in the future to any particular prisoner.

Prisoner privacy when providing the sample

6.25 Rule 50(8)/YOI Rule 53(8) states that "a prisoner required to provide a sample of urine should be afforded such degree of privacy for the purposes of providing the sample as may be compatible with the need to prevent or detect any adulteration or falsification of sample; in particular a prisoner shall not be required to provide such a sample in the sight of a person of the opposite sex".

6.26 Article 3 of Schedule 1 to the Human Rights Act 1998 specifies that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". Legal advice received is that the requirement to provide a sample of urine, in the direct view of a prison officer of the same sex, would constitute degrading treatment. Indirect observation is however more appropriate.

6.27 When providing a sample, the privacy of a prisoner should not be infringed unnecessarily. The level of privacy allowable as standard should be approved by the governor, as should any variations from this level which may be considered necessary. The approved level of privacy should not be reduced where a particular prisoner is suspected of cheating, or has cheated on a previous occasion, or the level of cheating in the prison is such that samples have to be collected with less privacy allowed to all prisoners. However, for such prisoners staff may deem it appropriate to conduct a further full search following long periods of confinement.

6.28 In the absence of direct observation of the sample provision process, it may on occasion prove difficult to prevent interference with the sample.

6.29 Where staff are suspicious, the best safeguard is to conduct as thorough a search of the prisoner as is possible and to ensure that the sample is checked carefully after provision (temperature, smell, appearance). Where a prisoner repeatedly provides negative samples but is suspected of interfering with the sample, the best approach is to conduct an on-suspicion test at a time least expected by the prisoner.

Privacy for women prisoners

6.30 Because of the physical, and to some extent cultural, differences between males and females in relation to urination, previous editions of the manual have advised that observation of women when providing samples may be less acceptable to staff and prisoners than for male prisoners.

6.31 This applies much less to indirect observation than to previous (and now inappropriate) provision for direct observation. The arrangements adopted by some female establishments have involved complete privacy for women in a toilet cubicle when they are providing the sample. Whilst addressing the fears of prisoners and staff alike over unnecessary intrusions into privacy, this arrangement does increase the possibility of vaginal concealment of false samples. Such additional privacy is not usually afforded to women in other testing environments, for example sports testing. Prisons have the responsibility to take all reasonable steps to prevent interference with the sample.

6.32 If establishments wish to offer less privacy to female prisoners in order to prevent cheating then they may do so provided that this additional intrusion into the privacy of the prisoner does not amount to degrading treatment (and as such is open to challenge under the Human Rights Act). In addition, Prison Rule 50(8) (YOI Rule 53A(8)) expressly provides that a prisoner is to be afforded such degree of privacy as is compatible with the need to detect adulteration or falsification of the sample. Any increased level of observation must,

therefore, be justifiable as a proportionate response to the threat of cheating from prisoners.

6.33 What amounts to degrading treatment is open to interpretation. Legal advice received is that requiring a female prisoner to provide a sample in a cubicle with the door ajar, or with a half-door fitted, and with a prison officer observing from outside the cubicle would not be considered as degrading treatment under ECHR article 3 provided that this can be justified as a proportionate response to the threat of cheating. Prisoners not suspected of cheating should be offered more privacy whilst those strongly suspected of cheating, or those shown to have cheated in the past, could be required to provide a sample with little or no privacy. Establishments are reminded that Prison Rule 41(3) (YOI Rule 46(3)) prohibits supervision of sample collection by staff members of the opposite sex to the prisoner.

6.34 Aside from the legal considerations, any decision to impose a form of sample taking involving a greater degree of indirect observation of the prisoner should first be discussed with the staff who will be supervising sample collection. The reasons why a greater degree of in direct observation is required should be noted, i.e. the prisoner is strongly suspected of cheating or has cheated in the past, in order to assist a defence if there is a challenge under articles of the Human Rights Act.

6.35 In order to help overcome the problem of cheating, extra effort should be put into the practical arrangements for collecting samples, as follows:

- prisoners required to provide a sample should be detained without any warning whatsoever and sample collection should not be undertaken at regular or identifiable times of day or days of week;
- thorough searches should be carried out prior to sample provision;
- some establishments make use of visible collection cup holders, either built into the toilet bowl or in the form of a frame fitting into a normal one. This eliminates the need for the prisoner to hold the cup and allows prisoners to place their hands in front of or away from their bodies. Thus discretely positioned staff need only observe and confirm the correct placing of a prisoner's hands, therefore reducing the opportunity to adulterate a sample or substitute a false sample.

Women with babies

6.36 Mothers should expect to leave their babies with the nursery nurse when they are required to provide a sample for drug testing purposes. It is not desirable for babies to be brought into the MDT suite.

6.37 Special arrangements must be made for mothers who are required to be confined for several hours if they cannot provide a sample quickly. Mothers must not be separated from their babies for lengthy periods.

Note: for guidance on the testing of pregnant and menstruating women see 4.62 – 4.63.

Sample volume

6.38 It is essential to ensure that a sufficient volume of urine is available to enable screening for the full range of drugs and for subsequent confirmation testing, should that be required. There is an overriding requirement to ensure that a sufficient volume of urine is available for independent analysis, should that be requested. *The sample for analysis must be provided from a single void (a single and continuous urination process).* It is unacceptable to top up the sample from different voids until the required volume is reached or to provide the A and B samples from different voids. Different voids of urine can in certain circumstances have

different characteristics (different drug levels and different levels of naturally occurring substances such as creatinine). If different voids were used for the A and B samples, this would lead to the conclusion that samples had been mixed, thus casting doubt on the wider MDT chain of custody procedure. *If insufficient volume is obtained from a single urination, the sample must be discarded and a process of confinement used.*

6.39 Whenever possible, sample collectors should fill the two sample containers (the 'A' and the 'B' samples) with the maximum volume of urine – 30 millilitres in each container.

6.40 *Where this is not possible, the minimum volume of urine requested to enable full analysis is 35 millilitres, which must be split equally between the two sample containers to provide a minimum of 15 millilitres in each container* – this allows for some minor wastage during the transfer process.

6.41 Where prisoners have a genuine difficulty in providing a sample, there is limited scope for discretion. As long as MDT staff are satisfied that levels of urine in both the 'A' and the 'B' tubes satisfy the minimum requirement of 15ml then a sample which appears to be slightly under the 35ml level could be accepted.

Confinement of prisoners pending collection of a sample

6.42 If a prisoner is unable to provide sufficient urine when required but is likely to benefit from being allowed more time, the collection procedure must be suspended and the following action taken:

- *if the urine collection kit has been opened it must be disposed of. A note should be made in the comments section of the chain of custody form and MDT register;*
- *the prisoner must be confined in a cell/room approved by the governor for this purpose under the terms of Prison Rule 50(7)/YOI Rule 53(7) and given access to a third of a pint of water at the beginning of each hour to assist him/her to provide a sample; and*
- *a record must be kept of the volume of water provided in the notes section of the chain of custody form.*

6.43 Before deciding that confinement is necessary, staff should consider whether limited discretion should be exercised to accept a slightly reduced sample volume of 30 millilitres (see 6.40-6.41).

6.44 The purpose of confinement is to ensure that prisoners are held securely whilst they are waiting to provide a sample and in circumstances where they cannot undermine the testing procedures by concealing false samples, or taking adulterants which might mask the use of illicit drugs, or by consuming large quantities of water, which would make analysis of the sample more difficult.

6.45 The authority for confining prisoners for specific periods during the collection of samples is contained in Prison Rule 50/YOI 53. This authority is limited strictly to very particular circumstances and its use must be carefully recorded and monitored.

6.46 Under Rule 50(6)/YOI Rule 53(6) confinement is possible in two sets of circumstances. First, a prisoner who is to be required to provide a sample may be kept apart from other prisoners for a period not exceeding one hour to enable arrangements to be made for the provision of the sample.

6.47 While authority should normally be obtained and the collection site prepared before prisoners are escorted to the site, this may not always be possible. Prisoners may, for

example, be escorted to the site in groups and may be confined while awaiting the opportunity to provide their sample.

6.48 In addition, circumstances may occur where a prisoner is suspected of misusing drugs which require the prisoner to be confined at short notice and where delay would provide him/her with the opportunity to take action to subvert the test.

6.49 Rule 50(7)/YOI 53(7): secondly, a prisoner unable to provide a sample of urine when required to do so may be kept apart from other prisoners until he/she has provided the required sample, save that a prisoner may not be kept apart under this provision for a period of more than five hours. The five hours begin when the prisoner is unable to provide a sample when first asked.

6.50 Prisoners may be unable to provide a sample immediately when required to do so and may need time and possibly access to fluid to assist them to provide the required sample. Four hours, with one additional discretionary hour as outlined below, with controlled access to fluids will in the majority of cases provide prisoners with sufficient opportunity to overcome any temporary difficulty in providing a sample.

Access to water and meals during confinement

6.51 *Prisoners must be provided with access to about a third of a pint of water (approximately 200 millilitres) – a full mug is approximately half a pint – at the beginning of each hour (starting when the prisoner is first confined) to assist in providing the sample*. It is important, to avoid the risk of dilution of the sample, that the prisoner is not provided with a pint and two-thirds of water all at once. No food or drink is to be provided/consumed in MDT suite apart from fluids given to prisoners in the confinement area. *The exception is if the prisoner is confined during a meal time. In those circumstances, the prisoner must be allowed the same food as other prisoners and a cupful of whatever drink is being served, for example, tea, coffee or fruit juice, at approximately the same time as other prisoners.* If provision of fluids with food is close to the hourly point when a third of a pint of water might otherwise be given, the water need not be provided on this occasion.

6.52 From time to time prisoners have alleged that controlled drugs have been administered by prison staff in the water provided during confinement. To safeguard against such allegations provide bottled water, breaking the seal in the presence of the prisoner, and give the prisoner the opportunity to check the receptacle in which the water is provided; alternatively, the prisoner may be invited to witness the actual provision of tap water.

Prisoners requiring medication

6.53 *Prior to any confinement, prisoners must be asked directly if they need access to medication of any type over the next five hours. If they do, then a member of Healthcare staff must be notified so that the prisoner can discuss that need and appropriate action can be taken.* A sign should be placed in the waiting room and the confinement area asking prisoners to let staff know immediately if any such medication is required.

Access to Healthcare workers when held in confinement

6.54 *During a confinement prisoners must be asked if they wish to discuss their inability to provide a sample with a Healthcare worker*. This may be done after two to three hours, but before the four-hour point is reached, and at any time where the officer believes the prisoner is having difficulties in providing a sample (see 10.14-10.19 for more information).

Confining a prisoner expecting a visit

6.55 Adjudicators will often be sympathetic to a prisoner who claims to have broken confinement because of a visit from a close family member. In establishments where there is a system of booked visits it is possible to avoid testing a prisoner at visit time, although this will introduce a degree of predictability.

6.56 The problem is greater where there are no booked visits and the prisoner claims to be due a visit when asked to provide a sample. In those circumstances, you should proceed as normal with collecting the sample and confinement, where necessary. You should inform visits staff that the prisoner is at the MDT site and ask to be informed as soon as his/her visitor arrives. If no sample has been provided by the time the visitor arrives, inform the prisoner that he/she is free to go and will not be charged with refusing a lawful order on this occasion. Warn the prisoner that he/she will be required to give a sample at a later time. The prisoner may be expecting you to attempt to take a sample immediately after the visit and could drink lots of fluids in an attempt to provide a dilute sample. As usual, unpredictability is the key; attempt to test the prisoner again when it is least expected.

Defecating whilst in confinement

6.57 Refusing a prisoner's request to defecate whilst in confinement until a urine sample is provided would be unreasonable.

The following action should be taken:

- ask the prisoner if he/she is able to provide a urine sample before going to the toilet. If so, there is no problem;
- search the toilet cubicle before the prisoner uses it – he/she may just be using the chance to pick up something hidden there earlier;
- tell the prisoner not to urinate; and
- search the prisoner on return to the MDT site.

6.58 It may be that the prisoner will urinate whilst visiting the toilet. This could be regarded as the prisoner being blatantly unco-operative, justifying a charge of disobeying a lawful order. In practice, some adjudicators may be sympathetic to an "I couldn't help myself" defence. However, it may be apparent that a prisoner was merely claiming to need to defecate in order only to urinate, thus emptying their bladder. Such cases may justify particularly a charge of disobeying a lawful order.

6.59 In many cases the solution will be to treat the prisoner as if their sample had been invalidated for a reason that was not their fault and re-confine the prisoner in the hope that a sample can be provided within the five hours (see 6.50). If, due to the time of day, that cannot be done, the prisoner can be required to provide a sample on another day.

Continued difficulty in providing a sample

6.60 Expert advice is that the majority of prisoners required to provide samples will be able, given controlled access to water, to provide sufficient urine (35ml) immediately or within a short period of the request. There will be a few prisoners who will experience difficulty in complying and will require more time and special treatment. Others may be tempted to try to use this as an excuse in order to evade the test procedures.

6.61 Legal advisers consider that it would be unlawful to require a sample to be taken where Healthcare staff concluded that because of a medical condition a prisoner could not reasonably be expected to provide a sample of sufficient volume. Neither would it be lawful if the giving of the sample involved material pain.

6.62 Certain prescribed medications have the side effect of causing urinary retention. Such side effects, where reported, are not experienced by every patient or necessarily by individual patients all the time. Certain medical conditions may also affect the production and/or passing of urine.

6.63 Some prisoners have a psychological condition called shy bladder syndrome or paruresis which prevents them passing urine if they are observed or pressurised. The problem may or may not be linked to other, more serious, psychological problems; it may be more common amongst young offenders than amongst adult prisoners. If a prison officer suspects a prisoner cannot provide a sample because of this problem, there are two possible approaches:

a) the prisoner must be allowed more time at the toilet without the time pressure to provide an immediate sample and a reduced level of observation; and
b) if this fails, the prisoner, after a full strip search, may be provided with a sample collection cup and allowed to provide a sample in complete privacy in a cell with either internal sanitation (water must be blued and the flush must not be accessible from inside the cell) or a cell without water but furnished with a urine container for the collection of excess urine and the opportunity then afforded the prisoner to wash their hands immediately thereafter.

6.64 Some prisoners might attempt to engineer these circumstances to gain more privacy in order to cheat. Some may do it to be awkward; some will be genuine. The judgement of the officer is crucial. Where the above reasonable steps have been taken and the prisoner is still unable to provide a sample, this may be counted as a refusal, taking into account all the circumstances of the case, including medical advice.

The fifth hour of confinement

6.65 If a prisoner is unable to provide a sample after four hours' confinement, the sample collecting officer has the discretion to allow a fifth hour. In most cases it will be appropriate to allow the extra hour. Only if the prisoner is blatantly unco-operative (see below) should confinement be terminated before the full five hours.

Providing a sample during confinement

6.66 During the period of confinement, the prisoner should be asked frequently whether they now wish to provide a sample. At a minimum, prisoners should be asked on an hourly basis at the point when further fluids are provided.

6.67 If, after a period of confinement, the prisoner wishes to provide a sample, a new sample collection kit should be prepared and, after confirming the identity of the prisoner, the procedures from 6.22 onwards should be followed.

Full searches of prisoners after confinement

6.68 There have been occasions where during the course of unobserved confinement prisoners have recovered an adulterant or sample of drug-free urine that had been concealed internally. The search carried out on admission to the MDT suite would not in those circumstances be effective. Where MDT staff have reasonable suspicion that a prisoner has recovered adulterants during the period of confinement, staff may conduct further searches on prisoners leaving the holding cell, prior to collecting the sample.

Refusal and non-co-operation

Refusal

6.69 If any prisoner refuses to provide a sample when required to do so he/she must be reminded that he/she is liable to be placed on report for disobeying a lawful order (Rule 51(22)/YOI 55(25*)). If he/she continues to refuse, the procedure must be stopped and a record made of the refusal in the comments section of the chain of custody form and in the sample collection register.* The prisoner should then be returned to his/her correct location as soon as practicable and arrangements made to place him/her on report (see also Chapter 8).

6.70 Any prisoner who has not been diagnosed as having a relevant medical condition may be charged with refusing a lawful order if he/she fails to provide a sample. Before proceeding with the case, advice should be sought from the medical officer on possible medical causes of the failure to provide a specimen. When the prisoner refuses to give consent to medical disclosure, the case should proceed on the available evidence.

Non-co-operation

6.71 A prisoner may stop short of refusing to provide a sample, but may still be blatantly unco-operative, for example refusing to go into confinement. A prisoner who remains blatantly unco-operative, despite warnings, may be charged under Rule 51(22)/YOI 55(25) with refusing a lawful order.

6.72 A prisoner held in confinement who is suspected of being unco-operative, but not blatantly so, should be warned that after four hours the confinement is likely to end and they will be liable to a charge of disobeying a lawful order. An example would be refusing to drink water (see also 4.72 – 4.73). In such circumstances, sample collectors should continue to make water available even if the prisoner does not accept the offer. There would be little point in confining the prisoner for a further hour.

MDT records

6.73 All data on random mandatory drug testing is obtained from the analytical laboratory. Therefore it is important to let the laboratory know whenever there is a refusal*. Each time this happens you must fill out a chain of custody form.* Place it in a surplus chain of custody bag or in a plain envelope, mark the front with a big "R" and send it off to the laboratory with your next batch of samples. This will enable full records to be kept of refusals. *In the case of refusal, a further prisoner must be selected from the reserve list in order to maintain the testing target.*

Interference with the MDT process

6.74 Where it can be proven that a prisoner has attempted to or succeeded in interfering with the MDT process, it is entirely legitimate to make the inference that the prisoner was attempting to conceal drug misuse.

6.75 There are a number of ways in which a prisoner might attempt to subvert the process:

- by diluting a sample once provided or consuming high volumes of fluids in advance of providing the sample;
- by substituting the sample with different drug-free urine (possibly from another prisoner), water or other liquid;
- by taking substances orally that might hide the presence of drugs;
- by adding substances to the urine, once provided (adulteration); and/or
- by interfering with the chain of custody process.

6.76 The prisoner may be charged under Rule 51(22)/YOI 55(25), disobeying a lawful order, where there is good evidence to suggest that a prisoner may have:

- taken steps to dilute the sample once provided;
- adulterated the sample; or
- substituted the sample, for example with one provided by another prisoner or with water or other liquid.

6.77 The laboratory routinely tests samples for creatinine (a by-product of muscle metabolism excreted by the kidneys), pH (acidity/alkalinity), physical appearance, and also for specific gravity as a second check for dilution if the creatinine level is low. A sample which is too acidic or alkaline, which has an unnatural colour or smell, or which contains excessive solids will be declared adulterated and be rejected for testing. A sample that fails the creatinine and specific gravity tests will be declared dilute. If the sample is extremely dilute it will be rejected for testing and reported as “not consistent with normal human urine”. It may, exceptionally, even with an extremely diluted or otherwise adulterated sample, still be possible to detect the presence of drugs. The laboratory will attempt to analyse such samples as the addition by a prisoner of liquid or an adulterant to a small urine sample during the collection process may not be enough to completely disguise the presence of drugs. If such a sample screens positive for drugs, a positive screening report will be issued and a recommendation that the prisoner also be placed on report for the attempted adulteration.

Dilution

6.78 In the case of a failed dilution test, the prisoner can, once the result is known, be asked to provide a further sample on the grounds that the original sample was not suitable for drug testing purposes. Alternatively the prisoner may still be charged if, despite the sample being dilute, one or more drugs still show up as positive. It is inappropriate, however, to ask for a replacement sample and to bring a charge based on the dilute sample.

6.79 Samples may be dilute due to normal patterns of drinking, illness or the use of certain medications, and a failed dilution test is not sufficient reason on its own for suspecting that the prisoner has tampered with the sample. Dilution of samples can occur in one of two ways:

- the addition of water or drug-free urine during sample provision. In the latter case, it is most unlikely that laboratory tests would show the sample as dilute; and/or
- consumption of large volumes of fluid prior to testing, sometimes known as flushing. A dilute urine sample may be expected from an individual who drinks either small amounts of fluid continuously throughout the day (a cup every half hour or so) or a

single large amount (e.g. four to five cups) approximately one hour prior to sample collection. It may take a minimum of two to three hours following consumption of a large volume of fluid for the system to return to a normal balance.

6.80 It is not possible to define what constitutes excessive consumption of fluids prior to testing and therefore it is difficult to prove that fluid consumption was intended to disrupt the MDT process.

6.81 However, in those instances where the laboratory reports the sample as being so dilute as to be not consistent with normal human urine, the prisoner should be charged with disobeying a lawful order (Rule 51 (22)/ YOI 55 (25) by failing to provide a fresh and unadulterated sample. If it was a random test and the sample proves to be too dilute or adulterated to the extent that testing is not possible, a name from the reserve list should then be drawn to make up the numbers needed to achieve the monthly testing level.

Adulteration

6.82 In some instances attempted adulteration may be readily apparent to MDT staff, for example, addition of bleach or foreign bodies floating in the urine. No matter how apparent the adulteration, the sample should still be sent to the laboratory for analysis (with the exception of samples which clearly fail the temperature check – see 6.103 onwards). It may, even with an adulterated sample, still be possible to detect the presence of drugs.

6.83 Even if not positive, it is still better to obtain expert laboratory evidence of adulteration prior to charging a prisoner. It would, however, at the very least, provide grounds for requesting a replacement sample and prisoners can still be charged for any reported positives even if the sample fails the adulteration test. Where there is good laboratory evidence of adulteration, it is possible to charge a prisoner with failing to provide a fresh and unadulterated sample – Rule 51(22)/YOI Rule 55(25).

6.84 A number of prisons have run pilot studies on making available disinfectant tablets (which contain sodium dichloroisocyanurate) as a harm-minimisation measure for those prisoners who continue to inject drugs. Disinfection tablets have the potential to disrupt the MDT analytical process and therefore provide a readily available means of adulteration. However, even small quantities of a tablet effervesce (give off bubbles of gas) violently for some minutes and smell strongly of chlorine (the smell often noticed at swimming baths) when added to urine. It should therefore prove possible to detect this form of adulteration immediately after the sample has been provided. Staff may place prisoners on report at this stage. The sample should also still be sent to the laboratory for analysis.

6.85 A number of prisons have experienced difficulties whereby a sample that tests positive at the screening stage failed to confirm positive. Extensive investigation showed the most likely cause to be denture cleaning products such as Bocasan or Steradent. Such products contain an oxidising agent which interferes only with the confirmation stage. Addition of dental cleaning products may be detectable through direct observation of the sample.

6.86 It has been reported that some prisoners carry around sachets of Bocasan mouthwash. Bocasan is available without prescription from chemists and shops and is used in the treatment of oral infections. It is a white powder that dissolves in water. High concentrations in a urine sample can cause a false negative screening result for some drugs. Bocasan if swallowed is toxic, so the sensible prisoner will try to add it to the urine sample. If enough is added to have an effect, the sample will turn a milky-white colour for about 10 minutes. *If staff come across a sample like that, they should charge the prisoner with failing to provide a fresh sample free from adulteration, but must also send the sample to the laboratory for analysis, with notes in the comments box on the form.*

6.87 The laboratory is able to identify when attempts have been made to disrupt the process using disinfectant tablets, Bocasan or Steradent etc. In such cases the sample will be reported as adulterated.

Falsification of documents

6.88 Prisons should also be alert to novel ways in which prisoners might attempt to subvert the MDT process.

6.89 [Paragraph deleted in accordance with PSI 11/2007]

6.90 [Paragraph deleted in accordance with PSI 11/2007]

6.91 One example involved a prisoner altering a copy of an independent analysis report to read that no drugs had been detected. The prisoner produced the forged analytical report to the adjudicator claiming the prison analysis was flawed. The matter only came to light when the case was referred to the Drug Strategy Unit to explore the reasons for the apparent discrepancy in analysis between the two laboratories. It was only upon making contact with the independent laboratory that it became apparent that the analytical report forwarded to the prisoner's solicitor in fact reported the sample as positive. Closer examination of the report in the prisoner's possession showed it to be a forgery, although it is unclear how the forgery was perpetrated.

6.92 Where there is good evidence of an attempt to subvert the MDT process, prisons should consider what additional charges might be appropriate in the circumstances.

Evidence for disciplinary action

6.93 In some cases there may be definitive evidence that the sample has been tampered with (e.g. extreme acidity, the presence of a substance that could not have occurred naturally or a sample which was found to be substantially water). In these cases comments will be made by the laboratory on the test certificate. Disciplinary action against the prisoner (for disobeying a lawful order, i.e. not providing an unadulterated sample) should only be considered if there are specific comments on the screening report (which will be titled 'Adulterated Sample Report' in these circumstances) to support this.

6.94 The Prison Service laboratory is able to conduct analysis which categorically identifies whether a sample is adulterated and in many cases what the adulterant is. In some instances it may be possible to prove the sample has been adulterated, but not to prove beyond doubt what was used. If the sample is adulterated the interpretation will be provided on the sample report. This constitutes sufficient evidence to take disciplinary action against the prisoner concerned.

Other spoiled samples

6.95 Where a sample is invalidated through no fault of the prisoner, for example, due to a fatal error in the chain of custody, accidental spillage by staff, staff inadvertently having to leave the MDT suite, or due to damage in transit, it is inappropriate to require the prisoner to provide another sample. The prisoner will already have complied with the original order and issuing a second order to provide a sample immediately following the first may be considered an unreasonable requirement, not least because it may be much more difficult to provide a second sample shortly after the first. The exception to that rule would be in cases where the inconvenience to the prisoner of not being tested would be greater than the inconvenience of providing another sample, for example, when the results of a risk assessment test were required before temporary release was considered.

6.96 It is important for statistical purposes to ensure that the monthly random target is achieved. For each spoiled sample or sample that has been adulterated to the extent that testing is not possible, an additional sample should be collected from a prisoner on the reserve list, in order to meet the monthly target. This applies irrespective of whether the sample was spoilt due to MDT staff error (e.g. spillage) or otherwise (e.g. damage or loss in transit). Where the laboratory reports a fatal flaw in the chain of custody (6.138) an additional sample should also be collected from a prisoner on the reserve list.

Actions to be taken immediately after sample provision

Hand washing

6.97 The prisoner should be required to wash his/her hands immediately after the sample cup has been given to the MDT officer.

Signs of dilution and adulteration

6.98 The sample should be checked immediately for signs of dilution or adulteration. The most readily identifiable sign of dilution is a lowering of temperature. The smell and appearance of urine can provide a strong indication of adulteration.

Temperature of the sample

6.99 *The temperature of the sample must be checked immediately using the temperature strip on the sample container to ensure the sample was freshly provided.* A false sample held outside the body will not be at the correct body temperature (range 32-38°C). A false sample concealed internally for an hour may, however, reach normal body temperature. Generally, where arrangements for searching and supervision are at a high level it will be more difficult to substitute, undetected, another sample.

Smell and appearance

6.100 Smell can provide a good indication of interference with the sample. Stale urine, which may be used as a drug-free urine substitute, has a particularly unpleasant and characteristic smell and is sometimes very cloudy. The addition of certain substances such as bleach or disinfection tablets should also produce very characteristic smells or appearance (e.g. milky or effervescing liquid).

6.101 There is a balance to be struck. The smell of any urine sample can be particularly unpleasant and staff are not asked to smell every sample closely. However, the more blatant forms of adulteration may produce sufficiently strong smells to alert staff.

6.102 The appearance of urine can sometimes give a clue to adulteration. The sample may have been adulterated if solids are floating in it, if there is a high level of debris, where the sample is effervescing or where it is an unnatural colour. Where the sample is very pale in colour this may indicate prior consumption of large volumes of fluids or the addition of water to the sample.

Action to be taken when interference is suspected

6.103 There are a number of possible courses of action:

6.104 If the sample is outside the prescribed temperature range (32-38°C), it should be rejected and the prisoner requested to provide another sample (clearly staff should also ensure that collection kits are not kept in a very cold environment). This could indicate dilution with water or a specimen of urine provided earlier. *A note must be made on the chain of custody form of the temperature recorded and subsequent actions and the prisoner confined in accordance with instructions in 6.42.*

6.105 If the second sample is also out of range, the officer should record the temperature on the chain of custody form, complete the sample collection procedure and ask Healthcare staff to examine the prisoner and take his/her temperature to identify whether there is any physical explanation for the temperature being outside the normal range.

6.106 If Healthcare staff advise that the unusual temperature of the sample may be consistent with the prisoner's physical condition, a note must be made in the comments section of the procedure checklist and the sample accepted.

6.107 If Healthcare staff are unable to identify any physical explanation for the temperature of the sample, this second sample should be rejected and, if time permits, the prisoner should be required to provide a third sample under closer observation. *A note must be made in the comments section of the procedure checklist and the prisoner confined in accordance with the instructions in 6.42.* If the prisoner cannot then produce a suitable sample within the allotted time, then he may be placed on report for refusing a lawful order to provide a fresh and unadulterated sample.

6.108 If the temperature is within the normal range but the sample appears dilute (very pale yellow/straw colour), this could indicate consumption of excessive fluids. The sample should be sent to the laboratory in the normal way. Routine analysis will identify the extent of dilution and it may still be possible to detect the presence of drugs.

6.109 If information is received via an SIR that a prisoner is internally concealing a false sample, then, with a governor grade's (or equivalent's) permission, the first sample obtained from that prisoner may be rejected and the prisoner required to provide another sample in accordance with the instructions.

6.110 If the urine sample contains excessive solids, caution should be exercised at this point and medical advice sought if in doubt – deposits of protein or dark coloured urine could be indicative of a serious medical condition thus warranting referral to the Healthcare department. The sample should be sent to the laboratory, where the nature of the adulteration might be confirmed. It can still prove possible to detect drugs even in heavily adulterated samples. Details of the suspected adulteration should be provided to the laboratory by completing the comments box on the chain of custody form when forwarding the sample.

6.111 It may be less certain that the sample has been adulterated, but the appearance or smell of the sample, or the behaviour of the prisoner, may give reason to suspect that adulteration has taken place. Either send the sample to the laboratory for testing (for actions on

adulteration following receipt of the screening report see 7.26) or reject the sample and require the prisoner to provide another. *Samples must only be rejected outright by staff where the temperature check has failed.* Even when staff have observed a clear attempt at adulteration, e.g. the prisoner adding water to the sample, as well as placing the prisoner on adjudication report for refusing to provide a fresh and unadulterated sample, the sample itself should still be forwarded for analysis to the laboratory as it may still be possible to detect drugs from the (albeit obviously diluted) urine sample. *A note must be made on the chain of custody form and the prisoner confined in accordance with instructions in 6.45.* When a sample has been rejected for whatever reason, the period of confinement is not to be re-started or extended, but continued up to the original maximum of five hours, if necessary.

Filling, sealing and packing the sample tubes

6.112 Once sufficient volume of urine has been provided, the prisoner will hand over the sample container to the MDT officer.

Transfer of urine to the sample tubes

6.113 For legal reasons, mandatory drug tests require split samples to be taken. This involves filling and sealing two sample tubes in front of the prisoner. The first tube or 'A' sample is used by the Prison Service laboratory for both the screening test and any confirmation test. The second tube, or 'B' sample, is sealed at the point of collection and, in the event of a confirmed positive test, is kept at the laboratory for 9 months pending any appeal. The 'B' sample may be used by the prisoner for independent analysis.

6.114 It is important that the transfer of the urine to the tubes is watched by the prisoner. The minimum volume of urine required at collection is 35 millilitres. The urine should whenever possible be transferred equally between the two tubes, ensuring that each tube contains at least 15 millilitres of urine. This ensures that all confirmation tests can be carried out should a sample test positive for more than one drug and should buprenorphine or LSD testing be required. For legal reasons it is important that the amount of urine available to the prisoner in any challenge is no less than that available to the Prison Service for its tests.

6.115 The aim should always be to provide for analysis the maximum volume of urine (30 millilitres per tube). Whenever sufficient volume of urine is available, the 'A' and 'B' tubes should be filled to capacity (but not to the point of overflow).

6.116 When insufficient sample is produced, from a single urination, the prisoner should normally be confined and given the opportunity to produce a satisfactory sample.

6.117 *If there is insufficient urine to fill both sample containers to the required level, then any urine produced must be discarded and the prisoner asked to provide a further sample using a new kit. A note must be made in the comments section of the procedure checklist and the prisoner confined in accordance with the instructions above.* Never fill one sample container at one point in time and the second later when the prisoner returns from confinement. In this situation the second sample is likely to be far more dilute than the first and any drugs found in the first sample may not show up in the second. Nor is it acceptable to mix samples obtained at different times in order to reach the minimum required volume.

Sealing the sample tubes

6.118 When closing the lid of the sample container make sure the top is pressed down firmly and the latch engaged. *All sample tubes must be sealed with the tamper-evident chain of custody seals supplied on the chain of custody form.*

6.119 The prisoner should be asked to initial and date the two tube seals in the space provided, whilst the seals are still attached. If the prisoner refuses to initial the tube seals, a note should be entered in the comments section of the form.

6.120 Whilst the prisoner watches, the tube seals initialled by him/her should be removed from the chain of custody form. Each end of the label should be held to prevent the label rolling up and sticking to itself. It should then be carefully placed across the top (avoiding the sharp edges of the latch and the hinge). Next, smooth the seal down the sides without creasing or pulling too tight*. It must not be possible to remove the cap without breaking the seal.*

6.121 Tube seals are tamper-evident and any attempt to remove them from the tube will be apparent to the laboratory. Once the seals are attached to the tubes they cannot be removed as this would render the sample invalid.

6.122 As long as the numeric code is still visible the sample will be analysed even if the bar code has been accidentally creased. In the event of one of the seals being damaged or becoming unreadable, then, while watched by the prisoner complete a new form and use the new set of seals and barcodes on each tube, ensuring that the old seals remain visible. *The prisoner must be asked to initial and date the new seals as outlined above. A note must be made in the comments section of the chain of custody form explaining the action taken (initialled by both the officer adding the comment and the prisoner).*

6.123 [Paragraph deleted in accordance with PSI 11/2007]

6.124 The tamper-evident seals contain unique barcodes used by the laboratory to identify samples. When the sample is received at the laboratory the seals are checked to ensure that they bear the same number and that it is identical to the one on the form.

Opening the chain of custody form

Bar codes/test reference numbers

6.125 The chain of custody form has printed bar code numbers on all four copies of the form. As well as the tamper evident sample seals, the form also includes a small barcode label. This should be attached to the relevant column in the MDT register.

Prisoner's declaration

6.126 The prisoner should be asked to sign the declaration on the chain of custody procedure form. If he/she refuses to sign the declaration, a note of this should be made in the comments box on the form using the following wording "Prisoner refused to sign, reason for test explained, correct procedures followed and demonstrated to the prisoner." The second member of staff should sign the form next to these words.

Prisoner's sex age, religion, disability and ethnic code

6.127 The chain of custody form includes tick boxes for the prisoner's sex, age, religion and ethnic code. Those of you working in single-sex establishments may see little point in ticking the same box all the time for prisoner's sex. However, there are occasionally establishments housing both male and female prisoners. Without these tick boxes, it would not be possible to differentiate between how many male or female prisoners have been tested or provide accurate statistics on patterns of drug misuse amongst male and female prisoners.

6.128 Age, religion, disabilities and ethnicity codes are required for similar reasons. This is especially important in showing that drug testing is undertaken in a non-discriminatory way. Please use the LIDS ethnicity codes in providing this information before each testing

session. If LIDS states 'unknown' or 'not stated', ask the prisoner if they wish to amend this.

Ask the prisoner if you are unsure of his or her age, religion, disability and ethnic code. Since 1 April 2004, the following codes have been used:

Category		Code
White	British Irish Any Other White Background	W1 W2 W9
Mixed	White and Black Caribbean White and Black African White and Asian Any Other Mixed Background	M1 M2 M3 M9
Asian or Asian British	Indian Pakistani Bangladeshi Any Other Asian Background	A1 A2 A3 A9
Black or Black British	Caribbean African Any Other Black Background	B1 B2 B9
Chinese or Other Ethnic Group	Chinese Any Other	O1 O9
	Not Stated	NS

Selecting the drug tests required

6.129 Each sample is analysed automatically for seven groups of drug: cannabis, opiates, cocaine, benzodiazepines, methadone, amphetamines and barbiturates. Buprenorphine testing is currently undertaken on samples in prisons which have specifically requested it. Positives recorded for buprenorphine do not count towards the random MDT Key Performance Indicator rate either locally or nationally. In addition, you may ask to test for LSD. LSD is treated differently because it is rarely found in prison, is costly to test for and is not particularly stable in urine samples.

6.130 The following procedure should be adopted if LSD testing is required:

- write "Test for LSD" in the comments section of the Chain of Custody Form.;
- if there are particular concerns that prisoners are using LSD, the MDT co-ordinator may contact the laboratory via fax and request that all prisoners be tested for LSD for one or more months; and/or
- as a monitoring measure, the Drug Strategy Unit may ask the laboratory to include selected prisons in tests for this drug.

6.131 Prisons may from time to time have suspicions that prisoners are misusing drugs that might not be detected by the drug screening programme. In those circumstances prisons are asked first to discuss their concerns with Drug Strategy Unit staff. The screening programme may already cover a number of less commonly encountered drugs. If not, it may in exceptional circumstances be possible to arrange for one-off analysis of samples to be undertaken for target drugs. *This type of analysis can prove expensive and in order to support the case for exceptional analysis, good intelligence must be available.*

6.132 In the case of buprenorphine, the list of prisons is not fixed. Area managers and area drug co-ordinators are asked to keep the situation under review and submit proposals for removing prisons from the list or extending testing to further prisons as and when required. There would need to be strong grounds for introducing testing. Such grounds might include:

- good quality and consistent intelligence of misuse over a prolonged period;
- a history of drug seizures;
- in prisons where buprenorphine is being used increasingly for detoxification purposes, good quality intelligence of leakage of legitimately prescribed medication; and
- significant levels of misuse in communities from which prisons draw their population.

Completing the chain of custody form

6.133 Before completing the chain of custody form check that the information provided is complete and correct, ensuring that any comments in the comments section are endorsed by the officer witnessing the sample collection. Never write the prisoner's name on the part of the chain of custody form which goes to the laboratory. This is so that the laboratory cannot be accused of bias against a particular prisoner.

6.134 The chain of custody form should be completed by:

- printing the collecting officer's name and the prison clearly in the space on the tear-off slip;
- entering the date and time the sample was collected;
- indicating if LSD testing is required;
- ensuring that the test reference number has been filled in;
- signing the declaration confirming that steps 1 to 13 on the procedure checklist have been completed in accordance with the instructions and guidance contained on the checklist and in this Manual; and
- tearing off the slip from the top copy and placing it in pocket of the chain of custody bag that does not contain the absorbent paper.

Packing the sample

6.135 Special containers and packaging are supplied for transporting samples. These preserve the chain of custody and ensure that, should the sample be crushed, then no urine leaks out. The latter is a health and safety requirement and for this reason alone do not, under any circumstances, use any containers or packaging other than those supplied for the purpose by NOMS and the courier company.

6.136 *The tubes must be packed securely in the bubble-wrap bag, and placed with the absorbent paper (designed to soak up the entire contents of both urine tubes in the unlikely event that both are broken in transit) in the chain of custody bag. Every effort must be made to observe hygiene precautions. The chain of custody bag must then be sealed.*

6.137 [Paragraph 137 deleted to conform with PSI 11-2007]

Errors in chain of custody procedure

6.138 If any of the following circumstances are discovered by the laboratory when they check the samples, they will be treated as fatal flaws in the chain of custody and the sample will not be analysed:

- collecting officer fails to sign the chain of custody form;
- barcodes different on chain of custody and sample seals;
- barcode seals broken or torn in such a way that the sample tube could have been opened – minor tears or slight damage to the seals should not be regarded as fatal and a second opinion will always be sought on borderline cases;
- evidence that a second set of seals has been applied except where noted as such on the chain of custody form by the collecting officer;
- sample volume less than 15ml in either tube;
- either sample tube is broken or leaking;
- donor has not initialled barcode seals when not noted on the chain of custody form and the forms are not labelled with barcodes or identified by barcode number;
- only one sample tube is received; and/or
- where the samples in the A and B tubes are significantly different in appearance.

6.139 If any other errors or discrepancies are discovered by the laboratory, they will be treated as procedural errors in the chain of custody. The laboratory will analyse the sample and report the procedural error together with the result of the test. *These procedural errors must be considered carefully by the drug test co-ordinator (and by the adjudicator if the prisoner is placed on report) before any action is taken against the prisoner on the basis of the test result*. Examples of non-fatal procedural errors include:

- Establishment code missing from the chain of custody (CoC) form.
- Sample collection date missing from CoC form or barcode seals.
- Collector's name missing from the barcode seal.
- Reason for test not recorded on CoC form.
- Damage to the CoC bag, but sample tubes and barcode seals intact.
- Date of collection missing from barcode seals and CoC form.
- Different dates of collection on barcode seals and CoC form.
- Date of collection in the future or greater than 30 days old.

Disposal of surplus urine

6.140 As soon as chain of custody bag is sealed, pour any surplus urine down the toilet while watched by the prisoner. The collecting cup should then be placed in a biohazard waste bag.

Storage of the sample

6.141 As soon as possible, the packed sample should be moved to a secure refrigerator until ready to be despatched to the laboratory by courier. Samples may be kept safely for up to fourteen days without any risk of deterioration if held in a refrigerator at or below a temperature of 4 degrees centigrade.

6.142 *The temperature of the refrigerator must be checked and recorded weekly.* Access to the sample refrigerator will be strictly limited to those staff approved by the MDT co-ordinator, and trained in the procedures for the collection, handling and storage of samples. A record must be kept of the names of staff who have control of, or access to, the samples until despatched to the laboratory for analysis.

Arrangements for despatch of samples

6.143 The courier service is arranged by the laboratory. Each prison will receive one scheduled collection on a set day every week. Ad hoc collections are possible in exceptional circumstances. Drug Strategy Team must be contacted if extra collections are needed..

6.144 Samples should be removed from the refrigerator and packed in a courier bag together with a note listing the number of samples contained in the bag, as close to the time of despatch as possible. The package tracking number must also be recorded. *The courier bag must be sealed and kept secure, in the care of a nominated member of staff, until handed to the courier.*

6.145 The packed samples must be handed to the courier by the nominated officer who must sign the despatch form and obtain a receipt as proof of transfer. The receipt of transfer must be filed with other chain of custody records in case of challenge or loss of samples in transit.

6.146 Couriers run to tight schedules and do not appreciate being kept waiting while a member of MDT staff is found to bring the samples from the MDT unit to the prison gate. There have been occasions when the courier has had to leave because this has taken so long. Unless your staffing and the geography of your establishment are such that the samples can be handed to the courier within five minutes of his arrival, you may leave samples at the prison gate for collection. Urine is a very stable substance, so leaving samples unrefrigerated for a few hours awaiting collection should have no effect. Certainly it would not result in any kind of chemical or biochemical process that would lead to an otherwise negative sample becoming positive.

6.147 When leaving samples at the gate, a member of gate staff must sign form HF014 (Appendix 13). This maintains the chain of custody of the samples and reminds gate staff to contact you if the courier fails to attend. There is no need to attach a copy of the HF014 to the documentation for every sample being dispatched. A single copy of the form can be filed separately. Should it be necessary to find the HF014 for a particular sample, this can be done by referring to the Date to Lab column of the MDT register. If you are made aware of a courier failure, advise the laboratory immediately so they can arrange another collection.

Storage of records

6.148 *All documentation relating to positive MDT tests – chain of custody forms, authorisation forms, confinement forms, screening certificates, confirmation certificates and any other miscellaneous paperwork – must be retained for three years. This is to ensure consistency with all other documentation relating to adjudications. Site registers must be retained for a period of seven years after the last entry.* All documentation relating to negative MDT results may be destroyed as soon as the negative result is received.

Filing arrangements

6.149 The top copy of the chain of custody form may be handed to the prisoner if requested. The second copy should be filed centrally with all other documents relating to the test. The remaining copies should be retained pending the result of the screening test. In the event of an adjudication being required, the third copy should be attached to the F256 for the adjudicator's information and the fourth copy attached to the F1127 for the prisoner. See 11.1-11.9 for more information on record keeping.

6.149 Chart 6.1 summarises the stages involved in collection and despatch of samples.

Chart 6.1: Collection and Despatch of Samples

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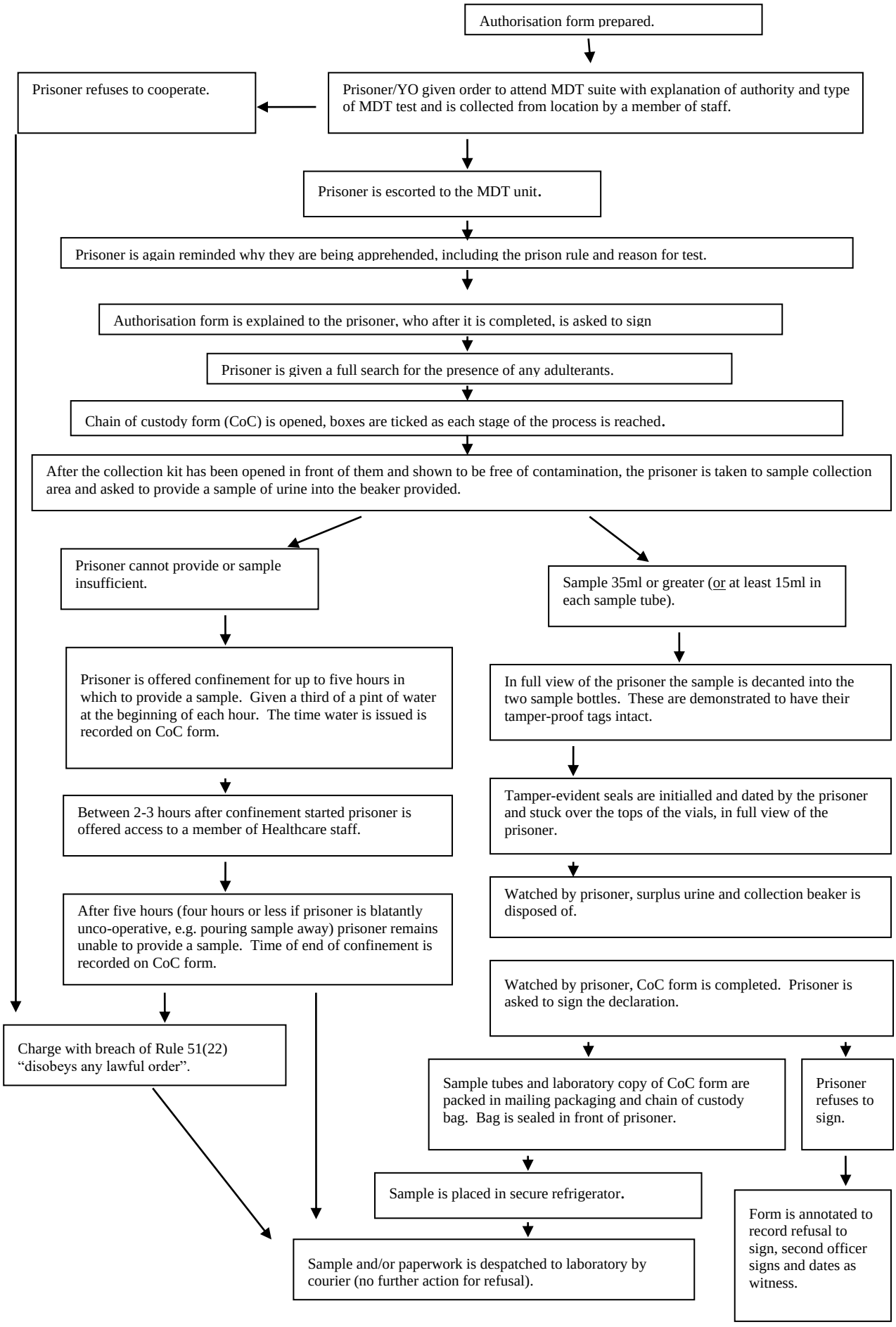
Chart 6.1: Collection and Despatch of Samples



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CHAPTER 7 - SCREENING AND CONFIRMATION TESTS

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Introduction

7.1 The laboratory analysis of MDT samples is a two-stage process. An initial screening test is performed and the results are reported back to the prison. *Normally a prisoner will be charged within 48 hours of receiving a screening test result that is positive for drugs. If the prisoner enters any plea other than an unequivocal guilty at adjudication, a confirmation test must be requested. A confirmation test must be requested for all opiate or amphetamine positive screens. It is also good practice to confirm positive screens, where the possibility exists that the case will be referred to the independent adjudicator.*

The screening test

7.2 All MDT samples undergo an initial screening test for seven drug types: cannabis; opiates including 6-monacetylmorphine (6-MAM), a specific substance detected after the use of heroin); benzodiazepines (tranquillisers); amphetamines (including ecstasy); cocaine; methadone; and barbiturates. Screening for an eighth – LSD – can be requested by the sample collector (see 6.129) and in a number of prisons buprenorphine is also tested.

7.3 The screening test uses a process called enzyme immunoassay – Cloned Enzyme Donor Immunoassays (CEDIA) or Enzyme Linked Immunosorbant Assays (ELISA). These technologies allow a high degree of automation and quality control. Urine samples do not require pre-preparation and hence results can be reported rapidly and accurately.

7.4 An immunoassay test uses a reagent containing drugs that have been chemically labelled and special proteins, know as antibodies. These are chosen to be drug-group specific and are able to detect the presence of drugs and/or their metabolites. The chemical labels are chosen because they can be measured by changes in the light-absorbing properties of the mixture.

7.5 The amount of drug present is compared with a calibrator – a sample that contains a known amount of the drug in question. The calibrator establishes the cut-off level for detection of the drug. Urine samples which contain the drug at values equal to or above this level are reported positive; below this level they are reported negative.

Table 7.1 – Cut-off values applied to MDT assays

Drug	Screening ng/ml	Confirmation ng/ml
Amphetamine	1000	250
Barbiturates	200	200
Benzodiazepines	200	200
Buprenorphine	10	2
Cannabinoids	50	15
Cocaine metabolite	300	150
LSD	0.5	0.3
Methadone	300	300
Opiates	300	300
6-Monoacetylmorphine	2	1

7.6 The ‘cut-off’ value is the level of drug detected in the urine sample below which it is less certain that the drug is actually present - at very low levels many unrelated substances can give similar responses to the target drug and cut-off values are set at a level above which it is highly likely the target drug is present. A balance is struck in that cut-off levels are set low enough to detect recent use but high enough to avoid false positives. Cut-off values used in the analysis are included at Table 7.1.

7.7 Where the level detected falls below the cut-off value, the sample will be reported as negative.

7.8 In a number of instances, the cut-off value is set above the limit of detection, often for toxicological reasons. For example, at screening, the cannabis assay has a cut-off value of 50 nanograms per millilitre. At this level it is possible to rule out positive test results due to passive inhalation of smoke and cannabis misuse over periods of longer than 30 days. In those instances, it is the cut-off value at the screening stage which is the key factor. Cut-off values at the confirmation stage need not be taken into account.

7.9 Most analytical procedures are in certain circumstances capable of determining the level or amount of drug present in the sample. The ‘accuracy’ of the technique is a measure of the ability to determine the level of drug present. Screening tests such as the biochemical assay used in this process are not intended to measure the level of drug present to a high degree of accuracy. For a number of toxicological reasons, the levels of drugs in urine require very careful interpretation and in many instances, the actual numeric results for urine-drug levels are of little value. For these reasons, the results from the initial screening test are reported only as positive or negative.

7.10 Biochemical assays are formulated to react with particular drugs or groups of drugs and their metabolites – the breakdown products of drugs in the body. Biochemical assays are rarely capable of identifying the presence of an individual drug beyond reasonable doubt. Drugs with a similar chemical structure to the target drug being tested may give a positive result – this is termed cross-reactivity. The extent to which an assay cross-reacts is also referred to as the specificity – a highly specific assay will only give positive results with one drug and therefore has a low cross-reactivity.

7.11 Some screening assays are very specific and have limited cross-reactivity, if any – cannabis, cocaine, methadone. The assays for amphetamine and opiates are the most likely assays to cross-react with legitimately prescribed medication. It is impossible to distinguish between the use of drugs legitimately prescribed and the same drug used illegally.

7.12 When a positive test result is caused by a substance other than the target drug, the result is called a ‘false positive’ result. The most likely cause of a false positive is the use of medication (prescribed or otherwise) containing drugs similar in chemical structure to the target drug.

7.13 Screening is a rapid test appropriate in the majority of cases. It is particularly effective at screening out samples that contain no drugs at all. It is much less reliable in identifying unequivocally which drug is present. The accuracy and specificity of the results obtained through screening tests varies across the range of drugs being tested. The table below shows the approximate percentage of confirmation tests that are positive compared with those that gave a positive screening result. A low percentage of screening test results confirmed may indicate a test with poor accuracy or specificity. It may also be a reflection of the analytical difficulty experienced in confirming the presence of the drugs, rather than the absence of the target drugs. For example, when drugs are present only at a low level, confirmation can be more difficult to achieve.

Table 7.2 – Reliability of screening tests

Drug type	**Approximate percentage of confirmation tests positive (excluding medical mitigations)**
Cannabis	95
Opiates	90
Cocaine	95
Benzodiazepines	70
Methadone	80
Amphetamines	50
Barbiturates	95
Buprenorphine	95
LSD	Not sufficient data

7.14 Even with the most accurate and specific screening tests, on average, 11% of screening positives do not confirm positive. For this reason, screening test results alone cannot be relied upon in any adjudication where the prisoner pleads not guilty.

7.15 As part of the screening process the laboratory also undertakes a number of dilution and adulteration checks.

7.16 Where a prisoner pleads guilty when confronted with the evidence of the screening test, the adjudicator may be able to complete the adjudication and find the prisoner guilty without resorting to a confirmation test, provided he/she is satisfied that the guilty plea is unequivocal. In such cases the main evidence on which a finding of guilt is based will be the prisoner's admission supported by the screening test result. *Confirmation must be sought when opiates or amphetamines have been used and/or where the case is being referred to an independent adjudicator.*

7.17 Screening test results can, under certain circumstances, be considered as factors in some administrative decisions such as the withdrawal of release on temporary licence or the imposition of closed visits (see 9.19-9.28).

"False negatives"

7.18 Occasionally there will be strong evidence that a prisoner has misused drugs, yet the screen test result will be negative. The likeliest reasons for this are:

- sample dilution/adulteration;
- the drug was last used many days ago and there is not enough left in the urine to produce a positive result;
- the amount of the drug in the product used is another important factor in detection. If the prisoner has consumed a drug that has been "cut" many times, he/she will be less likely to test positive. Similarly a few ‘puffs’ on a cannabis cigarette are less likely to produce a positive result; and/or
- the tests cover only the most commonly misused illicit drugs or constituents of drugs. It is possible that the drug the prisoner is misusing is not one of these.

7.19 If "false negatives" occur frequently you should explore in more detail the potential explanations and alert the Drug Strategy Unit.

Use of "dip and read" kits and on-site screening machines

7.20 In no circumstances are non-instrumental drug test devices ("dip and read" kits) or on-site screening machines authorised for use in analysing MDT samples or as a pre-MDT test. *All MDT samples must be sent to the laboratory for screening.* The Prison Service uses laboratory screening because it produces the most reliable and consistent results, provides a single robust chain of custody and so minimises the number of drug misusers who cheat the test and the number of confirmation tests required. Direct comparison of MDT results and on-site testing results is far from straightforward and should therefore be avoided.

The laboratory screening certificate

7.21 The laboratory will provide an individual report for each prisoner who tests positive (Appendix 14) and a summary report will be forwarded for all cases reporting negative.

7.22 Every positive screening test report has the same format. At the top of the report is the prison's barcode, the unique number that identifies the sample. Two lines below that is the sample collection date.

7.23 Section 2 contains the analytical results. Part a) contains the results of the dilution and adulteration tests. These are checks to find out if there is too much water in a sample or whether something has been added. It will be either a pass or a fail. The more dilute the sample, the more difficult it becomes to detect drugs. But it is still possible for a sample to test positive for drugs even though it fails a dilution check (or occasionally an adulteration test). The presence of more water than there should be in a sample does not make a positive test result unreliable. Table 7.3 describes the range of findings that might be provided. Part b) contains the drug test results. These state the drugs for which the sample has tested positive.

Table 7.3 – Wording of adulterated sample reports

Samples can be deemed to be adulterated in the following circumstances:
Creatinine less than or equal to 0.05 G/L and specific gravity less than or equal to 1.001
Creatinine less than or equal to 0.05 G/L and specific gravity greater than or equal to 1.03
Creatinine less than or equal to 0.02 G/L
pH outside range 3 to 11
Tests for oxidants positive
Tests for nitrites positive
Tests for gluteraldehyde positive
Test for cyanuric acid positive
Adulterant in sample
Unnatural smell
Unnatural appearance – two or more distinct layers
Unnatural colour
Unnatural appearance – abnormal amounts of crystalline debris
Unnatural appearance – foreign bodies
Unnatural appearance – frothy

7.24 Section 3 contains the interpretation of the laboratory. Section 4 lists the charges that may be appropriate, subject to the guidance given in this PSO. Just below is the name of the scientist at the laboratory who has certified that these results are correct. It is not necessary for the report to be signed.

7.25 On a separate page is the screen report action sheet, which contains sections for information on prescribed medication and for the MDT co-ordinator to request a confirmation test, if required.

Actions to be taken following receipt of a screening test result

7.26 The testing laboratory will report screening test results either by fax or email. Fax machines should not be switched off to stop results arriving whilst the MDT unit is not staffed as this can cause serious inconvenience to laboratory staff. It is important, particularly when disciplinary action is being considered, that the drug test co-ordinator (or a deputy in case of absence) takes all the action required in response to these reports without delay. Arrangements can be made with the analytical laboratory to prevent reports being received on Friday afternoons, thereby starting the clock ticking for the period of discovery (paragraph 8.20-8.22). The actions required are listed below:

- results are logged in the MDT register;
- *within 24 hours of receiving positive results at the prison, LIDS checks must be made to ensure that the prisoner was in prison custody when the drug was taken;*
- checks should be made with Healthcare to see if the positive result may have been due to prescribed medication. Send copies of the screening report and the test authorisation form with the prisoner's signed consent;
- request confirmation on all amphetamines and opiates positives;
- if the LIDS checks show that the prisoner was in custody when the drug was taken (by reference to the waiting periods in Table 8.1), and there is no reason to suppose the positive result was due to properly prescribed medication, then sufficient evidence exists to state that a disciplinary offence is likely to have been committed (see 8.5);
- the MDT co-ordinator or an appropriate member of staff must then lay charges against the prisoner as soon as possible and apart from exceptional circumstances within 48 hours of discovery of the offence (see section 7.29 and 8.20 onwards);
- all prisoners should be informed of the result of their test, including those who test negative; and
- where appropriate, a confirmation test should be requested without delay.

When to request a confirmation test

7.27 Confirmation tests should normally only be requested:

- if the prisoner has tested positive in a screening test;
- if the prisoner has been charged and brought to adjudication;

- if the prisoner does not enter an unequivocal plea of guilty (although amphetamines and opiates charges should always be confirmed, regardless);

- if the case is being referred to independent adjudication;

- in the case of multiple screen positives, all the drugs found on screening should be confirmed (but not barbiturates, benzodiazepines, buprenorphine or methadone if prescribed) even if the prisoner pleads guilty to administering one or more of drugs detected;

- in the case of benzodiazepines, if there is evidence that a prisoner is misusing a benzodiazepine other than that prescribed, then confirmation should be requested;

- in the rare event of a prisoner absconding with a positive screening test outstanding, a confirmation test should be requested immediately. This will ensure that sufficient evidence is available to proceed on recapture.

7.28 It follows that if a prisoner refuses to plead and/or attend an adjudication then a confirmation test must be carried out before a finding of guilt can be returned. Confirmation tests should also be undertaken before any significant administrative action is taken on any occasion where the prisoner disputes the result of the screening test or there is any doubt about the validity of a result obtained from a screening test.

7.29 Only with a positive screening result for opiates or amphetamines is there the option to delay charging. This is because codeine and dihydrocodeine, which are widely prescribed, can lead to positive screening results for opiates; similarly, some cough mixtures can produce positive results for amphetamines. Laying charges for drug misuse when the screen test is expected to be positive due to prescribed medication is a waste of staff time and an irritant to the prisoners being charged. If this is a common problem in your establishment, you may take the option of requesting confirmation before charging if medication which might have caused the screen positive was declared from the inmate medical record (IMR).

7.30 In cases of multiple drug misuse, charging for any other drug positives (where normal practice is to charge immediately) must not be delayed whilst awaiting the confirmation test results for opiates and amphetamines. When the adjudication is opened, the prisoner should be warned that he/she may be charged with further offences of drug misuse following a confirmation test. Confirmation should be requested for all the drugs found at screen. The charges should not be concluded until the confirmations have been received.

7.31 For example, where a sample screens positive for cannabis and opiates and the prisoner has been in receipt of opiate based medication, a charge of cannabis misuse should be laid within 48 hours of receiving the screening report. Confirmation would be requested for both drugs. If both confirmed positive, the prisoner should be charged with opiates misuse within 48 hours of receipt of the confirmation test report. Both charges would then be concluded at the same time.

7.32 In cases of multiple drug misuse the adjudication should normally be adjourned until all of the test results are available. This will enable the pattern of drug misuse to be considered in an integrated and proportionate manner.

7.33 Alternatively, if prisons prefer, it is possible to charge prisoners with administering all drugs that test positive at the screening stage, amending the charges subsequently if the confirmation test fails to prove the presence of a drug beyond reasonable doubt.

7.34 The action required following a positive screening test also depends on the type of drug found and is detailed in the table below.

Table 7.4 – Action in response to a positive screening test

Drug	Medical disclosure	Action
Cannabis **Cocaine** **LSD** **(no lawful use)**	Medical information not required at any stage in the process.	1 Charge immediately after a positive screening test and LIDS check. 2 Confirmation test only required for adjudication purposes if the prisoner pleads not guilty, but confirmation should be obtained if a charge is being referred to independent adjudication.
Methadone **Benzodiazepines** **Barbiturates** **Buprenorphine** These are controlled drugs which can be lawfully prescribed.	Medical information required immediately after screening positive and before any charge is laid.	1 Charge immediately after a positive screening test and LIDS check if none of these drugs has been prescribed. 2 A confirmation test is highly unlikely (with the exception of some benzodiazepines) to distinguish between prescribed drug use and misuse of the same drug obtained from an illegal source. If the drug has been prescribed there is no point in charging or requesting a confirmation test, with the exception of benzodiazepines (where confirmation should be sought if there is evidence that a different benzodiazepine to the one prescribed Is being misused). 3 If the drug was prescribed, make sure that the laboratory knows that the positive was due to medication – such positives can then be excluded from the MDT statistics. 4 Barbiturates, benzodiazepines, buprenorphine and methadone – confirmation test required if the prisoner pleads not guilty and prescribed medication is ruled out.
Opiates **Amphetamines** Codeine-based painkillers are the most likely prescribed medication to cause an opiate positive, whilst ephedrine (found in some cough mixtures) for example, can cause positives for amphetamines. Legal advisers have confirmed that if these positives occur frequently, a decision can be made to delay charging until after the results of a confirmation test are known.	Medical information required immediately after screening positive and before any charge is laid.	1 Charge immediately following a positive screening result and LIDS check if no drug has been prescribed. 2 Request confirmations even if prescribed or if prisoner pleads guilty for all opiates and amphetamines positive screens. 3 Confirmation tests can often differentiate between prescribed medication and drug misuse. 4. If medical information indicates the possibility that the positive screening test result may have been caused by a prescribed drug, the MDT Co-ordinator or appropriate member of staff may choose either to lay the charge immediately or await the outcome of a confirmation test. (See Flowchart at Chart 7.1.)

All drugs	Where a prisoner refuses to give consent for the disclosure of medical information no further attempt should be made to obtain this from the Healthcare department. Remember: the prisoner needs to bring forward at adjudication credible evidence that the positive test result was due to prescribed medication. If this is not done then a finding of guilt is possible regardless of whether or not disclosure of medical information is provided	If consent for disclosure of medical information is not given, then: 1 Charge immediately after a positive screening test and LIDS check. 2 Confirmation test only required for adjudication purposes if the prisoner pleads not guilty, or the charge is being referred to independent adjudication, if screen indicates use of amphetamines or opiates. 3 If the prisoner pleads not guilty, he/she should be asked again for consent to disclosure. 4 If consent is given, then follow the advice given in respect of the individual drug identified above, adjourning the adjudication if necessary. 5 If consent is still refused then send for confirmation if necessary, and proceed with adjudication when confirmation test result is known on the basis of available evidence.

7.35 Do not assume that an opiate positive is due to codeine even if it has been prescribed recently. Heroin misusers may take codeine in an effort to mask the effects of heroin on the test. A confirmation test can often distinguish between a positive result due to the codeine from painkillers and a positive due to heroin misuse. The same applies to positive results for amphetamine, in circumstances where prescribed cough mixtures might have been used.

7.36 If a prisoner tests positive for methadone, benzodiazepines, buprenorphine or barbiturates and has been prescribed the drug recently (the best guide is the waiting periods – Table 8.1), then there is little point in requesting a confirmation test. Even using sophisticated testing techniques it is practically impossible to distinguish between a therapeutic dose of these substances, legitimately prescribed, and misuse of the same substances illegally obtained. In these cases you will have to assume that the positive screen was due to prescribed medication.

Positive tests due to prescribed medication

7.37 If the disclosure of medication is clearly consistent with the positive test result and was almost certainly due to prescribed medication (see Table 7.4), then the prisoner should not be charged. The prison must fax the screening report back to the laboratory, making sure to indicate that the test result should be mitigated and that no confirmation test is required. In the box that would normally be used to list prescribed medication, write “(name of drug) declared negative due to prescribed medication”. Please also state the name, date and dosage of the drug prescribed. This will give the laboratory all the information required to allow the test to be mitigated. The positive test result can then be registered as being due to medication and not to the misuse of drugs. If you do not do this, the statistics produced by the laboratory will show a greater drug problem at your prison by recording a positive result for KPI purposes. This information will also allow the laboratory to dispose of the samples provided for screening. Prisons must inform the laboratory of any medical mitigations within 10 working days of receipt of the screening test report.

The confirmation test

7.38 Confirmation testing is definitive and uses a more sophisticated technology. Two analytical techniques, Chromatography and Mass Spectrometry, are coupled together either as GCMS (Gas Chromatography Mass Spectrometry) or LCMS (Liquid Chromatography Mass Spectrometry). Chromatography is a technique for separating components from a mixture. An extract of the urine sample is injected into the chromatograph and any drugs or metabolites are separated from other components present in the sample. As drug/metabolite molecules pass through the chromatograph they enter the mass spectrometer. The mass spectrometer shatters each molecule as it leaves the tube. The length of time a substance takes to pass through the chromatograph, the pattern a molecule makes when it shatters, and the weight of the fragments combine to make a unique "fingerprint" for every drug. Results obtained from such tests identify beyond reasonable doubt the drugs present and are able in most cases to clearly distinguish between medication taken as prescribed and drug misuse.

7.39 Results obtained from such tests can, with skilful interpretation by toxicologists, identify the precise nature of any drugs in the sample and are able in many cases to differentiate clearly between medication properly prescribed and illicit drug misuse (though not the same drug used both legally and illegally). To assist this process it is important that details of any medication taken in the 30 days before the sample was collected are passed on to the laboratory.

7.40 The interpretation of opiate test results is particularly complex because some painkillers, migraine tablets and even cough mixtures contain codeine, an opiate. Only heroin, once taken, produces an intermediate breakdown product called 6-monoacetylmorphine (6-

MAM), similar to morphine. When this is found by a confirmation test, there is no doubt that the prisoner used heroin. Unfortunately, 6-MAM breaks down quickly in the body to produce morphine and is normally gone within 36 hours of the last use of heroin. Heroin itself is rarely, if ever, detected but morphine can be detected for up to five days after heroin use. However, codeine may also be present in urine following heroin use, so some prisoners try to mask their heroin misuse by obtaining a prescription for codeine-based medication. When the confirmation test finds just codeine and morphine in a sample, the laboratory scientist compares the amounts of each substance and judges whether all the morphine in the sample could have come from the codeine, or whether some of it must have come from something else (misuse of heroin or of morphine itself). This is not a foolproof process and some prisoners may, on occasion, succeed in masking their heroin misuse some of the time. Further key markers of heroin misuse include papaverine and noscarpine and their metabolites; these provide additional conclusive evidence of heroin misuse when morphine is confirmed above cut-off.

Arrangements for requesting confirmation tests

7.41 A confirmation test is requested by faxing back to the laboratory the screening report. The screening report asks you to nominate which drugs that screened positive are to be confirmation tested. Be certain of the drugs that need to be confirmed before you fax a request as you will not be allowed a second chance. If you request confirmation but fail to nominate the drugs to be tested, all drugs that screened positive will be confirmed. When requesting confirmation you must also ensure that the details of medication are filled in where appropriate and where available.

7.42 The result of the confirmation test will be returned within six working days of receipt of the request. When the confirmation test result is received, arrangements should be made for the adjudication to be re-convened.

Fast track for confirmation tests

7.43 There is a fast-track process for confirmation tests. In exceptional circumstances only, confirmation test results can be returned within two working days, rather than within six days as normal. This should be used only when absolutely necessary. To request a fast-track confirmation test, please return the screen certificate to the analytical laboratory by fax as normal and contact them by telephone to ask for the fast-track service. Do not take advantage of this service by requesting urgent confirmations where it is not truly necessary. The laboratory is contracted to provide urgent confirmation up to a maximum percentage of samples. When that percentage is reached, no more will be accepted from any prison within the designated period.

7.44 There is normally no need to notify the laboratory if a confirmation test is not required. The exception to this is when a screening result is declared negative due to prescribed medication (see 7.37).

Laboratory confirmation report

7.45 The laboratory will provide an individual report for every confirmation requested. An example of the confirmation report is included at Appendix 15. All confirmation reports are divided into sections: 1) sample details, 2) analytical results, 3) stated medication, 4) interpretation and 5) charges. Sections 4 and 5 must be used as the basis for concluding or laying charges. A positive confirmation report provides sufficient evidence to proceed with the adjudication when guilt is denied. Where the laboratory experts conclude that a positive confirmation is consistent with prescribed medication this will be made clear. No charges should follow. The laboratory will automatically make the necessary adjustment to the prison KPI figures to show this as a negative.

Transfer of prisoners

7.46 A prisoner might be transferred to another prison after providing a sample but before the test result is received. If the result indicates that an offence may have been committed, then, as with any other offence, the prison to which the prisoner transferred (the receiving prison) can proceed with the charges against the prisoner. It is the responsibility of the sending prison to raise the charge sheets and number, then forward the necessary documentary evidence without delay, to enable the receiving prison to take the necessary decisions in a timely way.

7.47 Unless otherwise notified, the laboratory will always send test results back to the prison where the sample was taken. In their records this prison is the customer and the laboratory does not have authority to release results to other prisons.

7.48 If a confirmation test is necessary, the receiving prison can request it directly from the laboratory using the screening report passed from the sending prison. The name of the prison at the top of the certificate should be altered and the request should indicate clearly that the prisoner has transferred and that confirmation results should be sent to the receiving prison. The positive test result will be counted for KPI purposes against the originating prison.

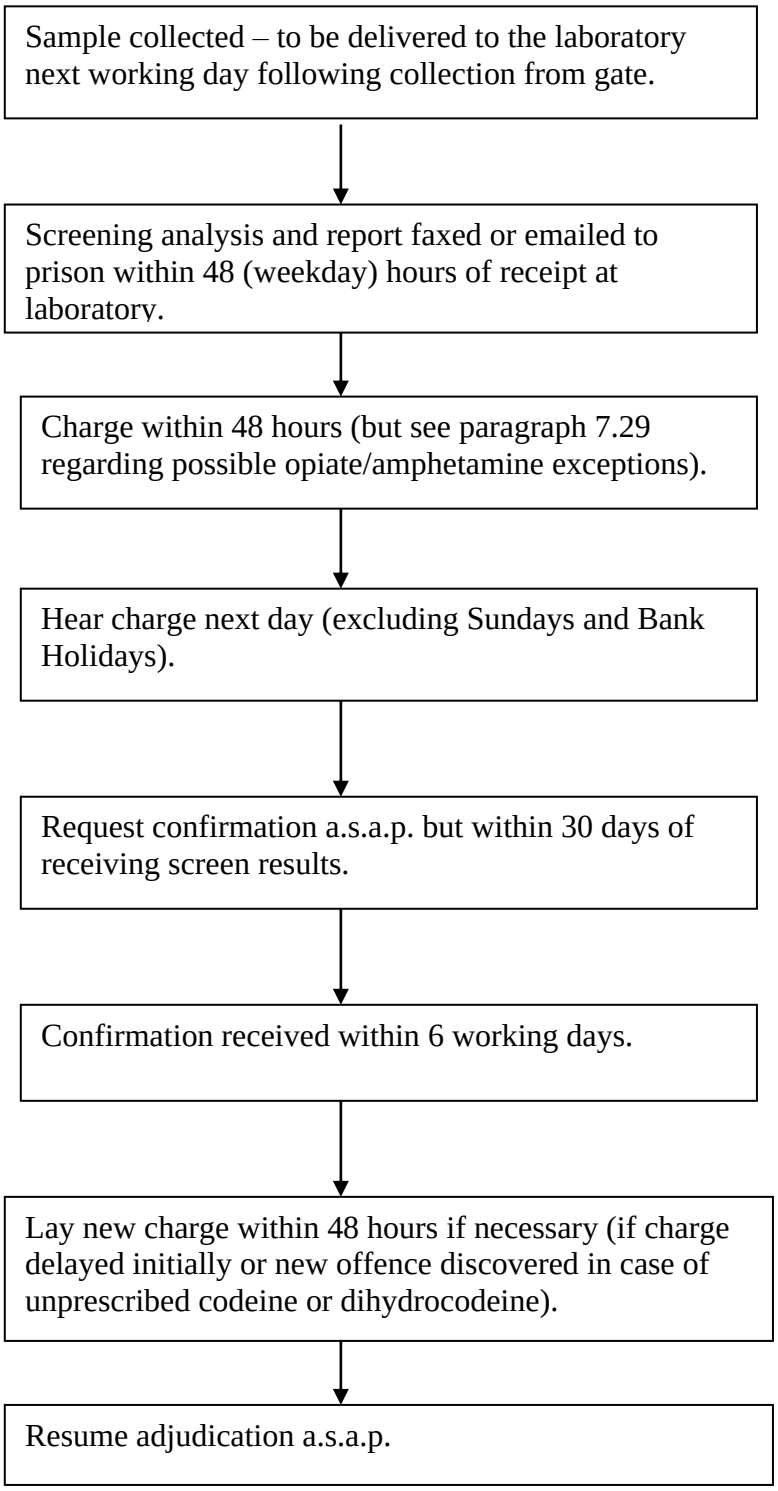
Enquiries

7.49 The laboratory is responsible for liaising with prisons about specific drug test results and their interpretation. Please remember to quote the relevant barcode number. You should contact the Drug Strategy Unit with enquiries about the interpretation of this Manual or MDT policy. Enquiries about samples related to the blind performance challenge should be referred to the quality assurance adviser. Up-to-date telephone numbers are published in the contacts list with each MDT bulletin.

7.50 The laboratory has been asked not to communicate with prisoners who write or telephone. All letters will be passed to the Drug Strategy Unit. Prisoners should be told to direct any queries through prison staff to the MDT co-ordinator.

7.51 Chart 7.1 sets out timetables for screening, confirmation and adjudication.

Chart 7.1 – Timescales for screening, confirmation and adjudication



CHAPTER 8 – LAYING CHARGES AND ADJUDICATION PROCEDURES

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Introduction

8.1 *Prisons must follow watertight procedures if the testing and adjudications procedures are to survive review by the courts.* The most common reason for losing MDT cases on appeal following an Ombudsman's enquiry or at Judicial Review is a failure in the adjudication procedure, rather than in the MDT sampling procedure or the subsequent analysis. Every effort should therefore be made to ensure good adjudication practice, which is described in the Prison Discipline Manual and to which adjudicators should always refer as the source document. This chapter is not intended to replace the Discipline Manual.

8.2 The Prison Discipline Manual recommends strongly that each prison should appoint an adjudication liaison officer (ALO) and ensure that he/she is trained in the proper interpretation of offences. The ALO's primary role is to provide advice and training for prison officers involved in the preparation of disciplinary charges.

All adjudications that are pursued following a positive confirmatory MDT result and any necessary checks on prescribed medication should be carried out following the instructions within PSI 05/2018.

Preparation of disciplinary charges

8.3 The complexity of the issues involved in the preparation of charges arising from mandatory drug testing requires special arrangements. Governors are recommended strongly to limit the responsibility for giving advice on the preparation of these charges to either the drug test co-ordinator, the ALO and/or a first line manager or above who has been trained in all the principles and protocols for drug testing. The issues to check prior to laying charges are listed at 8.6.

8.4 If satisfied on each of these elements, the designated staff should make arrangements for the prisoner to be charged under the relevant rule:

- Rule 51(9)/YOI Rule 55(10) (administering a controlled drug);
- Rule 51(12a)/YOI Rule 55(13a) (possession of an unauthorised article); or
- Rule 51(22)/YOI Rule 50(19) (disobeys any lawful order).

8.5 Where, in considering these elements, the ALO is presented with some hard evidence indicating that the prisoner's food had been "spiked" or that the drug had been taken under duress, then he/she should, if possible, undertake a preliminary investigation into the matter within the time scales defined by Rule 53(1)/YOI Rule 58(1) before deciding whether to charge the prisoner. The mere possibility of such a defence will not in itself be sufficient cause to delay the laying of a charge.

Issues to be checked prior to laying charges

8.6 When considering whether to lay a charge, the drug test co-ordinator or ALO should consider the following issues:

- that the requirements of Rule 53(1)/YOI Rule 58(1) are complied with by ensuring that the charge is laid as soon as possible and, save in exceptional circumstances, within 48 hours of the discovery of an alleged offence (see 7.29 for exceptions and 8.19 for details on when this offence is considered to have been discovered);

- that the laboratory test report indicates the presence of a controlled drug in the prisoner's urine and/or that the sample has been diluted to the extent that it cannot be tested or it has been adulterated;

- that the charge arises from any form of mandatory drug test and not a voluntary or medical test;

- that the correct test category has been chosen for the purpose;

- that there are no significant irregularities (fatal flaws) in authorising the drug test and subsequently the chain of custody procedure (see 6.132) and that all transactions are accounted and signed for;

- that the prisoner has been provided sufficient information about the MDT process to enable a reasonable judgement about legality to be made (5.16 – 5.17);

- that the drug would have been taken whilst the prisoner was subject to Prison or YOI Rules (using details from LIDS of the prisoner's reception into prison and the information in Table 8.1 on minimum waiting periods for different drugs);

- that the prisoner had not previously been charged under Rule 51(9)/YOI Rule 55(10) for the same act of administration of a controlled drug (using information from the F2050 and the waiting periods set out in Table 8.1);

- that there is no prima facie evidence indicating that the prisoner took the drug without his/her knowledge or under duress (the ALO would be under no obligation to look for such information if none was readily available);

- that there is no evidence disclosed (with the prisoner's consent) from the inmate medical record to indicate that the controlled drug in the prisoner's body was lawfully prescribed (using the information shown in Table 7.4).

Action to be taken following the detection of codeine and dihydrocodeine

8.7 The presence of codeine in the absence of other opiate-type drugs is, in the majority of cases, due to the use of proprietary headache tablets which contain a mixture of paracetamol and codeine (paracodol). Although codeine is an opiate drug with properties similar to morphine and heroin (although less potent in nature), it is highly unlikely that paracodol tablets will be misused for the codeine content, due to the very high toxicity level of paracetamol. The MDT process was never intended to target prisoners using headache tablets. In circumstances where codeine is the primary opiate drug detected – where the confirmation report states "consistent with undeclared use of codeine", no charges should be bought against a prisoner for misusing a controlled drug, but the prisoner can be charged with possession of an unauthorised article under Rule 51(12a)/ YOI Rule 55(13a), if the paracodol tablets were not prescribed.

8.8 The circumstances for dihydrocodeine are different – dihydrocodeine (DF118) has long been a popular substitute for heroin. There is, however, a fine distinction with the classification of dihydrocodeine within the Misuse of Drugs Act. Whenever dihydrocodeine is detected, prisons should charge with (between dates that equate to the waiting period plus one day) possession of an unauthorised article under Rule 51(12a)/YOI Rule 55(13a); not administering a controlled drug – Rule 51(9)/YOI Rule 55(10). *For dihydrocodeine to be present in the urine, the prisoner must at some earlier point have been in possession of an unauthorised article, unless the express defence can be applied.* If there is a possibility

that codeine or dihydrocodeine have been used on temporary release, no charges should be laid.

Errors in the sample collection procedure

8.9 Significant irregularities in the MDT procedure will result in the case being dropped. However, a minor error in the procedures governing the collection of samples is not sufficient to invalidate the result of a test. A combination of such errors in any one case may, however, undermine confidence in the procedures and provide a prisoner, or his/her representative, with an opportunity to cast doubt on the entire process. Where there are errors in the collection procedure, the co-ordinator should consider whether these are likely to undermine confidence in the rest of the process. Where the nature of the error is sufficiently serious, the co-ordinator should not proceed with disciplinary charges. Appropriate steps should also be taken to ensure that such errors are not repeated. Fatal and non-fatal flows in procedure are described in paragraphs 6.138 and 6.139.

Applicability of Prison/YOI Rules

8.10 Rule 51 (9)/YOI Rule 55 (10) (administering a controlled drug) can apply only to a prisoner who was in prison or on temporary release when the offence was committed.

Applicability of Rule 51(9)/YOI Rule 55(10)

When considering whether to lay disciplinary charges against a prisoner for the administering of a controlled drug the drug test co-ordinator should note that:

- a prisoner cannot be charged under this Rule if the drug could have been taken before the prisoner became subject to Prison Rules (e.g. if taken prior to entry to the prison);
- charges should only be brought following a positive mandatory drugs test and not following a positive voluntary drugs test. *An MDT drugs test authorisation form must have been provided to the prisoner; and*
- *prisoners must be informed in writing of changes to Prison Rules and should not be charged with an offence if the offence might have occurred before they were informed of the change in rules.*

Prisoners appearing at court

8.11 When a prisoner tests positive having appeared at court within the drug's waiting period (see 8.14), Prison and YOI Rules can be regarded as applying, and disciplinary charges can be laid in respect of indiscipline taking place:

- before the prisoner is handed over to the court, even when the police escort the prisoner;
- whilst the prisoner is at court (but not in the courtroom since at that point the prisoner is under the jurisdiction of the court);

- after a court appearance where a warrant exists requiring detention in a prison and the prisoner is held by prisoner custody officers, or by prison officers from the receiving prison; and

- between court and prison where the prisoner is in the custody of a prisoner custody officer or prison officer from the receiving prison.

8.12 The legal position remains, however, untested. Adjudicating governors are advised to operate on the basis that the rules apply, but so as to minimise the risk of legal challenge, should be satisfied that the circumstances of each case are sufficiently serious as to require formal disciplinary action. In view of the high priority attached to tackling drugs in prisons, advice is that administering controlled drugs is a sufficiently serious offence to justify disciplinary action. Adjudicators should consider the circumstances of each individual case and in particular when a defence is constructed around the specific timing of administration of the drug.

Police custody

8.13 Prison rules cease to apply when a prisoner is taken into police custody. This does not mean that a prisoner who has been in police custody within the waiting period for the drugs in question cannot be charged under Rule 51(9)/Rule 55(10). It is only necessary to note any breaks in continuous prison custody on the charge sheet, for example, when prisoners are released into police custody for short periods to further the investigation of crime. It goes without saying that prisoners who are in police custody should not have access to illicit drugs. If a prisoner claims to have taken drugs while in police custody, it is for the adjudicator to test the evidence to establish whether the drug could have been taken whilst the prisoner was outside of prison custody. Evidence from police officers responsible for the custody of the prisoner will be important in such cases.

Release On Temporary Licence (ROTL)

8.14 Prisoners released on temporary licence on community visits are subject to Prison Rule 51(9)/ YOI 55(10) and if they take drugs whilst on temporary release they can be charged under this rule.

Waiting periods

8.15 The time periods listed in Table 8.1 show for each drug the maximum length of time (the waiting period), after last use, that a person's urine may be positive for that particular drug, provided that no further episodes of drug misuse occurred.

These time periods represent:

a) the minimum waiting periods after a prisoner first entered the prison before it would be safe to conclude that the drug was consumed in prison and therefore to charge a prisoner under Rule 51(9)/YOI Rule 55(10); and

b) the minimum period between positive samples upon which successive disciplinary actions for the same drug should be based (a subsequent positive within the waiting period could relate to the same drug-taking episode). A sample taken within this minimum waiting period could, however, be used as evidence to support a charge of administering a different controlled drug.

8.16 If there is reasonable chance that a drug was taken prior to being in prison custody, then no charge should be laid. *If for some reason a charge is laid, then the adjudicator must find some other way to be satisfied beyond reasonable doubt that the drug was taken whilst the prisoner was in prison custody (an unequivocal admission by the prisoner at adjudication that the drug was taken within the prison).* In theory, if a significantly higher level of drug was to be reported from a confirmation test undertaken on a second sample within the waiting period, it could be

argued this related to a further episode of drug taking. However, a complex series of interacting factors combine to determine the levels of drug found in urine. Drug levels stated on confirmation certificates do not therefore constitute sufficient evidence upon which to define the point of drug use, nor to determine subsequent drug use within the waiting period*. Expert evidence must be sought, where the specific point is a critical element of the case against the prisoner.*

8.17 The waiting periods need only be applied up to the point when a negative drug test is obtained for the drug in question. If, for example, a prisoner twice tests positive for cannabis within the same 30-day period (which would have started when the first positive test was recorded) and the prisoner also records a negative test result for cannabis in between the two positives, the second positive test will be due to a second episode of drug taking. In those exceptional circumstances it is possible to charge the prisoner with the offence of administering a controlled drug based on the second positive result. The results from voluntary drug tests could provide important evidence in support of this approach. Where a prisoner tests positive for the same drug within the original waiting period, it is legitimate to check voluntary drug test results obtained within the relevant period of time. If a voluntary drug test result was negative for the drug in question, the prisoner may be charged with an MDT offence. It is, however, inappropriate for voluntary drug test results to be forwarded automatically to MDT or security teams.

Table 8.1 – Minimum waiting periods for drugs

Drug	Comment	Minimum waiting period (days)
Amphetamines	Including MDMA (ecstasy) and methamphetamine	4
Barbiturates	Except phenobarbital Phenobarbital	5 30
Benzodiazepines		30
Buprenorphine	Temgesic/Subutex	14
Cannabis		30
Cocaine		4
Methadone		5
LSD		3
Opiates	a) Including morphine, codeine and dihydrocodeine b) 6-Monoacetylmorphine (6-MAM)	5 3

8.18 By way of example, if a prisoner tests positive for an opiate, Table 8.1 shows that opiates have a minimum waiting period of five days (three days for 6-MAM). If the prisoner has been in custody for more than five days from when the sample was taken, then it is certain that the opiate was taken when the prisoner was under the control of prison rules and he/she can be charged. If LIDS shows that the prisoner came into prison custody less than five days before the sample was taken, then it is possible that the opiate was taken outside of prison, which is not a disciplinary offence and charges should not be laid. The tables are based on time periods reported in the scientific literature and represent the maximum times over which a drug can be detected in urine following a single incidence of use at the cut-off levels used for the screening stage. There is no need, therefore, to allow a further margin when considering appropriateness to charge. Nor is it appropriate simply to apply a blanket 30-day waiting period for all drugs – *the waiting period applied must reflect the drug detected.*

8.19 The waiting periods need not be applied in circumstances where an MDT positive overlaps with a positive drug test recorded within the voluntary drug test programme, since only administrative measures may follow a positive voluntary drug test and it is permissible to take both administrative and punitive measures following the same incidence of administering a controlled drug.

Discovery of the offence – Rule 53/YOI Rule 58

8.20 Disciplinary charges under Rule 51/YOI Rule 55 are required to be laid as soon as possible, and (save in exceptional circumstances, for example, where confirmation evidence is required in particular circumstances – see 7.29), within 48 hours of the discovery of the offence (Rule 53/YOI Rule 58). An offence of administering a controlled drug under Rule 51(9)/YOI Rule 55(10) is discovered as soon as the positive screening report is received in the establishment. A report is deemed to be received as soon as it arrives, not when it is read.

8.21 This also applies at weekends, when some prisons may not have staff available to take appropriate and timely action in response to the report. Prisons may therefore make specific arrangements with the analytical laboratory to prevent reports being received on Friday afternoons. Reports generated on Friday afternoons can instead be sent to prisons on Monday morning.

8.22 After a minimum of three attempts to fax or email a report, the laboratory posts it. For posted results, discovery of the offence is deemed to take place as soon as the envelope containing the results is opened. *All results received through the post must be marked "received" with the date, time and a member of staff's signature.* Every report carries the date on which the laboratory produced it (Date Reported), so a long gap between that date and the date received would need to be justified as due to exceptional circumstances.

LIDS checks

8.23 On receipt of the screen certificate the co-ordinator should carry out a check using LIDS to determine whether or not the prisoner was likely to have been in custody when the drug was administered. This is done using the information from LIDS, the date when the sample was taken, and the tables showing minimum waiting periods for different drugs (Table 8.1).

Checks on prescribed medication

8.24 *Charges must be laid within 48 hours of receipt of the fax/email and within this period checks must be made on medical records where this is appropriate, to ensure as far as possible that any positive result was not due to prescribed medication.*

8.25 Checks for medication are only necessary for those tests which are likely also to produce positive results for prescribed medication, i.e. tests for opiates, amphetamines, barbiturates, benzodiazepines, buprenorphine and methadone. Positive screening results for cannabis, cocaine and LSD cannot be due to prescribed medication and medical checks are not a necessary pre-condition of stating that a disciplinary offence may have occurred. Neither do checks for medication apply if the prisoner has stated categorically that he/she has not taken prescribed medication or where the prisoner has refused consent for disclosure of the IMR. See 10.10-10.11 for medical disclosure procedures.

Note: See Table 7.4 for further advice relating to each drug on the actions necessary before charging

Preparation of charges using F1127A and F1127B

8.26 Examples showing how these forms should be completed are attached at Appendix 16. This is shown for Rule 51(9) (administration of controlled drugs) and Rule 51(22) (disobeying any lawful order).

Preparation of documentation for disciplinary charges

The preparation of charges under Rule 51(9)/YOI Rule 55(10) and the MDT related charges under Rule 51(12a)/ YOI Rule 55(13a) has raised several issues that are specific to charges relating to drugs and which do not necessarily apply when laying charges for other types of offences:

- **Place** As it is unlikely to be known with any degree of certainty the exact location of the prisoner when the controlled drug was administered, it will be sufficient to say that it took place whilst the prisoner was lawfully held in prison or on temporary release (see 8.10-8.13).

- **Time** The time of the alleged offence should be left blank since the precise time when the offence of misusing the drug is alleged to have taken place is unlikely to be known. One possible exception is where the act was witnessed by a member of staff or other reliable witness.

- **Date** The date of the alleged offence should be defined as the period between the date when the sample was collected and a date equal to the waiting period of the drug plus one day prior to this, unless the act of administering a controlled drug is defined by a reliable witness.

8.27 Even with a detailed admission from the prisoner as to date and time of offence, it is unwise to be specific in the charge about the precise details, because, for example, the admission may be disputed or retracted. For this reason a specific period for each drug should always be quoted.

8.28 Guidance given in previous versions of the Manual stated that when defining dates a waiting period of 31 days should be applied as standard, whatever the drug. Two reasons were given for this: first, simplicity; second, that the prisoner might plead guilty to an incident of administering a controlled drug which could not have caused the positive test result. The guidance has been changed because experience has shown that there is a greater benefit in reducing to a minimum the time period specified in the charge, because of potential complications caused by new receptions, court appearances and police custody. Also, it becomes much easier, where appropriate, to charge with further incidents of administering a controlled drug.

Multiple charges

8.29 Any prisoner found to be in possession of drugs may be required to take a drugs test. If they subsequently test positive for the same drug as the one found, they may be charged with two separate offences (one for unauthorised possession and the other for misuse) at two separate adjudications and given two separate punishments.

8.30 *If a prisoner tests positive for two or more drugs arising from a single test (e.g. misuse of cannabis and misuse of opiates), separate charges must be laid in respect of each drug.* The laying of a single charge for a multiple drug positive result from a single test is not acceptable. This issue was discussed in R v The Governor, HMP Lindholme *ex parte* Hawkins.

8.31 If multiple charges of misuse are proven at adjudication, the adjudicator can set a punishment which reflects the number of drugs misused but only up to the maximum penalty allowable for a single charge.

8.32 In circumstances where it can be proved that a prisoner has diluted or adulterated the urine sample, but that action did not prevent drugs being detected, it is possible to charge a prisoner with administering a controlled drug – Rule 51(9)/YOI Rule 55(10) – and disobeying a lawful order - Rule 51(22)/YOI Rule 50(19).

8.33 For the purposes of calculating the waiting period, positive test results from the voluntary drug testing programme need not be taken into consideration since it is possible (provided the two processes are differentiated clearly) to take disciplinary and administrative measures for the same act.

Amending the charge

8.34 When the screening test reports a positive either for opiates or amphetamines, there is an option to delay charging until the results of the confirmation test are known (see 7.29).

8.35 Prisons may, however, exercise the option to charge a prisoner based on the screening test result. Paragraph 2.5 of the Prison Discipline Manual provides that details of a charge may be altered by the adjudicator at the hearing, provided that the amendment does not result in any injustice or unfairness to the accused. *The accused must be told of the amendment made and given the opportunity of a further two hours to consider the amended charge.* If the original charge is laid naming a specific drug and the forensic analysis proves it to be a different drug, then this charge must be dismissed and a new one laid within 48 hours of the results of the confirmation test being received.

The adjudications process

8.36 Experience with the MDT process has shown that the point of greatest challenge and where cases are ultimately most likely to be lost is as a result of flaws in the adjudications process itself. *Adjudicators must ensure that they are fully conversant with general principles described in the Prison Discipline Manual*. The rest of this chapter discusses specific MDT issues of importance to adjudications.

Additional days

8.37 Following the European Court of Human Rights judgement in the case of Ezeh and Connors in July 2002, any discipline hearing which is likely to result in an award of additional days must be handled by an independent adjudicator with prisoners having the right to legal representation should they request it. Governors are no longer able to award additional days. Full details about procedures to be followed are listed in the Prison Discipline Manual. In respect of MDT, the following points should be noted:

- *the expectation is that only the most serious charges will be reported, e.g. administers Class A drugs or disobeys a lawful order to provide a fresh and unadulterated sample;*
- *in some establishments other classes of drugs or specific drugs may actually be deemed as among the most serious charges. For example, cannabis misuse in a juvenile or YOI establishment when that is the prime drug of misuse is therefore a serious problem in that context;*
- *screening and confirmation reports must be made available before charges are heard by the independent adjudicator;*
- *clarification of whether a prisoner wishes to seek independent analysis or not prior to, and commencement of the process where necessary in advance of, referral to the independent adjudicator;*

- *the full range of punishments is available to independent adjudicators;*

- *a decision to impose a programme of frequent testing can only follow a finding of guilt at adjudication. The nature of that programme will be for the prisons to determine (see paragraph 4.32).*

Proof beyond reasonable doubt

8.38 ***Rule 51(9)/YOI Rule 55(10)*** *- before an adjudicator can be satisfied of guilt, the following must be established beyond reasonable doubt:*

- a controlled drug was administered and/or the urine sample was not fresh or unadulterated;

- the test which produced the positive result was undertaken under the mandatory testing arrangements and the appropriate testing category was used;

- there were no significant irregularities (fatal flaws) in the chain of custody of the sample;

- the analysis was properly conducted and reported;

- the drug was administered while the prisoner was in prison or on temporary licence and subject to Prison or YOI Rules, subject to the caveat of police custody;

- the prisoner has not previously been charged under Rule 51(9)/YOI Rule 55(10) for the same act of administration of a controlled drug (using information from LIDS the F2050 and the minimum waiting periods set out in Table 8.1);

- no express defences apply (e.g. there is no credible evidence that the prisoner took the drug without his/her knowledge or under duress);

- the presence of the drug was not due to lawful prescription; and

- the prisoner has been provided sufficient information about the MDT process (see 5.16 – 5.18).

Guilty pleas

8.39 Following a positive screening test result, a prisoner providing an unequivocal plea of guilt at adjudication may be found guilty of the offence provided that the adjudicator is satisfied with the guilty plea following any enquiries that he/she may wish to make.

Elements to be proved following a guilty plea

The plea of guilt must involve a clear admission:

- of taking the controlled drug specified in the details of the charge;

- of taking this specific controlled drug within the waiting period.

8.40 In these cases the primary evidence is the prisoner's admission. The positive screening test does however provide corroboration, for example, if there was a subsequent allegation by a prisoner of being coerced into pleading guilty.

Multiple charges of possession and misuse

8.41 In cases of multiple drug misuse, if confirmation is required for any of the drugs found, then all the drugs found should be confirmed. In such instances, the case should be adjourned until all test results are available. This will enable the adjudicator to consider the overall pattern of drug misuse and, if guilty, decide on a proportionate response. This applies also where there are different drug-related charges, e.g. drug misuse and possession of an unauthorised article. Where the release of the prisoner is imminent, adjudicators need not delay until all the results are available. If for any reason coincident drug offences are dealt with separately, it should be made clear to the prisoner that a number of offences have still to be dealt with.

Evidence of administering a controlled drug

8.42 Before any adjudicator finds a prisoner guilty of an offence under Rule 51(9)/YOI Rule 55(10) for the administering of a controlled drug*, he/she must be satisfied that all the elements of the charge have been proved beyond reasonable doubt.* **The initial positive drugs screening test on its own (without a plea of guilt) provides insufficient evidence to prove guilt**. If the prisoner pleads not guilty to a charge under Rule *51(9)/YOI Rule 55(10), the adjudication must be adjourned to allow a confirmation test to be carried out*. Rule 51(9)/YOI Rule 55(10) is different in its application from any of the other charges under Rule 51/YOI Rule 55 in so far as knowledge and intent are not essential elements of the charge itself. These elements are instead catered for separately in the three express defences of Rule 52/YOI Rule 56.

Express defences

8.43 Rule 52/YOI Rule 56 contains the express defences to Rule 51(9)/YOI Rule 55(10):

It shall be a defence for a prisoner to show:

- that the controlled drug detected had been lawfully obtained;
- that the controlled drug was administered by or to him in circumstances in which he did not know and had no reason to suspect that such drug was being administered; or
- that the prisoner was forced to take the drug and it was unreasonable to resist.

8.44 The impact of introducing these express defences is to permit a finding of guilt on the basis of the positive test result alone, in the absence of any credible explanation from the prisoner, or any witness giving evidence at the adjudication, and without the adjudicator having to find any additional evidence to prove knowledge and intent.

8.45 The effect of express defences does not remove the duty of the adjudicator to enquire into the offence, although the adjudicator is under no obligation to look for evidence of knowledge or intent unless there is sufficient evidence produced in the course of the hearing to cast some doubt on those elements.

8.46 Where a prisoner relies upon the express defences as set out in Prison Rule 52(b)(c)/YOI Rule 56(b)(c) then the burden on proof lies with the prisoner. If, for example, the prisoner wishes to raise the defence that the drugs were administered to him in circumstances which he did not know and had no reason to suspect that such a drug was being administered, ie a spiked drink or roll-up cigarette, then it is for the prisoner to show on the balance of probabilities that there were sufficient reasons/circumstances not to have suspected that

he/she was going to receive an article that may contain drugs. It is not for the adjudicator to prove that there was reasonable suspicion. The burden of proof lies with the prisoner to prove that he/she has a defence under the Rules, i.e. that it was reasonable in all the circumstances not to have suspected that drugs may have been in the cigarettes/drink.

8.47 Credible evidence in these circumstances means evidence that is sufficiently strong to raise more than a doubt in the adjudicator's mind that the drug had been administered lawfully or without the prisoner's knowledge or consent. It would usually involve something that can be enquired into. A simple, unsupported claim that a drink had been "spiked" or the prisoner had been forced into using the drug would not normally be sufficient to raise such a doubt. Evidence from the Healthcare department or a nominated member of their staff that a drug had been lawfully administered would, on the other hand, be regarded as credible evidence, as too might be naming the person responsible, and pursuing satisfactorily this line of enquiry.

8.48 Where a positive screening test result is received which requires medical disclosure prior to confirmation and consent for disclosure has been denied, *the following procedures must be complied with:*

- the prisoner should be charged with the appropriate offence;
- *the prisoner must be given an opportunity during the adjudication to provide evidence that the positive test was due to prescribed medication and this is likely to be possible only by the prisoner giving permission for the Healthcare department to provide information to the adjudication from medical records;*
- where consent for medical disclosure is subsequently given at adjudication, and a confirmation test is still required, the necessary information should be forwarded to the laboratory with the request for a confirmation test, ensuring that no information on the identity of the prisoner is sent to the laboratory;
- if no medical information is provided during the course of the initial hearing, the laboratory should still be requested to carry out a confirmation test;
- *if the confirmation test proves positive, the hearing should be resumed and the prisoner must be provided with another opportunity to provide evidence that the confirmed positive test result was due to any medication lawfully administered.*

8.49 Where the prisoner refuses to give consent for disclosure of medical records, the adjudication may be completed on the basis of the available evidence.

Passive smoking

8.50 The passive inhalation of cannabis smoke is a common defence to a positive cannabis test result. Forensic toxicological advice is that research carried out over a period of years has proven that it is not possible to achieve a positive cannabis test result in urine as a consequence of passive smoking, provided the cut-off levels incorporated into the analytical methodology are applied at the screening stage.

8.51 If raised in defence, adjudicators may quote this expert advice, but it does not constitute evidence in this form and may be challenged if the prisoner wishes. To dismiss this challenge without due consideration may lead to a finding of guilt being overturned on appeal since the adjudicator is not an expert in toxicology. If the prisoner is not satisfied with the above statement and wishes, perhaps, to see the evidence first-hand or to challenge the evidence directly, it may be necessary to adjourn the adjudication to make suitable arrangements.

8.52 Recent interest in passive inhalation and passive exposure to cocaine was generated when it was noted that babies and infants of cocaine/crack users were presenting at emergency rooms in the US. It seems that small infants can inhale enough cocaine smoke to show up as positive when screened at 300ng/ml and that small infants via this hand-to-mouth route can

pick up enough cocaine to screen positive. Work on adults concluded that single adults, when exposed to extreme conditions, could not produce urine that would contain enough cocaine to screen positive.

8.53 It is possible to absorb cocaine through the skin and experiments have been conducted where laboratory workers have been exposed to varying amounts of cocaine powder. The results show that after repeated direct contact to cocaine powder not a single urine sample exceeded the screen cut-off of 300ng/ml. Therefore casual exposure to cocaine smoke or cocaine powder would be insufficient to produce a sample of urine that would exceed the cut-off level of 300ng/ml.

8.54 The minimum waiting periods for drugs shown in Table 8.1 are also based on expert toxicological advice drawn from long-term research studies. As such, they are open to the same considerations as the expert advice on passive smoking.

Innocent consumption of otherwise illegal substances

8.55 From time to time it may be claimed that use of legally available products (other than prescribed medication, which is discussed at 7.28 onwards) rather than direct consumption of illegal drugs has resulted in the presence of illegal drugs in the urine. Certain natural products may contain trace levels of illegal drugs although the products themselves are not proscribed. In such circumstances it is often the case that any drug is present at such a low level that very large quantities of the product in question would have to be consumed to register a positive screening test. It may also be put forward in defence that an illegal drug was otherwise consumed in circumstances where the prisoner could not reasonably be held to have known what was consumed. Examples of such a defence include food products with cannabis present, infusions and liquids containing solutions of drugs and cigarettes laced with cannabis or heroin.

8.56 Many prisons give very clear warnings that prisoners should not accept cigarettes, medicines or other goods from other prisoners, due to the dangers of being passed controlled drugs. In circumstances where those warnings are clear, for example, posters displayed in the prison and warnings given on reception, this reduces considerably the opportunity to put forward the express defence that the prisoner was unaware that a product was laced with drugs. Adjudicators have more scope to consider that a prisoner should be fully aware of the potential consequences and that the acceptance of, for example, a cigarette constitutes acceptance of a reasonable risk of drugs contamination, given the well-documented nature of drugs problems in prisons.

8.57 In terms of credible evidence that a controlled drug was consumed unknowingly, an adjudicator may wish to consider the extent to which it is reasonable for a prisoner to claim there was nothing unusual about the smell, for example, of a cigarette.

8.58 Each defence of this nature should be considered on its own merits. If there is any doubt as to the facts, the adjudicator should adjourn the hearing and seek expert toxicological advice from the analytical laboratory.

Drug levels

8.59 Drug levels are now reported on confirmation certificates in compliance with the judgement in the case of R v Wynter.

8.60 Drug levels in body fluids are determined by a number of different factors:

- the amount of drug taken;
- the time since use;

- the particular metabolic (the process by which drugs are removed from the body) characteristics of the individual which vary between different individuals and can vary within the same individual at different times;
- the metabolic profile of individual drugs – some drugs have a two-stage metabolism which means that following a single dose of the drug, the level in urine reaches a maximum point, falls and then rises again to a further maximum;
- the time the sample was taken – an early-morning urine sample (following overnight concentration) will be much stronger than the following sample; and
- the volume of fluids consumed prior to giving the sample.

8.61 Drug levels in urine can in certain circumstances provide significant information about patterns of drug taking. However, all that is generally required to prove the charge is the absolute presence of drugs, not the actual level. It is sometimes claimed that drugs are present due to passive use. Analytical parameters are in the main designed to exclude such possibilities. Adjudicators should not take undue inference from the level of drug detected, for example, high reported levels of drug should not be taken as increased severity of offence. Nor does it follow automatically that high levels of drug reflect recent or regular intake.

8.62 There are, however, some instances where the levels of drugs found in urine samples can provide useful information; for example, the relative levels of drugs and metabolites. Levels of drugs can sometimes substantiate or disprove a prisoner's claims of prior patterns of misuse. *Such interpretation must only be undertaken by toxicological experts at the laboratory.* Prisons should therefore seek expert advice whenever questions are raised about the drug-urine levels or where it is intended to use drug levels as evidence in support of the charge.

Independent analysis

8.63 The second part of the sample (the 'B' sample) is sealed at point of collection and, in the event of a positive result, is kept by the laboratory for nine months pending any challenge. There is no need to remind the prisoner at adjudication that the second part of the sample exists since this information is on every authorisation form. A prisoner disputing a positive confirmation result may challenge it by having an independent analysis conducted on the second part of the sample. This is done at the prisoner's own expense, with the cost likely to be in the order of several hundred pounds, although legal aid is often granted.

8.64 Detailed guidance on the independent analysis process, including timescales and advice was originally found in PSO 3605 – Procedures for the Independent Analysis of Mandatory Drug Test Samples. This guidance is now included in this manual at Appendix 17. Independent analysis may also be arranged as part of any appeals process, not only as part of the original hearing. Where independent analysis is requested in the latter circumstances the same framework as set out in Appendix 17 should be applied.

8.65 Where cases are referred to independent adjudication, ideally, independent analysis results should be available at the first independent hearing. However, this is not always possible, but the question of whether the independent analysis is required or not should be raised with the prisoner by the prison adjudicator. This way a referral to the independent adjudicator can be running in tandem with the first stages of independent analysis, thus wasting little time.

8.66 In cases where the prisoner accepts the presence of drugs in the urine sample but otherwise contests the case, for example, the chain of custody procedures in the prison, there is rarely anything to be gained from granting time for independent analysis.

8.67 *If the adjudicator is to give proper weight to independent analysis, he/she must be satisfied that the standards applied in the laboratory nominated by the prisoner or his/her*

representative are adequate to meet the needs of a forensic analysis. Both the ability to maintain chain of custody procedures and the analytical methods are important in this regard.

8.68 A list is provided at Appendix 17 of those laboratories believed to have the capability to test urine samples for illicit drugs to appropriate standards, but does not amount to a recommended or approved list. The Prison Service cannot guarantee the quality of analysis at any laboratory other than our contracted laboratory. Prisoners and their legal representative are free to determine their own arrangements for independent analysis and may choose any laboratory. Alternatively, prisoners or their representatives can be referred to the *Directory of Expert Witnesses*, published by the Law Society. Absence from the directory may, though not invariably, be taken as an indication of lack of expertise. Whilst, for the most part, the procedures of independent analytical laboratories will comply fully with industry requirements (and adjudicators should not automatically assume otherwise), there have been occasions where laboratories have been unable to comply with the necessary requirements in full.

8.69 If the prisoner decides to use an unknown laboratory, he/she should be advised that, unless evidence can be brought forward to show that the sample was analysed appropriately, any independent evidence obtained from analysing the sample may not be given the same weight as that from the original analysis carried out on behalf of the Prison Service. It is therefore recommended that the prisoner uses a laboratory that follows UK Workplace Drug Testing Guidelines and is accredited by the United Kingdom Accreditation Service (UKAS) for testing of drug abuse under ISO 9001.

Expert evidence and legal representation

8.70 Whenever a case involves consideration of scientific evidence, adjudicators should have articular regard to the potential complexity of the case, the need to call expert evidence and any request to grant legal representation.

8.71 The onus is always on the Prison Service to prove the content of any analytical report produced in evidence. In the case of R v Governor of HMP Swaleside *ex parte* Wynter, the court concluded that analytical reports amounted to hearsay evidence but stated that, because of the scientific nature of the tests, the evidence was less likely to be unreliable than other types of hearsay evidence. For this reason, it was accepted that the test results could be accepted as evidence, even if they are disputed, and adjudicators can rely on the confirmation test results as evidence of guilt.

8.72 Subsequently, it has been questioned whether computerised analytical reports should be accepted where they are not signed by the authorising scientist (as is currently the case). Legal advisers conclude that unsigned reports may be accepted provided the laboratory maintains a full audit trail of those involved from start to finish in the analytical process. Such records are always maintained by the laboratory and the inclusion of the names of laboratory personnel on analytical reports do, in effect, provide electronic signatures.

8.73 Even in cases where a prisoner disputes the scientific evidence, there is no automatic right to call a scientist. *However, adjudicators must consider carefully any request to call a scientist*, *given the limited means by which a prisoner can challenge scientific evidence.*

8.74 The Prison Discipline Manual states at section 5.11:

"An adjudicator has the discretion to refuse to call witnesses named by the prisoner or by the reporting officer but this must be done reasonably and on proper grounds and not, for example, for reasons of administrative convenience or because the adjudicator considers the case against the prisoner is already made out. The accused should first be asked what assistance or evidence the accused believes the witnesses might give. If the request is refused the adjudicator should give reasons and these should be noted on the record of

hearing. A witness may be refused, for example, if it is clear that he or she was not present at a material time and had no relevant information to offer, if the adjudicator believes that the request is simply part of an attempt to render the hearing unmanageable, or if the adjudicator already accepts the evidence that the accused hopes the witness will confirm."

8.75 In the case of R v The Governor of Swaleside *ex parte* Wynter, the judges concluded that, provided prisoners were given detailed information about the MDT process and, in particular, a statement on the confirmation certificate of the level of drug detected, then it would rarely be appropriate for the adjudicator to call the relevant laboratory scientist for cross-examination.

8.76 *Prisoners must be given the information they need in order to assess exactly the nature of the evidence against them (reinforced by the judgement in R v The Governor of Full Sutton ex parte Russell).* The level of drug detected at the confirmation stage is now provided in the analytical report. Much more detailed information on the MDT process is now available to prisoners. This should reduce considerably the need to call an expert witness to the adjudication. However, circumstances may arise from time to time when it is necessary for the scientist to attend.

8.77 *Careful consideration must also be given where a request is made for legal representation at the adjudication.*

8.78 Any prisoner whose charge is referred to independent adjudication must be offered the opportunity to seek legal representation. For in-house adjudications, there is no automatic right to legal representation at adjudication, and the courts have held that such representation will only rarely be appropriate. When deciding whether to grant such a request, adjudicators must take certain factors into account (R v Secretary of State for the Home Department *ex parte* Tarrant):

- the seriousness of the charge and potential penalty;
- whether points of law are likely to arise;
- the capacity of the prisoner to present the case;
- whether or not there are likely to be procedural difficulties;
- the need for reasonable speed; and/or
- the need for fairness between prisoners and prison staff.

8.79 *The reason for refusal to grant legal representation must always be stated clearly. The following points must be borne in mind when considering requests for legal representation in MDT adjudications:*

- where technical aspects of the analysis are called into question or where the advice of an expert toxicologist may be required, this increases the potential complexity of the arguments;

- if the adjudicator adjourns the case to obtain advice from the Drug Strategy Unit or the analytical laboratory, this may underline the potential complexity of the case; and

- the seriousness of the offence will need to be considered in conjunction with other factors and merely because a punishment is likely to be at or near the maximum, it does not follow automatically that legal representation will be appropriate.

8.80 Once a decision has been taken to proceed with an adjudication, the primary concern must be to ensure that the adjudication is conducted according to the principles of natural justice and that the prisoner is given the opportunity to fully test the evidence.

Contradictory expert evidence

8.81 Of the many independent analyses conducted since the inception of MDT, on only a handful of occasions has a contradictory result been obtained. A contradictory independent analysis does provide reason to question the initial analysis but it does not automatically follow that a finding of not guilty should be reached. In the first instance it would be appropriate to explore with the Prison Service laboratory whether they wish to review their procedures and to seek their views on the potential reasons for the disparity in expert evidence*. If the laboratory, after a review, raises any concerns about their own analysis, a finding of not guilty must be returned and the matter reported to the Drug Strategy Unit.*

8.82 If the Prison Service laboratory, as in normal circumstances they should, confirms the original positive finding, the best course of action is to call both experts to give evidence of their findings. It can prove quite difficult for lay adjudicators to differentiate between conflicting expert scientific evidence but the adjudicator is entitled to prefer the evidence of one expert over another. It will be appropriate to probe the analytical process, awareness and adherence to agreed industry standards, good analytical practice and, where relevant, UK guidelines, chains of custody, the expertise of experts and the track record of the laboratory. The adjudicator may ask the Prison Service expert to comment on the strength of the evidence given by the independent analyst and vice versa. Ultimately the test of "proof beyond reasonable doubt" remains the key factor.

8.83 It should also be borne in mind that differences between the results obtained from the 'A' and 'B' samples may be caused not only by errors in analysis but also by errors in the sample collection procedures. This will not be the case if procedures described in this Manual are followed strictly. But adjudicators should explore this possibility when faced with any discrepancies. The most likely error to occur is that when insufficient volume of urine is provided at the first attempt, the first sample (or void) is placed in the 'A' tube and the second void placed in the 'B' tube. In many instances the second void will be more dilute, leading to different analytical results.

8.84 The calling of conflicting expert evidence is the preferred approach because it is important wherever possible to resolve the reasons for the discrepancy and ensure that poor analytical or sample-taking practice does not go unchallenged or uncorrected. The credibility of the MDT process relies in no small measure on maintaining full probity at every stage.

8.85 The Drug Strategy Unit will be happy to advise on the best course of action to take in the circumstances arising from individual cases.

DNA profiling of urine samples

8.86 As a result of advances in DNA technology it is now possible to obtain a profile from a very small amount of cellular material. It is theoretically possible to apply the technique to urine samples. The necessary analysis is both time consuming and expensive.

8.87 The technique is potentially useful to prove or disprove chain of custody or to provide evidence of prisoner substitution of urine. The Drug Strategy Unit does not, however, see a role for DNA profiling routinely in the MDT process. Provided chain of custody procedures are properly followed, there should be no difficulty in proving sample provenance beyond reasonable doubt. This is also a particularly expensive technique and may not be proportionate to deploy in proof of urine substitution by the prisoner.

8.88 Prisoners' representatives have requested DNA profiling as part of the independent analysis process. There is no reason why this should not be undertaken, provided the following criteria are met:

a) the cost is met by the prisoner;

b) the independent analysis timescale remains the same and no additional time is permitted (see Appendix 17); and

c) the laboratory in question is a reputable one and capable of carrying out DNA testing to the standard that is legally defensible.

8.89 Provided adjudicators are entirely satisfied that the chain of custody process holds up and there are no significant inconsistencies between the Prison Service laboratory and independent laboratory analyses, there is no need to delay the adjudication process until the DNA results are available. Any significant discrepancy between analyses should, however, alert adjudicators to the potential for valid questions on sample provenance to be raised.

8.90 Such questions of sample provenance might only be resolved by a three-way DNA profile analysis of the A and B urine samples and a further sample, e.g. hair or mouth swab taken directly from the prisoner in question. Such an approach is expensive, not guaranteed to produce unequivocal results and should only be considered within the full circumstances of the case and in consultation with the Drug Strategy Unit.

8.91 The weakest link in the DNA profiling process is proving beyond reasonable doubt the origin and authenticity of the reference sample. There have been a number of instances in criminal profiling work where a reference sample has been substituted, thus producing a different profile to that of the suspect.

8.92 Where prisons are asked to make DNA reference material available to facilitate independent DNA profiling commissioned by prisoners' representatives, they should co-operate fully and quickly with that request. It is important to reduce to a minimum any delays and to avoid the prison being held responsible for any delay. DNA reference samples (hair/mouth swabs) should only be taken with the prisoner's written consent. Samples should only be taken using the full chain of custody procedures and should follow the instructions and use the sample containers provided by the independent laboratory commissioned to undertake the DNA profiling work. Medical or Healthcare staff should be encouraged to take the sample and since the prisoner is requesting DNA profiling, this should not constitute a conflict of interest.

Possession of articles that might interfere with the MDT process

8.93 Prison staff who discover prisoners in possession of articles such as containers or urine, condoms or rubber glove fingers full of water, etc. may wish to consider placing prisoners on report for possession of unauthorised articles. Good practice may be to strictly prohibit under local prison rules the possession of such unauthorised liquid containers capable of interfering with the MDT process. More innocent products, e.g. sachets of cleaning powder or fragments of tablets, may also potentially be used to attempt to interfere with the MDT process. Again, good practice would be for staff to specifically ask prisoners during the search process, having entered the MDT suite, if they have any articles on them which may interfere with the MDT process. Failure to disclose something subsequently found would help substantiate the grounds for laying a charge (see 6.15).

LIDS codes for entering adjudication results

8.94 The following codes have been allocated:

Rule 51(9)/YOI Rule 55(10) – administers a controlled drug

085 Unauthorised use of a controlled drug.
This is the code for anyone found guilty at adjudication.

Rule 51(12a) – possession of an unauthorised article

092 Possession of unauthorised article.

Rule 51(22)/YOI Rule 55(25) – disobeys any lawful order

195 Disobeying a lawful order (other than 196/197). This is the code for any other (non-drug misuse related) offence (replaces code 190).

196 Refusal to provide a sample for drug testing.
Disobeying a lawful order by refusing a mandatory drugs test.

197 Adulterating or falsifying a drug testing sample.
Disobeying a lawful order (i.e. to provide a fresh unadulterated sample) by cheating after the order to provide a sample was given.

Rule 51(25a)/YOI Rule 55(29a) – attempts, incites, assists
In addition there are an equivalent set of codes covering:

585 Attempts, incites or assists unauthorised use of a controlled drug (i.e. helping or pressurising someone to take a controlled drug).

696 Attempts, incites or assists the refusal to provide a sample for drug testing (i.e. pressurising someone to refuse).

697 Attempts, incites or assists the adulterating or falsifying of a drug testing sample (i.e. being caught with a false sample before the order to provide a sample was given or selling samples of urine for the purposes of substitution. Possession of an unauthorised article may be a simpler alternative for the latter).

695 Attempts, incites or assists the disobeying of a lawful order (other than 696/ 697).

CHAPTER 9 – RESPONDING TO A POSITIVE TEST RESULT

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The balance between support and punishment

9.1 Mandatory drug testing has a dual role to fulfil in that it aims to identify those misusing drugs, both to punish as a deterrent against drug misuse, and in order to offer support to drug misusers. The balance between a supportive and a control response is crucial to the successful application of mandatory drug testing.

9.2 The purpose of this chapter is not to be prescriptive but to provide guidance on the best approach to adopt, which remains the responsibility of each and every adjudicator. There are, however, a number of guiding principles:

- the level of sanctions should reflect the circumstances of the offence and the offender;
- adjudicators should seek to use creatively and to the full the wider range of sanctions available to them in a way that is as productive as possible for the prisoner;
- adjudicators should seek consistency of approach so as to ensure that offences committed in broadly similar circumstances meet with broadly the same response; and
- adjudicators should have clearly in mind the desired outcomes of the local drug strategy.

9.3 Prisons' local adjudication policies should develop more detailed guidance.

9.4 *In order to maintain an effective drug testing programme, prisons must carry out the following actions:*

- develop their local drug strategy and maintain a satisfactory programme of support for those with drug problems;
- ensure that every prisoner testing positive on a mandatory drug test is made aware of the options available to them for support;
- agree on the local guidelines for disciplinary punishments to be used at the establishment in cases where administering of a controlled drug is proven at adjudication;
- agree the nature of those MDT cases to be referred to the independent adjudicator;
- consider whether cautions or suspended punishments are more appropriate for first-time offenders or for positive tests for particular drugs or for other prisoners in particular circumstances;
- agree on the appropriateness of different administrative measures (bearing in mind any national guidance) to those found guilty under Rule 51(9)/YOI Rule 55(10) on one or more occasion, such as the importance as a factor in the refusal to grant release on temporary licence, imposition of closed visits or loss of Category D status;
- decide on the action to be taken when someone is found guilty of misusing drugs and they are already subject to a voluntary drug testing agreement as part of a drugs compact (see PSO 3620 on voluntary testing);
- develop guidelines for the imposition of a programme of frequent drug tests on (at least) those prisoners who are found guilty of misusing Class A drugs (see 4.31 onwards).

Developing a supportive response to a positive test

9.5 *Prisoners who are proved to have misused drugs as a result of a mandatory drugs test must be offered and encouraged to accept appropriate support to address their drug problem.* The establishment's local drug strategy team should address the question of how to provide a supportive response to those who test positive and, from MDT figures, anticipate levels of misuse for different drug types. *All MDT positives must be referred to the CARATs team which will be the first-line response for providing appropriate assistance with the possible exception of cannabis positives.* There may however be instances of intractable cannabis use which would benefit from a CARATs type intervention.

9.6 Options for supportive response – not mutually exclusive may include the provision of formal CARAT assessment/reassessment which may in turn lead to:

- individual or group counselling;
- a detoxification programme;
- a drug rehabilitation unit;
- drug awareness courses;
- a voluntary drug testing programme/drug-related compacts;
- information booklets.

9.7 The primary focus of drug treatment especially within the Criminal Justice System is directed at Class A drug misuse as generally this causes the most harm both to individuals and to the wider community.

9.8 *However, cannabis must not be regarded as a "safe" drug.* Use of cannabis can lead to physical and psychological problems and, especially in the prison setting, can lead to debt and violence. There is growing evidence of significant dangers to health associated with heavy use.

9.9 *Since cannabis is by far the most commonly misused drug within prison, a supportive response to its misuse must not be ignored. Inevitably, finite resources for treatment and support programmes mean that such programmes must be targeted towards those in greatest need. Intensive treatment programmes may be less appropriate for all but the heaviest cannabis misuse.*

9.10 *Prisoners who are identified as using drugs as a result of a mandatory drug test must be offered and encouraged to accept an assessment and any appropriate treatment and support from CARATs and other drug treatment services.*

9.11 Whilst the aim should be to refer all prisoners who test positive to the CARATs team for assessment/reassessment, this may be less appropriate for occasional cannabis misuse. If all cases of cannabis misuse were to be referred to the CARATs team, CARATs services would be swamped. A more appropriate response may be to target cannabis misusers with information leaflets and drug awareness training.

9.12 If the individual is on the existing caseload the information will be used in ongoing care management. Where the prisoner is not previously known to CARATs, an initial assessment should be offered, which will indicate if any further work is necessary – priority for this will be given to those testing positive for Class A drugs.

Options for a control response

9.13 Control responses to those who test positive on a mandatory test include:

- adjudications and disciplinary punishments **–** careful thought is required to assess the level of punishment appropriate to drug misuse involving different types of drugs, the use of cautions or suspended punishments and agreed policy on independent adjudicator referral of MDT cases;
- the imposition of repeat tests or a programme of frequent tests;
- consideration as a factor in the restriction of release on temporary licence;
- consideration as a factor in the imposition of closed or non-contact visits;
- consideration as a factor in re-categorisation to open prison status; and
- links to incentive schemes.

Levels of disciplinary punishment

9.14 In most establishments, adjudications and disciplinary measures are the most common form of control response. Information on adjudication procedures is contained in Chapter 8. As with other offence types, it is important that different adjudicating governors within an establishment use broadly similar levels of punishment for the same offence. These can then be varied up or down by the adjudicator depending on the circumstances of the individual case.

Mitigation at adjudication

9.15 Following a finding of guilt for administering a controlled drug, adjudicators are allowed to take into account relevant mitigating factors when imposing punishments. These might include reports on conduct, willingness to seek help and treatment for drug problems, or reports of progress if treatment is already being received. Following a finding of guilt, an adjudication may be adjourned for a day or two in order to receive such reports prior to a decision on punishment. *There must not, however, be any suggestion of the adjudication process being used to coerce prisoners into drug treatment.*

9.16 **Cautions/warnings:** in some establishments, prisoners committing a first offence are warned rather than taken to adjudication or issued with a caution at adjudication. As part of this warning or caution, they might be required to submit to a further, unannounced test over the next few weeks.

9.17 **Suspended punishments:** adjudicators already have powers to suspend any punishment in appropriate circumstances. *This might be an option, for example, for a first offence. For the reasons outlined above the decision to suspend a punishment must never depend on the agreement of the prisoner to accept an offer of treatment for their drug problems.*

9.18 In some cases, establishments have suspended a punishment given for refusing to provide a sample in return for the prisoner agreeing to provide a sample following the adjudication. This is not recommended. A prisoner believing he/she will test positive may refuse the test knowing they will be able to agree to a test a day or two later, at minimal penalty, and then possibly test negative, particularly if they spend the intervening day or two drinking large amounts of water.

Administrative measures

9.19 Measures with an immediate impact on prisoners' lifestyle, such as a loss of privileges or closed visits, may be most effective. The use of additional days is expensive, particularly at a time of high population pressure. However, disciplinary awards have played a part in the significant reduction seen in positive test results for cannabis since the introduction of MDT. But depending on local circumstances, other approaches might be equally effective, of more immediate impact and more cost effective.

9.20 Adjudicators are therefore encouraged to keep the effectiveness of their responses to positive mandatory drug tests under constant review. This should include the potential for greater differentiation between awards to better reflect the severity of the offence. Greater use should also be made of both administrative sanctions and the incentive and earned privilege scheme outside of the adjudication forum, although informed and prompted by positive test results. Drug strategy co-ordinators should ensure that establishments' policies on adjudication and administrative responses to positive MDT tests are complementary.

Use of screening test results

9.21 Mandatory drug test screening results can, under certain circumstances, be considered as a factor in some administrative decisions such as the withdrawal of release on temporary licence or the imposition of closed visits. Care needs to be exercised in using screening tests outside of adjudication and without confirmation tests.

9.22 Use of screening test results without confirmation in imposing administrative measures:

- *unless the positive test result is for cannabis, LSD or cocaine, a careful check of medical records (with the consent of the prisoner) must be made to rule out the positive result possibly being due to prescribed medication;*
- *in the absence of a confirmation, the prisoner must be given an opportunity to explain the test result before any action is taken. Any plausible explanation given by the prisoner must be fully and demonstrably explored;*
- in any risk assessment process, the test result should count as one factor and should not be the sole determining factor; and
- if the prisoner disputes taking the drug, then a positive screening test on its own carries far less weight in any risk assessment than a positive result confirmed at a laboratory;

Release on temporary licence

9.23 PSO 6300 - Release on Temporary Licence (paras 7.7&7.8) provides details of procedures for release on temporary licence. The Introduction states:

"A [mandatory drugs] test that proves positive prior to a period of temporary release must result in cancellation of the release, unless there are compelling circumstances in favour of the release being allowed to proceed. A positive test must give rise to disciplinary proceedings in accordance with the guidelines on mandatory drug testing and will be considered in future risk assessments."

9.24 Asking prisoners to "volunteer" for drug tests as a prerequisite of release on temporary licence is potentially unlawful*. Establishments must not take a substantive decision on the basis of voluntary drug testing results (including compliance testing results) alone. Because of this, any drug test upon which the decision to release on temporary licence is based must be carried out under mandatory drug testing provisions.*

9.25 The need for proportionality in the level of mandatory testing imposed on prisoners also needs to be borne in mind. If a prison is known to be virtually drug-free, then requiring all prisoners to submit to drug tests prior to temporary release may be inappropriate unless it can be argued that this level of drug testing deterrence is in itself contributing significantly to keeping the level of drug misuse at such low levels.

Imposition of closed visits

9.26 The imposition of closed visits has always been an option where there is reasonable suspicion that a prisoner may have been passed drugs, or any other unauthorised article, during an open visit. PSO 3610 provides a more robust and consistent framework for tackling those involved in supplying and receiving drugs through visits.

Re-categorisation/transfer of prisoners

9.27 Drug misuse is an important factor in any risk assessment when considering re-categorisation or transfer of individual prisoners. A finding of guilt for misuse of a drug under Rule 51(9)/YOI Rule 55(10) should carry the same weight, in relation to A/B/C classification, as a finding of guilt for possession of a quantity of that drug for personal use.

Links to incentive schemes

9.28 PSO 4000 provides a national framework for incentives and earned privileges for prisoners. Decisions relating to disciplinary measures are taken independently of those relating to incentive schemes (see section 1.7.8, PSO 4000). The disciplinary record of a prisoner, however, should be considered as one factor in deciding on the regime level or privileges to be made available to that prisoner.

<u>Other responses to positive mandatory drug tests</u>

9.29 A number of alternative options are also available in response to a positive drugs test. Such options can in the right circumstance prove equally effective as discipline awards but there is a tendency to invoke such options with much less frequency.

Repeat testing

9.30 Prisoners found guilty of drug misuse may be required to undertake one or more further drug tests, possibly in connection with a suspended punishment or caution. If the prisoner tests positive on the subsequent occasions or refuses the test(s), then he/she becomes liable to the original, suspended punishment plus any punishment given for the new offence (i.e. for testing positive on the second test or refusing the second test).

9.31 *The repeat testing must be required under MDT frequent testing provisions and <u>not</u> under provisions for testing on reasonable suspicion. Any further sample(s) taken must be taken without warning and after a period of time such that any positive test result is clearly due to a further act of misuse of the drug(s) in question and not due to the original act of misuse.*

Frequent testing programme

9.32 Prisoners who are shown to have a significant and persistent problem with drugs but whose offences fall outside of misuse of Class A drugs may also be placed on a frequent testing programme; for example, following persistent misuse of certain Class B (e.g. some amphetamines) or Class C (e.g. buprenorphine) drugs.

Links to voluntary drug compacts

9.33 Prisoners who sign voluntary drug testing compacts will automatically be subject to a programme of voluntary drug testing. *In these circumstances they must not be exempted from mandatory drug testing, including the random programme.* The random programme is designed, for statistical and legal purposes, to select and test a completely random cross-section of the prison population.

9.34 If a prisoner, subject to voluntary drug testing, tests positive on either a therapeutic or compliance voluntary drugs test, then the only sanctions that should be applied are those administrative measures agreed as part of the compact. Disciplinary measures are not possible. The available options are discussed in detail in PSO 3620 on Voluntary Drug Testing.

9.35 If a prisoner subject to voluntary drug testing as part of a compact tests positive on a mandatory drug test, then it is possible to take both disciplinary measures (under Rule 51(9)/YOI Rule 55(10)) and administrative measures (under the terms of the compact) against the prisoner. The rationale for this is that, unlike other prisoners, a prisoner on a compact is subject to two codes of practice: Prison Rules, and the conditions of the voluntary compact. If both of these are breached by one action of misuse, then both sanctions may apply without constituting double jeopardy. Individual prison establishments may wish to consider their own response in these circumstances.

9.36 Legal advice on this subject has stressed the importance of ensuring that prisoners do not have a legitimate expectation, under the terms of any drug-related compact, that they will not be disciplined if they test positive on a mandatory drug test whilst they are subject to the drug compact. *Establishments must review the wording of their existing drug compacts to ensure that prisoners are aware of the different types of drug test they will be subject to (voluntary and mandatory), the likely consequences of each, and the fact that they are liable to disciplinary proceedings if they test positive on a mandatory drugs test in the same way that they would be liable to disciplinary proceedings under Rule 9 if they were found in possession of drugs whilst subject to a drugs compact.*

Health and safety implications

9.37 Employers commonly use drug testing to identify employees who, because of the nature of their work, would put themselves or others at risk if they were under the influence of drugs. This includes those operating dangerous machinery. Employees screening positive are immediately suspended while awaiting a confirmation test. Prisons should identify prisoners' jobs which fall into this category and should consider adopting similar responses on health and safety grounds.

9.38 A degree of caution should, however, be exercised when interpreting positive drug test results. The best means to assess unfitness is by assessing the level of drugs in blood and by assessing the prisoner's physical and mental state at the time. Drugs can be detected in urine long after the effect (and the high-risk stage of unfitness) has passed. It is therefore wrong to associate automatically the presence of drugs in urine with unfitness at the point of detection. However, the detection of drugs indicates a predisposition to misuse drugs, thus making the individual high risk when undertaking any activity where health and safety implications might arise.

Remission of additional days

9.39 An adult prisoner is eligible for consideration or reconsideration for remission of actual or prospective additional days provided that, in the last six months:

- the prisoner has not committed any offence for which additional days were given, or for which suspended additional days were activated; and,
- the prisoner has not submitted any other application for remission for which he/she was eligible.

9.40 The qualifying period is four months for young offenders and for prisoners who were young offenders at the time of the last offence for which additional days were given or activated.

9.41 In the calculation of the six (or four) month period, the date of the offence should be considered to be the date when the offence was committed. Where the precise date is not clearly established during the adjudication, the date of the offence should be considered to be the earliest date when the offence could have been committed (i.e. date of sample collection less the waiting period for the drug in question or the longer period if more than one drug is involved).

CHAPTER 10 – HEALTHCARE ISSUES

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Healthcare staff

10.1 Mandatory drug testing is an integral part of each establishment's local drug strategy and as such Healthcare staff should play an active role, through the drug strategy team, in the development of local policy and procedures connected with MDT. The non-voluntary nature of MDT and its links with disciplinary measures place prison Healthcare departments in a difficult position, particularly regarding the codes of practice of professional medical bodies. These prevent Healthcare staff with registered qualifications from participating in any procedure where the informed consent of the prisoner has not been obtained.

10.2 Because of these difficulties, Healthcare staff, with or without registered qualifications, should not be asked to undertake those tasks connected with MDT which have raised particular concerns. These tasks are:

- participation in the collection of samples for mandatory drug testing purposes or the escorting of prisoners to the sample collection room;
- involvement in the selection of prisoners for non-random tests and/or authorising those tests, particularly on-suspicion tests;
- involvement in the laying and processing of disciplinary charges arising from MDT.

10.3 Healthcare staff should, however, participate in other aspects of the mandatory drug testing process, in particular:

- contributing to decisions on the areas of application of mandatory drug testing through their participation on the local drug strategy co-ordination group;
- disclosing medical information when required with the consent of the prisoner (see 10.10-10.11);
- assisting the MDT co-ordinator in the identification of prisoners to be excluded from mandatory drug testing on health grounds (see 4.60);
- ensuring that all medication issued (including cough and cold cures) is accurately logged (see 10.13);
- attending at the request of prisoners held in cellular confinement who are unable to provide a sample of urine (see 10.14-10.16);
- assessing whether failure to provide a specimen of urine has an underlying medical cause;
- assessing whether the provision or urine with abnormal temperature levels can be explained by a medical condition; and
- assessing whether the provision of abnormally coloured urine samples is cause for medical concern about the welfare of the prisoner.

10.4 Neither a medical officer nor a pharmacist should be asked to interpret the results of mandatory drug tests. By and large they have no specialist toxicological knowledge or expertise in the analysis of urine for drugs. In addition, they lack the detailed information on a particular sample which is available to the laboratory. *All questions about the interpretation of the results of drug testing must be directed to the laboratory.*

Prisoner's consent to medical disclosure

10.5 *All information held on inmate medical records is confidential and must not be disclosed without authorisation from the prisoner and even then only when absolutely necessary.* Failure to abide by these principles could lead to legal action by the prisoner for breach of confidence.

10.6 The accurate interpretation of drug test results will in some cases depend on the availability of information about medication administered to the prisoner up to 30 days prior to the collection of the sample. All prisoners required to provide samples for testing for the presence of any controlled drug will be asked to give their written consent for the medical officer or nominee to disclose information about any medication issued by Healthcare which may have been used by the prisoner during the 30 days prior to the date of the collection of the sample.

10.7 The prisoner's consent will be recorded on the authorisation form (Appendix 2) which is issued to the prisoner before he/she is required to provide the sample*. If the prisoner refuses to give his/her written consent to disclose medical information, no disclosure must be requested or given, either directly or indirectly.*

10.8 The wording on the authorisation form meets the requirements of medical confidentiality and has been agreed with Prison Health, Department of Health – Appendix 18.

Note: Details of medication which may have been taken by the prisoner during the last 30 days are required, not just medication prescribed during the last 30 days.

10.9 Without the prisoner's consent, no approach can be made to Healthcare for disclosure of medication issued to the prisoner. Where consent has been given, Healthcare may be asked to disclose relevant information, but only after a positive screening test result has been received and only where information on medication is necessary for accurate interpretation of test results. A positive test result for cannabis, cocaine or LSD, for example, does not require disclosure of medication. Chapter 7 (Table 7.4) provides more information on the circumstances where disclosure of medication is required for different drug types.

Procedure for disclosure of medical information

10.10 The procedures to be followed for the disclosure of medical information are described below. They are designed to minimise the extent of the disclosure of medical information as far as possible. The chain of custody and screen test report forms are the only forms sent to the laboratory with the sample and these contain only the test reference number and barcode as identifying information. The documents containing the prisoner's name (the authorisation form and procedure checklist) do not leave the prison. *Both these documents must be treated as confidential and must be stored in secure cabinets with restricted access.*

10.11 If the screening test result is positive, and where medical disclosure is necessary (see Table 7.4) and the prisoner has given consent for disclosure of information from his/her medical record, then the drug test co-ordinator should carry out the following:

- attach a copy of the authorisation form containing the prisoner's consent for medical disclosure to the screening test report form received from the laboratory (Appendix 15); and

- forward these to the Healthcare department to report any medication which the prisoner might have been authorised to take over the last 30 days.

(**Note:** this is not necessarily the same as medication issued over the last 30 days – a prisoner may have been given a month's supply of medication six weeks ago and may still have been taking this medication in the relevant period prior to when the sample was collected.)

10.12 Refer to 7.28 onwards and Table 7.4 for guidance on action following medical disclosure.

Recording of medical information

10.13 Some medicines may affect the result of the testing process. For this reason it is essential that all medication issued to prisoners (including cough/cold cures) is logged in some way against the prisoner's name/number. If this is not done, then it could prove more difficult for an innocent prisoner to support any claim that a positive test result was due to authorised medication. Any prisoners found guilty in these circumstances could have justification for appeal against the finding on the grounds that the Prison Service had failed, contrary to regulations, to keep the necessary information which was essential evidence to support his/her plea at adjudication. Drug strategy co-ordinators/ Healthcare departments also need to ensure robust protocols exist for the receipt and recording of information regarding medication issued to prisoners while attending hospital, court, when on police production, etc.

Examination of prisoners unable to provide a sample

10.14 *Any prisoners who appear likely to be confined for more than four hours due to a temporary inability to provide a sample of urine must be asked whether they wish to see a representative from Healthcare (see 6.64).* This may be done at any time where the officer believes that the prisoner is having difficulty in providing a sample. The officer collecting the sample will inform Healthcare if any request of this nature is made. Healthcare staff are required to respond to any such request. Healthcare officers and nurses are not trained to diagnose problems of this type but they can discuss with the prisoner any difficulties they may be experiencing and could arrange for the prisoner to see the MO at a later date.

10.15 After seeing the prisoner, the Healthcare worker may be able to advise the officer collecting the sample whether it is inadvisable to bring charges against the prisoner for disobeying a lawful order. As in all other situations involving the disclosure of medical information, Healthcare staff cannot in these circumstances divulge confidential information about a prisoner's treatment or condition without consent from the prisoner.

10.16 In some establishments there is limited medical cover at weekends. Legal advice is that in these cases it is permissible for a prisoner during confinement to speak to a Healthcare worker over the telephone. This constitutes the required access to healthcare advice.

10.17 If a prisoner is charged with disobeying a lawful order, he/she can still bring forward evidence at adjudication of any valid reason (medical or otherwise) as to why they were unable to provide a sample in the time period given.

10.18 In certain circumstances a prisoner might put forward a defence that a medical condition impacts significantly on the outcome of MDT. For example, severe hepatic impairment or (at the margins) renal impairment might affect the waiting times. Certain types of medication may also affect the ability to produce urine. In these circumstances, it may be inappropriate to bring a charge or return a finding of guilt. If such a defence is raised and with the necessary consent, it would be appropriate for the Healthcare department to comment on relevant aspects of the prisoner's medical condition and to offer expert opinion on the impact of that condition on the MDT results.

10.19 Healthcare workers may also (although only rarely) be asked to confirm whether abnormal temperature levels of urine provided for MDT purposes is consistent with a prisoner's medical state. Also, occasionally, the colour of a prisoner's urine may give MDT staff cause for medical concern about a prisoner's well-being and prompt an immediate referral.

CHAPTER 11 – RECORD KEEPING AND MDT PERFORMANCE DATA

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Record keeping

11.1 The importance of maintaining full, accurate and up-to-date records of the MDT process cannot be underestimated. Such records are an essential element in underpinning the chain of custody process and provide an essential means of demonstrating the probity of MDT processes.

11.2 The Governor's authorisation should be displayed in the MDT suite clearly at all times. A list of all staff fully trained and available to conduct the MDT process should be maintained.

What records to keep

11.3 *Each establishment must retain the original documentation (site register, LIDS print-out, security information reports, chain of custody form, authorisation and laboratory reports) relating to samples collected on their site.* Only copies of the documentation should be sent to another establishment if the prisoner is transferred.

11.4 When the test result is positive, regardless of whether the prisoner is charged, site copies of the chain of custody, authorisation, and test report documentation should be stapled together and stored in a logical order; by test reference number or alphabetically, though the first option makes disposal of old records easier.

The F2052B

11.5 *Each establishment must create a "live" F2052B card index system for MDT use.* When using the F2052B, establishments will record all MDT information relating to prisoners tested, i.e. name, number, reason for test, where tested, when tested, and test result.

Record retention

*11.6 All documentation for positive tests must be retained on site for a minimum period of **three years** from the date the sample was collected.* This is to ensure consistency with all other documentation relating to adjudications. Such documentation includes chain of custody forms, authorisation forms, screening certificates, confirmation certificates and any other related documentation.

11.*7 Negative test results must be recorded in the site register, on the F2052B and on individual prisoner record.* All other documentation relating to negative samples can be disposed of immediately.

11.8 *The random main and reserve MDT lists must also be retained on site for a minimum period of three years together with an explanation of the reasons why prisoners on the main list were not tested.*

11.9 *Site registers must be retained on site for a minimum period of seven years*.

Retention of samples

11.10 Screen negative samples are disposed of by the laboratory after two weeks. Screen positive samples are disposed of nine months after the screening report date. If a request for confirmation is made, samples are disposed of nine months after the confirmation report date. If a request for confirmation is received at the end of the 31-day period, this could mean that samples are retained for up to ten months. If as part of an appeals process a prisoner subsequently requests independent analysis, it will still be possible to make the necessary arrangements. Similarly, if a prisoner mounts a late challenge to the screening test result, a confirmation test can be requested.

Disclosure of records

11.11 *A prisoner's MDT records may be disclosed to his/her legal representative. In all other cases, records must not be disclosed automatically to external sources.* The prison should retain the original documentation at all times – only copies should be forwarded to legal representatives*. Original copies of MDT documentation must be available at the adjudication for examination by all parties.* The one exception is if disclosure is in the public interest, for example if it were relevant to a criminal investigation. In 1996 there was a case in which a city council was trying to evict a prisoner suspected of drug dealing. In that case, legal advice was that the prisoner's MDT records should not be disclosed because a positive MDT result would not support an allegation of drug dealing. Therefore, disclosure was not in the public interest.

11.12 All requests for disclosure of MDT information to external sources should be channelled through the police liaison officer nominated by the local police force. Procedures should follow those set out in the Memorandum of Understanding between The Association of Chief Police Officers and the Prison Service, reinforced by *Combating Drug Trafficking and Drug Misuse in Prisons – Protocols*. In particular, levels of authorisation for disclosure should be strictly adhered to.

11.13 Mandatory drug testing data can provide an important element in the drugs intelligence profile of the prison and of individual prisoners. Mandatory drug testing information may therefore be disclosed internally, both to maintain the security and good order of the prison and to inform decisions about what levels of treatment and support might be appropriate for the prisoner.

MDT performance

The Prison Service Key Performance Indicator (KPI)

11.14 The figures obtained from the random mandatory drug testing programme provide the best available means of monitoring drug trends within and between prisons. The MDT figures also provide one of the few outcome measures against which to assess the success of the wider drug strategy initiatives.

11.15 One of the Prison Service's KPIs is based on the random MDT figures. The random MDT positive rate is calculated as the total number of random tests that prove positive, expressed as a proportion of the total number of random samples tested. A national target has been set to reduce the yearly random figure to 10%. Each prison is required in support of the KPI to set a local key performance target annually and to have fewer than (x%) positive random tests for that year. Targets for each prison should be agreed annually between the area manager and the governor, based on an assessment of:

- the prison's current and previous MDT performance;
- benchmarks sets by other similar prisons;
- any area or establishment strategy;
- available resources.

11.16 Once agreed, the prison's target should not normally be changed during the course of the year, unless the basic operating assumptions behind the target have altered – for example, because of a re-role or substantial change to the available accommodation.

11.17 The ability of the Prison Service nationally to meet KPI targets depends entirely on the performance of individual prisons. The Psimon database provides information on MDT performance, including targets, levels of testing, monthly and yearly positive rates,

cannabis and opiates rates and comparative data. MDT performance varies widely between prisons and this means that the better performing prisons support the poorer performing prisons in seeking to achieve the national target. Further advice on better integrating the MDT programme into a more effective overall establishment drug supply reduction strategy can be found in the *Supply Reduction Good Practice Guide.*

11.18 The national MDT KPI is also incorporated into the series of targets set under the *Home Office Public Service Agreement* (Objective 4, Target 6) and the *Home Office Business Plan* (Aim 5, Objective 3).

11.19 The KPI is intended to provide as close a measure as possible of the level of drug misuse in prison. Data upon which the KPI is based are incorporated directly from the analytical laboratory. Prisons need not add data locally to the Psimon database.

Random tests

11.20 Of the five kinds of mandatory drug test, the KPI focuses on random testing alone because it gives the most accurate indication of the level of drug misuse in an establishment. The other forms of MDT are all targeted in some way, so that statistics measure not the level of drug misuse but the effectiveness of targeting, or other parameters.

Refusals

11.21 The KPI measures in terms of random drug **tests**. Only when a sample is taken and tested will it be counted.

Spoiled samples

11.22 Only samples that have been tested for drugs will be counted.

11.23 **A sample counts as positive when:**

- the screening test is positive and there has been no confirmation test (for whatever reason); or

- a confirmation test is positive – the result of the confirmation test overrides the screening test (if a screening test is positive but the confirmation negative, the sample will be counted as negative).

Multiple positives

11.24 If a sample tests positive for more than one drug it counts as one positive sample for KPI purposes but as separate positives under the aggregate figures for each individual drug. It is for this reason that the sum total of individual drug positives is always greater than the headline KPI positive figure.

Prescribed medication

11.25 Positive results that are due to prescribed medication count as negative. Where the testing establishment is sure that a positive screen result is due to prescribed medication *(i.e. where barbiturates, benzodiazepines, buprenorphine or methadone have been prescribed), they **must** notify the contracted laboratory to that effect, otherwise the test will continue to count as positive. Details of the drug(s) prescribed, dosage and details of administration must also be provided to allow the analytical laboratory to satisfy themselves that the mitigation is appropriate in the circumstances.* Where a confirmation result is consistent with prescribed medication, the laboratory will automatically mitigate the result. Where a

sample tests positive for two (or more) drugs and only one (or more) positive is due to prescribed medication, the sample is still considered positive for KPI purposes.

Charging and adjudications

11.26 The KPI is concerned with samples that test positive. Whatever happens after the test result is reported is irrelevant for the purposes of the KPI. This eliminates local variations in charging and adjudication practice, creating a more level playing field on which establishments' performance may be judged.

Transferred prisoners and new receptions

11.27 For KPI purposes the results for a sample belong to the establishment where the sample was taken. Whilst it is not the fault of the prison if new receptions from another prison test positive for drugs, within the waiting period, the results from random tests are still included in the KPI to provide an accurate picture of drug misuse across the estate. Establishments are required to organise their random testing in such a way that newly received prisoners selected for random testing are not tested until they have been in custody for at least 14 days. This will ensure that the majority of drugs tested for, if detected, will have been misused in prison.

Carrying over the random lists (main and reserve) from one month to the next

11.28 See paragraph 4.16, which allows in exceptional circumstances for one month's random list to be completed within the first two weeks of the following month. All samples collected in a given month count towards that month's figures. *(The following month's entire random list must also be completed as well.)*

Spoiled samples

11.29 All prisons have targets for the level of random testing to be undertaken, generally either 5 or 10% and agreed with the area manager. The KPI is concerned only with samples tested and samples positive; spoiled samples that cannot be tested never count towards those totals because we cannot know whether they would have tested positive or negative. Spoiled samples do not count towards the target.

11.30 There are three types of spoiled sample:

- **extreme dilution or adulteration**. In some rare circumstances it is, however, possible for a sample to be adulterated but still tested;

- **chain of custody error**. The collecting officer has made a mistake which may be corrected by testing an additional prisoner from the list. The spoiled sample should not be counted as a sample collected. Further samples should be drawn from the top of the reserve list. Prisoners who have provided random MDT samples with subsequent chain of custody flaws should not be asked to submit a second sample;

- **sample damaged or lost in transit**. Although not the fault of the prison, the samples should not be counted towards the total collected. Further samples again should be drawn from the top of the reserve list.

Accuracy of data

11.31 Concerns are often raised as to whether the random MDT figures provide an accurate reflection of the level of drug misuse in prisons. The minimum levels for random testing (5% or 10%) are based on advice from the Home Office Research, Development and Statistics Directorate (RDS).

11.32 *A balance must be struck between accuracy of results and testing resources. The random levels prescribed are the minimum required to obtain statistically defensible figures*. Where testing levels fall below the minimum, the reported results become much less accurate.

11.33 The random MDT figures provide a snapshot in time of the number of prisoners using drugs. But for statistical reasons, the MDT results cannot give a complete picture of the prevalence of drugs in prisons and almost certainly underestimate the actual level of misuse. However, the MDT results do provide a statistically valid way of measuring patterns and trends of drug misuse over periods of time, both within and between prisons.

11.34 The analytical laboratory is responsible for creating the central MDT database from which the KPI and other MDT information is derived. Prisons have a responsibility for ensuring that certain information on prescribed medication and refusals is forwarded to the laboratory for incorporation in the database.

11.35 Concern is often expressed that the MDT figures compiled by prisons locally from results returned by the analytical laboratory do not match the figures compiled centrally by the Drug Strategy Unit using the data obtained direct from the laboratory. As a result, the DSU commissioned an independent review of data systems which concluded that the majority of discrepancies were due to errors made locally by prisons. Errors were due to a failure to follow the counting rules, failure to forward to the laboratory default information on medicinal exemptions, and/or excluding positive tests obtained from new receptions within the waiting period and the erroneous assumption that subsequent positive tests from such prisoners could be excluded.

11.36 It is essential that prisons understand and take into account the KPI counting rules when preparing MDT performance reports locally:

- only random tests are counted;
- the KPI refers to samples that test positive for drugs, not findings of guilt at adjudication;
- *medical mitigation information must be forwarded efficiently to the analytical laboratory*;
- the Prison Service works to financial years, starting in April and finishing in March of the following calendar year;
- positive tests are counted as defined;
- exclude from counting spoilt samples, refusals and exemptions due to prescribed medication;
- include all positive tests that do not for whatever reason result in adjudication (e.g. positive results within waiting periods for drugs in question);
- where a sample is collected at the end of the month, the results may not be received until the beginning of the following month. All test results are attributable to the month in which the sample was collected, not the month in which the result was received; and
- later confirmations and mitigations can alter initially positive drug screen results.

11.37 Planning Group have in place a mechanism to allow challenge of KPI data reported centrally, but before doing so, prisons should first ensure that figures calculated locally are accurate, and allow time for late mitigations and confirmations to be updated centrally at the start of the following month.

11.38 The KPI result is calculated by dividing the total number of random positive drug tests by the total number of random samples tested.

11.39 Information on calculating random mandatory drug test statistics can also be found in PSO 7100: PUMIS Sources and Guidance Notes.

Monitoring performance

11.40 The collection of performance data is about much more than informing the KPI requirement. MDT data provides the best available information on patterns of drug misuse in prisons and the use of KPI data is therefore vital in shaping the overall prison drug strategy and in informing the allocation of finite resources. The best prisons regularly produce a series of management reports outlining progress with the MDT initiative and act on adverse trends. It is important first to ensure that the MDT data is accurate. Experience shows that MDT data can fluctuate quite widely on a monthly basis. Performance is therefore best judged on longer-term trends rather than short-term changes which might not be sustained. If, for example, performance is judged on a quarterly basis, the sample size is much larger and the data becomes proportionately much more accurate.

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Drug Strategy Unit
November 2005

(Amended by PSI 11-2007 - 06/03/07)

APPENDICES

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APPENDIX 1

LEGISLATION COVERING DRUG TESTING IN PRISONS

EXTRACT FROM PRISON ACT 1952

Section 151 of the Criminal Justice and Public Order Act 1994 inserted the following section into the Prison Act 1952 after section 16.

Section 16A.

(1) If an authorisation is in force for the prison, any prison officer may, at the prison, in accordance with Prison Rules, require any prisoner who is confined in the prison to provide a sample of urine for the purpose of ascertaining whether he has any drug in his body.

(2) If the authorisation so provides, the power conferred by subsection (1) above shall include power to require a prisoner to provide a sample of any other description specified in the authorisation, not being an intimate sample, whether instead of or in addition to a sample of urine.

(3) In this section -
"authorisation" means an authorisation by the governor;

"drug" means any drug which is a controlled drug for the purposes of the Misuse of Drugs Act 1971;

"intimate sample" has the same meaning as in Part V of the Police and Criminal Evidence Act 1984;

"prison officer" includes a prisoner custody officer within the meaning of Part IV of the Criminal Justice Act 1991; and

"Prison Rules" means rules under Section 47 of this Act.

Notes (not part of Prison Act):

(a) Part V of the Police and Criminal Evidence Act 1984 defines an intimate sample as "a sample of blood, urine, semen, or any tissue fluid, saliva or pubic hair, or a swab taken from a person's body orifice."

(b) The Criminal Justice and Public Order Act 1994 redefines saliva as a non-intimate sample.

(c) The most common form of sample used for drugs testing is urine. Oral fluids, hair and sweat are also possibilities.

EXTRACT FROM PRISON RULES 1999 AND YOUNG OFFENDER INSTITUTION RULES 2000

Interpretation

2(1) In these rules, where the context so admits, the expression "controlled drug" means any drug which is a controlled drug for the purposes of the Misuse of Drugs Act 1971(b).

Compulsory testing for controlled drugs

50 (1) This rule applies where an officer, acting under the powers conferred by section 16A of the Prison Act 1952 (power to test prisoners for drugs), requires a prisoner to provide a sample for the purpose of ascertaining whether he has any controlled drug in his body.

(2) In this rule "sample" means a sample of urine or any other description of sample specified in the authorisation by the governor for the purposes of section 16A.

(3) When requiring a prisoner to provide a sample, an officer shall, so far as is reasonably practicable, inform the prisoner:

(a) that he is being required to provide a sample in accordance with section 16A of the Prison Act 1952; and
(b) that a refusal to provide a sample may lead to disciplinary proceedings being brought against him.

(4) An officer shall require a prisoner to provide a fresh sample, free from any adulteration.

(5) An officer requiring a sample shall make such arrangements and give the prisoner such instructions for its provision as may be reasonably necessary in order to prevent or detect its adulteration or falsification.

(6) A prisoner who is required to provide a sample may be kept apart from other prisoners for a period not exceeding one hour to enable arrangements to be made for the provision of the sample.

(7) A prisoner who is unable to provide a sample of urine when required to do so may be kept apart from other prisoners until he has provided the required sample, save that a prisoner may not be kept apart under this paragraph for a period of more than 5 hours.

(8) A prisoner required to provide a sample of urine shall be afforded such degree of privacy for the purposes of providing the sample as may be compatible with the need to prevent or detect any adulteration or falsification of the sample; in particular a prisoner shall not be required to provide such a sample in the sight of a person of the opposite sex.

Offences against discipline

51 (9) is found with any substance in his urine which demonstrates that a controlled drug has, whether in prison or while on temporary release under rule 9, been administered to him by himself or by another person (but subject to rule 52);

(12) has in his possession -

(a) any unauthorised article, or
(b) a greater quantity of any article than he is authorised to have;

(22) disobeys any lawful order.

Defences to rule 51(9)

52 It shall be a defence for a prisoner charged with an offence under rule 51(9) to show that:

(a) the controlled drug had been, prior to its administration, lawfully in his possession for his use or was administered to him in the course of a lawful supply of the drug to him by another person;

(b) the controlled drug was administered by or to him in circumstances in which he did not know and had no reason to suspect that such a drug was being administered; or

(c) the controlled drug was administered by or to him under duress or to him without his consent in circumstances where it was not reasonable for him to have resisted.

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Appendix 2
(as amended by PSI 11-2007 - 06/03/07)

MANDATORY DRUG TEST AUTHORISATION FORM

PrisonerName_____**PrisonerNumber**_____

Test Reference Number

1. The governor has authorised that in accordance with Section 16A of the Prison Act 1952 any prisoner may be required by a prison officer or prison custody officer to provide a sample of urine for the purposes of testing for the presence of a controlled drug.

2. You are now required under the terms of Section 16A to provide a fresh and unadulterated sample of urine for testing for the presence of controlled drugs.

3. Authority for the requirement was given by:

Name_____**Position**_____

4. Reason for requirement: (only one box to be ticked)

- **Random test:** You have been selected for this test on a strictly random basis.

Non Random

- **Reasonable suspicion:** You have been selected for this test because staff have reason to believe that you have misused drugs.
- **Risk assessment:** You have been selected for this test because you are being considered for a privilege, or a job where a high degree of trust is to be given to you.
- **Frequent test programme:** You have been selected for more frequent testing because of your previous history of drug misuse.
- **On reception:** You have been selected for testing on reception.

5. The procedures used during the collection and testing of the sample have been designed to protect you and to ensure that there are no mistakes in the handling of your sample. At the end of the collection procedure you will be asked to sign a statement confirming that the urine sealed in the sample bottles for testing is fresh and your own.

6. Your sample will be split at the point of collection into separate containers which will be sealed in your presence. In the event of you disputing any positive test result, one of these containers will be available for a period of up to 9 months, for you to arrange as soon as possible, if you so wish, for an independent analysis to be undertaken at your own expense.

7. You will be liable to be placed on report if you:

(a) provide a positive sample;

(b) refuse to provide a sample;

(c) fail to provide a sample after 4 hours of the order to do so (or after 5 hours if the officer believes that you are experiencing real difficulty in providing a sample); or

(d) provide an adulterated or spoiled sample.

Consent to Medical disclosure

* (i) During the past 30 days I have not used any medication issued to me by Health Care.

* (ii) During the past 30 days I have used medication issued to me by Health Care. I understand that some medication issued by Health Care may affect the result of the test. I give my consent to the Medical Officer to provide details of this treatment to the prison authorities. In the absence of medical disclosure, positive tests will be presumed to be due to illicit use of drugs.

Signature of Prisoner:_____ **Date:** _____

(* Delete as appropriate)

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Appendix 3a

HM PRISON SERVICE

INFORMATION TO PRISONERS ON MANDATORY DRUG TESTING

Introduction

This booklet is designed to provide you with information on the mandatory drug testing (MDT) programme, from the processes involved in your selection for a test, through sample collection, to the consequences of testing positive for drugs. This booklet is supplied to enable you to ensure that correct MDT procedures are followed and make you aware of what happens when you are selected for testing.

Why do we have MDT?

Mandatory or compulsory drug testing operates in every prison establishment in England and Wales. The Prison Service began MDT in eight pilot prisons in 1995 and extended it throughout the Prison Service by March 1996. MDT is an essential element of an integrated and balanced approach to tackling drug misuse in prison and is part of the Prison Service drug strategy "Tackling Drugs in Prison", since updated in December 2002 as part of the national Drug Strategy, which aims to reduce the supply of drugs into prison and the demand for them.

MDT has three objectives:

i. to deter prisoners from misusing drugs through the threat of being caught and punished;
ii. to supply better information on patterns and scale of drug misuse to improve the targeting of treatment services and to measure the effectiveness of the overall strategy; and
iii. to identify individuals in need of treatment.

Legal provisions for mandatory drug testing

This section outlines the legal grounds for MDT. Every part of the process is governed by legislative provision and Prison Rules.

In 1994, section 151 of the Criminal Justice and Public Order Act amended the 1952 Prisons Act by inserting a new section, 16A, which gave prison officers, providing an authorisation is in force at the prison, power to require any prisoner to provide a sample of urine for the purpose of testing for the presence of controlled drugs. This means that it is an offence against Prison Rules for a prisoner to use controlled drugs without appropriate medical approval.

A summary of relevant Prison Rules which apply are as follows:

Prison Rule 50 [YOI Rule 53], sets out the procedures that must be followed by prison officers when they require prisoners to provide a sample of urine under the MDT programme to test for the presence of controlled drugs in their body.

Under Prison Rule 51(9) [YOI Rule 55(10)], a prisoner is guilty of an offence against discipline if he is found with any substance in his urine which demonstrates that a controlled drug has, whether in prison or while on temporary release under Rule 9 (YOI Rule 5), been administered to him by himself or by another person (but subject to Rule 52 (YOI Rule 56)). (This is subject to the express defences set out in Prison Rule 52 [YOI Rule 56] – see page 8.) If following an MDT test you test positive for one or more drugs, you are likely to be charged under this Prison Rule. Separate charges will be laid for each individual drug positive from one sample.

Prison Rule 51 (22) [YOI Rule 55(25)] is another offence against prison discipline where a prisoner "disobeys a lawful order". If you refuse to provide a fresh and unadulterated sample suitable for testing, you will be charged with an offence against this Prison Rule.

Prison Rule 51(12a) [YOI Rule 55 (13a)] is an alternative offence of "possession of an unauthorised article". Where medications which are not controlled drugs but which also have not been legitimately prescribed to you are detected, you may be charged for the unauthorised possession prior to the MDT test, evidenced by the laboratory analysis.

You should note that an order to submit to an MDT test is an order to submit to one, single continuous chain of events which cannot be subdivided into a series of sequential orders. If a prison officer orders you to attend the MDT suite you must assume that it is for the purposes of submitting to an MDT test. The MDT testing process will only be discussed with you in detail once you are present in the MDT suite.

Types of mandatory drug testing

There are five types of MDT under which you may be required to provide a sample of urine:

- random testing – where a proportion of the prison population (normally 5 or 10%) is tested each month;
- reasonable suspicion – where prison staff have reason to believe that you have misused drugs;
- frequent test programme – you may be selected for this programme if you have a previous or persistent history of drug misuse and especially if you test positive for Class A drugs;
- risk assessment – you are selected for this test when you are being considered for a privilege (such as release on temporary licence), or a job where a high degree of trust is to be granted; and
- testing on reception – you may be selected for testing on first reception to a prison.

Random testing

Most MDT is by random testing. A computer operated system known as the Local Inmate Data System (LIDS) is used to generate the names of inmates required for random testing and has been used since the start of MDT. The process runs, and is capable of running, only once a month. Before running the selection process there is no way to identify which inmates will be selected. Since it can be run only once a month, it cannot be "re-done" after the first list is produced. Lists are produced normally by the MDT co-ordinator.

It is possible to program in the percentage selection required, with a percentage selected for the reserve list provided at the same time. The process is based on a random number generator, with a system built in to remove any duplicate selections. The final lists are printed out in the order the numbers were generated. The system makes no reference to previous runs of the program and it is therefore possible to generate the same prisoner on a number of subsequent occasions, as with any random process.

It is important to distinguish between randomness and probability. Randomness is the condition where, before the exercise is performed, it is not known which event will result. Each subsequent event is independent, since the outcome of any one event cannot influence the outcome of others. But it is possible to calculate the chance of an event happening – probability is the expected or relative frequency. In order to make a judgement on probability, the event has to be conducted on many occasions. A good example is throwing a dice where after a sufficient number of throws, the numbers should occur in equal proportions. In this instance, the event is the selection process for a random mandatory drug test. It is not unusual or untoward for a prisoner to be selected on more than one occasion over comparatively short periods of time.

Sample collection

Each time you are selected for MDT you will be informed of the reason or grounds for the test, collected from your location, and escorted to the MDT suite by prison staff.

Whilst MDT, by its very nature, is a relatively intrusive process, all procedures are carried out with maximum consideration for your privacy and human rights. In compliance with Prison Rule 50(8) which states that "a prisoner required to provide a sample of urine should be afforded such degree of privacy for the purposes of providing the sample as may be compatible with the need to prevent or detect any adulteration or falsification of sample; in particular a prisoner shall not be required to provide such a sample in the sight of a person of the opposite sex".

On arrival at the site you will first be issued with a test authorisation form explaining the reason and grounds for the test and including a section for disclosure of any prescribed medication. Some medicines can cause a positive MDT result. The form also explains the likely consequences of a positive test result. You will be asked to sign this authorisation form. Following this, your sample will be taken in accordance with chain of custody procedures. You will be given a full search for the presence of any adulterants. You will then be allowed to put your clothes back on, or be given a gown to wear when providing your sample. Next, you will be asked to wash your hands, including fingernails, to minimise any possibility of adulteration. You will then be asked to provide a sample of urine, into a freshly opened sample container, within a secure testing site under indirect observation by prison staff. This sample must be at least 35ml of urine. If less is produced the sample will be thrown away and you will be placed in confinement for a period of up to four hours (plus an additional hour at MDT staff's discretion) until a fresh sample is produced.

Once you have provided a sample it will be subject to temperature and visual checks to ensure that it has been freshly provided and is unadulterated. If your sample falls outside of the prescribed temperature range it will be rejected for testing and you will be asked to provide another sample.

The sample will be divided equally between two sample tubes. The tubes will be sealed in your presence with tamper-evident, unique bar-coded labels marked A and B. These bar-codes are used as the only means of identification for the sample to preserve your anonymity and ensure a clear chain of custody for all samples. You will be asked to satisfy yourself as to the integrity of the samples and initial the seals of these samples to prove that you have witnessed them being sealed. Next you will be asked to sign a chain of custody form to confirm that the process has been carried out correctly. Before leaving the MDT suite you will be given the top half copy of the chain of custody form and a copy of the authorisation form. Both A and B tubes are then sent to an independent laboratory contracted by the Prison Service who undertake all analysis of MDT samples.

What if I cannot or will not provide a sample?

If you are unable to provide a sample you may be held apart from other prisoners and allowed additional time in which to do so. You will be confined in a holding cell for up to four hours (five, at the discretion of the MDT officer, if it is believed you may be able to provide a sample) and issued with a third of a pint of water at the start of each hour throughout the period. After two to three hours of confinement you will be allowed access to Healthcare staff should you wish. If you refuse to provide a sample, or cannot provide one after five hours, you will be charged with disobeying a lawful order (see legal provisions for mandatory drug testing). If you are unco-operative during confinement, you may be charged with disobeying a lawful order well before the end of the four-hour period and are, in any event, unlikely to be afforded a fifth hour in which to provide a sample. If there is a legitimate medical reason, which has been verified by the prison medical officer, for your inability to provide a sample, this will be given full consideration.

Reasons for variation or exemption from MDT

If you are fit to be in prison and not segregated from other prisoners on grounds of physical or mental health then you are deemed to be fit to take a drugs test.

You may be excluded from testing on health grounds:

- if you are unfit to attend at the sample collection area for drug testing purposes; or
- if you are considered to be a danger to yourself, staff or to other prisoners and may already be segregated on health grounds from the rest of the prison and may be awaiting transfer to a mental hospital.

You cannot be excluded from MDT on religious grounds however, staff will exercise sensitivity when collecting samples.

The chain of custody

The chain of custody is designed to provide a legally defensible system of controls to track the progress of any sample from the moment you provide it to the declaration of its result. It is designed to ensure your anonymity. It links beyond doubt the sample to you and the result to the sample.

Measures are in place to make sure that this chain is properly followed throughout the process of collection, transport and testing. The sample collector, courier and laboratory staff are required to follow a clearly defined procedure, and to maintain a record of each key step. The entire sample collection process is carried out in the presence of two staff at least, one of whom must be MDT training accredited. This is to minimise possibility of error and to ensure that procedures are witnessed by another person.

Failure to follow correct procedure or to record these key steps will invalidate the integrity of the collection and testing process.

How do I know that my sample wasn't tampered with?

Fresh sample collection kits are used on each occasion. Your sample was divided between two sterile sample tubes in your presence. The tubes were closed and sealed with tamper-evident seals that you were asked to initial. You were asked to sign a declaration on the chain of custody form, part of which states that the bar-codes on the sample seals are identical to the one on that form. The sample tubes were then sealed into a chain of custody bag in your presence. That bag is not opened until it reaches the laboratory. On arrival at the laboratory, staff check the sample tubes and the seals. If there is any sign of damage or tampering, the sample is rejected for testing. It is also checked that the bar-codes on the seals match each other and the bar-code label on the chain of custody form. If any of the codes do not match, the sample is rejected for testing. Bar-codes are used to track all movements of the sample in the laboratory.

Prescribed medication

Some medication can affect test results for certain drugs. For this reason, before a sample is collected, you will be asked to sign an authorisation form to consent to the disclosure of medication that may have been taken in the previous 30 days. This information will be taken into account if you test positive for particular drugs following the screen test.

If you were prescribed any medication for use in the month before you were tested, it is in your best interests to consent to the disclosure of your medical records. If you do not consent then prescribed medication cannot be taken into account at the adjudication. If you did not give consent to medical disclosure on the test authorisation form you will be given another opportunity to consent to medical disclosure at adjudication after a positive screen result.

The testing process

All samples are analysed by an independent laboratory contracted by the Prison Service. The laboratory is fully accredited and follows internationally accepted analytical procedures. The laboratory runs internally its own quality assurance programme. The analytical process is supervised by fully qualified analytical staff able also to provide expert toxicological advice.

On receipt of both of the sample tubes at the laboratory, the “B” tube is put into cold storage. All tests (screen and confirmation) carried out on behalf of the Prison Service use urine from the “A” tube. Whenever a confirmation test has been carried out on a sample – indicating the possibility that an independent analysis may follow – the “B” tube is stored for 9 months from the date of the confirmation test.

Extreme dilution/adulteration

Prior to testing, your sample will be subject to a dilution and adulteration check at the testing laboratory. If a sample is too dilute to be tested or fails an adulteration test this will be reported as failure to comply with the order to provide a fresh and unadulterated sample and you will be placed on report.

If only moderate dilution is reported this means the sample can still be tested but is less likely to detect drugs present. Therefore repeat moderately diluted samples may lead to further reasonable suspicion testing.

Drug elimination periods

The amount of time that a drug stays in the body varies from drug to drug and within drug groups. If drugs could have been taken before you entered prison, you may be charged with an offence until it can be established whether it would be safe to state that the drug was consumed in prison and therefore in breach of Prison Rule 51(9) [YOI Rule 55].

If there is a reasonable doubt that a drug was taken whilst not in prison custody or on release on temporary licence then you will not be charged.

The screening test

All MDT samples undergo an initial screening test which allows those samples testing negative to be screened out. It is usual for a prisoner to be charged following a positive screening test. The screening test uses a process known as immunoassay. This is where biochemical assays are formulated to react with particular drugs or their metabolites – the breakdown products of drugs in the body.

The screening test is particularly effective at screening out samples that contain no drugs at all. Screening tests provide a very good indication of the presence of drugs but cannot do so beyond reasonable doubt. In 2003-04 (1 April 2003 to 31 March 2004) 10,735 samples that screened positive were sent for the confirmation test. Of these, 9,527 (88.7%) confirmed positive or were as a result of prescribed medication. Screening was particularly accurate in detecting opiates positives (88.0% confirmed positive), cannabis (96.0% confirmed positive) and cocaine (96.4% confirmed positive).

The screening test report

Every positive screening test report has the same format. At the top of the report in Section 1 is the **Prisons Bar Code**, which is the unique number that identifies your sample. Two lines below that is the **Sample Collection Date**. The copy of the chain of custody form you are provided with when charged has a barcode label on it and you can check that the barcode number and sample collection date on it match the ones on the screening report. If either does not, you should report it to staff immediately.

Section 2 contains the analytical results. Part a) contains the results of the **Dilution Tests**. These are checks to find out if there is too much water in your sample. It will be either a pass or fail. It is still possible for a sample to test positive for drugs even though it fails a dilution check. Only if extremely dilute will the laboratory be unable to test the sample and you will be liable to be placed on report for refusing an order. The presence of more water than there should be in a sample does not make a positive test result unreliable. This section will also report if any **Adulterants** have been found. Part b) contains the actual **Test Results**. These state the drugs for which your sample has tested positive.

Section 3 contains the **Interpretation** of the laboratory. Section 4 lists the rules under which you may be charged. Just below is the name is the name of the scientist at the laboratory who has certified that these results are correct. It is not necessary for the report to be signed.

The second part of the report contains sections for information on prescribed medication and for the MDT co-ordinator to request a confirmation test, if required.

If your screen test proves negative, a copy of the test certificate will be sent to your MDT co-ordinator. He/she should in turn notify you; this will usually be within 14 days of your sample being collected.

Express defences

An express defence to a charge is simply one that is mentioned in the Prison Rules. Prison Rule 52 contains three express defences to a charge of drug misuse; these are:

a) *the controlled drug had been, prior to its administration, lawfully in his possession for his use or was administered to him in the course of a lawful supply of the drug to him by another person;*

b) *the controlled drug was administered by or to him in circumstances in which he did not know and had no reason to suspect that such a drug was being administered; or*

c) *the controlled drug was administered by or to him under duress or to him without his consent in circumstances where it was not possible for him to have resisted.*

Challenging the screening test result

If you enter any plea other than a definite “guilty”, the adjudication must be adjourned to request a confirmation test (in the case of opiate and amphetamine positive screens the test must be confirmed anyway to establish the classification and controlled status of the likely drug used). Our laboratory will normally provide the results of confirmation testing within six working days of receiving a request.

The confirmation test

Confirmation testing, which is more definitive than screening, uses a more sophisticated technology. Two analytical techniques, Chromatography and Mass Spectrometry, are coupled together either as GCMS (Gas Chromatography Mass Spectrometry) or LCMS (Liquid Chromatography Mass Spectrometry). Chromatography is a technique for separating components from a mixture. An extract of the urine sample is injected into the chromatograph and any drugs or metabolites are separated from other components present in the sample. As drug/metabolite molecules pass through the chromatograph they enter the mass spectrometer. The mass spectrometer shatters each molecule as it leaves the tube. The length of time a substance takes to pass through the chromatograph, the pattern a molecule makes when it shatters, and the weight of the fragments combine to make a unique "fingerprint" for every drug. Results obtained from such tests identify beyond reasonable doubt the drugs present and are able in most cases to clearly distinguish between medication taken as prescribed, and drug misuse.

The confirmation test report

This report looks quite similar to the screening report. Section 1 again includes the **Prisons Bar Code** and the **Sample Collection Date**. Section 2 contains the **Analytical Results**, which states the drugs for which your sample has tested positive. Section 3 will state your prescribed medication. Section 4 contains the **Interpretation** of the confirmation results. Section 5 contains advice to the prison on whether **Charges** can be pursued or if new charges can be laid.

When a substance called 6-monoacetylmorphine (6-MAM) is found, the report will state "**Opiates: positive, consistent with heroin abuse**". This is because 6-MAM is only found as a result of taking heroin, so when it is detected in urine there is no doubt about the drug that was used. (This is just one example of the several different confirmation report interpretations.)

If your confirmation test proves negative, a copy of the test certificate will be sent to your MDT co-ordinator. He/she should in turn notify you if the confirmation test for a drug is negative. The charge relating to that drug will be dismissed.

The confirmation test report also contains details of the levels of drugs detected. However, this is dependent on a wide range of factors including the amount taken and when and how drugs were last used. The level should therefore have no bearing on the punishment imposed at adjudication and should not be used to judge the seriousness of the offence or when drugs might have been consumed, unless expert toxicological advice is taken into account.

Independent analysis

If you are certain that a positive test result is wrong or you have other concerns about the conduct of the analysis, you have the right to obtain an independent analysis of your sample. Although you can do this after the screening test, it makes sense to wait until after the confirmation test.

When you provided your sample, it was divided equally between two tubes that were then labelled A and B. The B tube is your part of the sample and it is sent to our laboratory only for secure storage in a fridge. All of the Prison Service's screening and confirmation tests are carried out using urine from the A tube. When an independent analysis is arranged it is your B tube which is sent, with its seal still intact, to the independent laboratory of your choice.

It is your responsibility to arrange for the independent analysis, in which case the adjudication is adjourned. If you wish to take this option, you are permitted a maximum period of approximately six weeks from the adjournment of adjudication to produce a completed independent analysis.

When a prisoner requests an independent analysis he/she and any solicitor acting on their behalf must be given a copy of "the Procedures" (found at Appendix 18 of PSO 3601) which explains how to obtain an independent analysis.

First, you or your legal representative must find a laboratory that is prepared to do the work and agree a price, within 14 days of adjournment. A list of laboratories that the Prison Service knows are equipped to do this work is available in “the Procedures”. Be aware that not all laboratories are able to conduct the same range of tests as those of the Prison Service’s laboratory.

When a laboratory to carry out the analysis has been found, you or your legal representative must contact the prison where the sample was taken asking them to authorise the release of your sample and naming the laboratory you want it sent to. Release of the sample will normally be authorised within a few working days and then the two laboratories can arrange the transfer of the sample.

Once you have the report on the independent analysis you must decide what to do with it. The report will only be accepted as evidence if you allow the adjudicating governor to read the whole of it.

If you or your solicitor fail to meet any of the milestones within the six-week timescale, this will normally result in the adjudication being reconvened and concluded on the basis of available evidence.

Calling the laboratory scientist as an expert witness

It has been suggested that there is a big loophole in MDT: that the laboratory reports are hearsay evidence and so if you do not accept that they are accurate, either the laboratory scientist must be called to give evidence or the charge must be dismissed. This was considered in the High Court in May 1998. The judgement in that case confirmed that laboratory reports are hearsay evidence, but accepted that confirmation reports may be admitted in evidence, even when a prisoner disputes the result of the test and the laboratory scientist is not called as a witness.

If you request the attendance of the laboratory scientist as a witness, the adjudicator will consider your request and decide whether the scientist should be called. The adjudicator may ask you what relevant evidence you believe the witness could give beyond that contained in the confirmation certificate.

Avenues of appeal

If you feel that the MDT procedure was incorrectly followed when you were asked to provide a sample, there is a route of appeal open to you. You should obtain a complaints form from your personal officer, and follow the procedure below:

- In the first instance speak to a member of staff via an oral application;
- If not resolved, fill in a complaints form, which will be answered at prison officer level (stage 1);
- If dissatisfied with due response, re-submit the complaint. The response will be from someone senior to the original respondent (stage 2);
- If you are still unhappy you may appeal to the governing governor (stage 3);
- If you remain unhappy you may contact the Prison and Probation Ombudsman.

If you are unhappy with the outcome of an adjudication you must first write to the area manager, and thereafter the Ombudsman, and only then consider legal action.

Responses to a positive MDT result

One of the aims of MDT is to achieve a balance between a supportive and a control response. If you are found guilty, at adjudication, of misusing drugs, there are a variety of disciplinary

responses available to the adjudicating governor or independent adjudicator (IA), and a number of administrative measures that can be applied after the adjudication.

Control responses can include:

- disciplinary punishments, such as loss of earnings and cellular confinement or an award of additional days to your sentence (IA only) it is relatively rare for punishments of greater than 28 days to be awarded. Cautions and suspended punishments may also be received;
- the imposition of repeat tests, or a programme of frequent tests (if you are found guilty of misusing a Class A drug – some Opiates and Amphetamines; Methadone; LSD; or Cocaine it is mandatory that you will be placed on a frequent testing programme);
- consideration as a factor in the restriction of release on temporary licence;
- consideration as a factor in the imposition of closed social visits;
- consideration as a factor in re-categorisation to and from open prison status; and
- links to incentive schemes, such as Incentives and Earned Privileges schemes (IEP).

A supportive response may include: referral to CARATs, an integrated **C**ounselling, **A**ssessment, **R**eferral, **A**dvice and **T**hroughcare service; or referral to detoxification or rehabilitation programmes. The Prison Service has developed a framework for drug treatment services which provides an even distribution of basic and enhanced/specialist care to meet low-level, moderate and severe drug problems. You are encouraged to seek help within this programme if you have a drug problem.

Quality assurance programme

The Prison Service employs an independent quality assurer to ensure that MDT procedures are correctly followed and the integrity of the process is maintained.

To help ensure that procedures are carried out properly (both by the analytical laboratory and, in part, prisons) there is a system of blind performance challenge built into the process. Dummy samples are introduced into the process under the guise of samples from different establishments. These might contain drugs or might be fatally flawed, e.g. incorrect procedure is followed in the chain of custody. These are treated by the laboratory entirely as ‘real’ samples and are used to monitor their testing performance.

In addition, the quality assurer carries out audits of prison MDT collection sites and of the testing laboratory. The independent analysis of samples is another means of quality assuring the process.

Questions about the MDT process

If you have any questions about the laboratory or its procedures or any other aspect of the MDT process you should raise them with MDT staff or at adjudication. Prison staff should be able to answer the majority of your questions. If not, they will seek further advice from the analytical laboratory or Drug Strategy Unit. The laboratory used by the Prison Service has been instructed not to reply directly to letters from prisoners.

Drug Strategy Unit
November 2005

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Appendix 3b

HM PRISON SERVICE

MANDATORY DRUG TESTING (MDT)

1. What is MDT?

Urine testing to detect drug use. All prisoners in England and Wales can be tested. It's part of the Prison Service drug strategy "Tackling Drugs in Prison", (as part of the national drug strategy), to prevent drug use in prisons and after release.

MDT aims to:

- find out if you need help with your drug problems and put you in touch with people who can help;
- find out the level of drug misuse in prisons;
- deter you from using drugs;
- support you in resisting any peer pressure to use drugs.

2. What types of MDT are there?

There are five reasons why you can be tested under MDT:

- random testing at any time;
- reasonable suspicion of drug misuse;
- frequent testing due to past drug misuse in prison;
- risk assessment (e.g. before release on licence or privileged work involving a degree of trust); and
- reception testing when you arrive at a prison.

3. Who is tested?

Every prisoner can be tested at any time (including weekends) unless they are excused for health reasons.

4. What happens when I am selected for MDT?

Prison staff will tell you that you are required to give a urine sample for MDT. They will also tell you why you are being tested (e.g. for a random test, reasonable suspicion test, etc).

You will be taken to the MDT unit and searched and then asked to provide a sample.

The sample will be sealed. It will then be sent to the testing laboratory. All through the process there are clear guidelines so that mistakes can be avoided.

5. How does testing work?

There are two stages: screen and confirmation.

Your sample will be screened first. The use of a confirmation test will depend on what drug is detected, what medication you are taking and whether or not you admit to drug misuse (although this depends on the drug detected).

6. What happens if I test positive for drugs?

If you test positive for illegal or unauthorised drugs you may be subject to disciplinary action for breaking prison rules.

Once found guilty at adjudication, this might include loss of earnings or cellular confinement. If referred to the independent adjudicator you may also receive added days.

You will also be offered help to do something about your drug use. This will include normally at least a referral to a CARATs worker.

7. What if I disagree with the result?

If you are sure that you have not taken drugs you can have your sample re-tested following the confirmation test. An independent laboratory will do this. You will have to pay but legal aid **may** be granted to cover costs.

8. How can I be sure that MDT is as fair as possible?

- Random selection is made by the LIDS computer, not prison staff.
- Full chain of custody procedures must be applied to the samples.
- Drug analysis is carried out by an independent laboratory, fully qualified for the task, and subject to ongoing quality assurance.
- If you are not satisfied with the outcome of the MDT procedure, you can use the complaints process.

9. Further information.

If you want to know more about MDT, a booklet " Information to Prisoners on Mandatory Drug Testing" is available from your MDT unit and prison library. If you have any questions about MDT, please ask the MDT unit staff.

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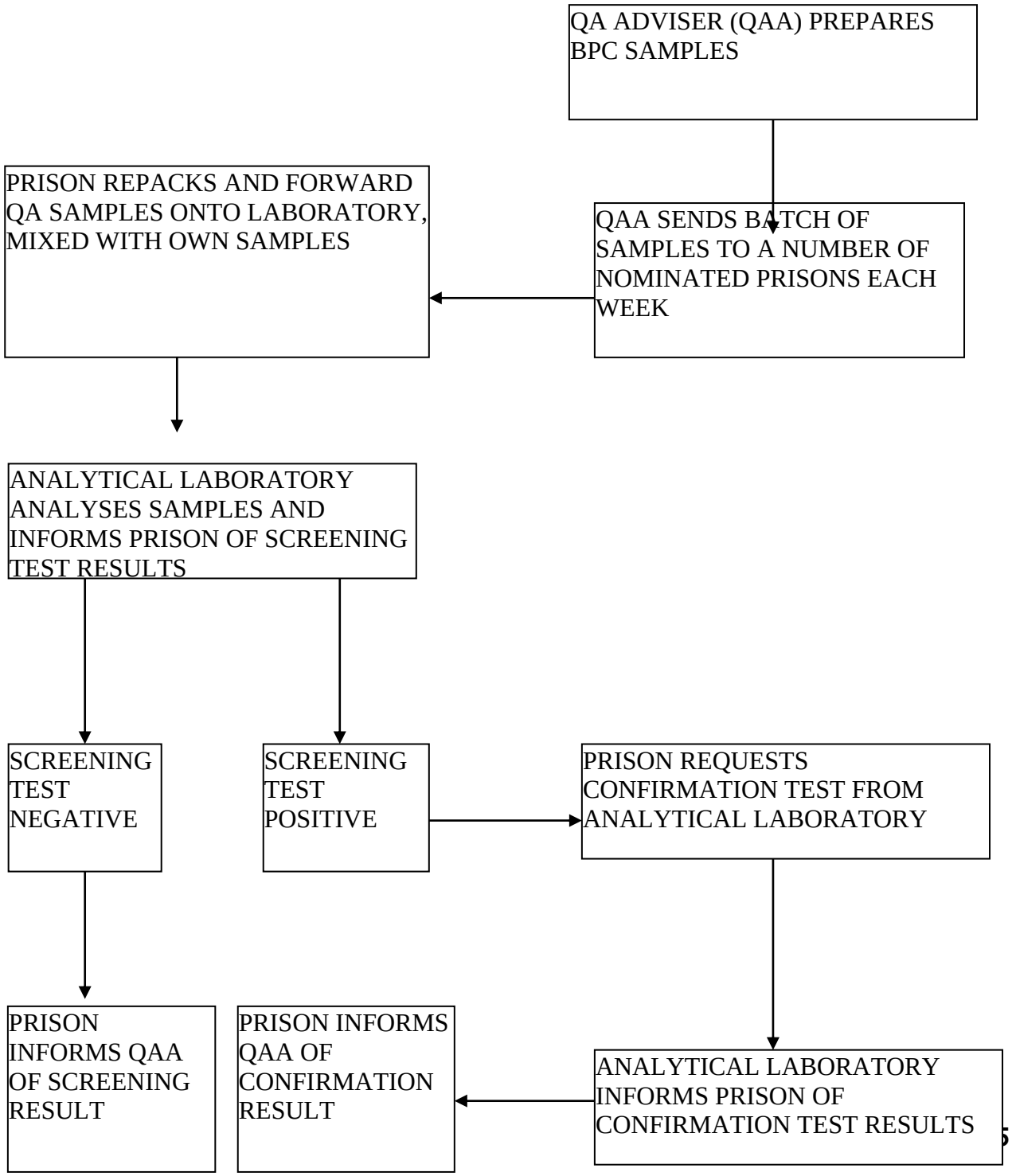
Appendix 4

(as amended by PSI 11-2007 - 06/03/07)

THE BLIND PERFORMANCE CHALLENGE PROCESS



Step-by-step guide to list generation from LIDS

1. Log on to LIDS using MDT-specific user name and password
2. On entering LIDS, the only option is 3 – select inmates for drug testing
3. Press return
4. Enter selection percentage (5 or 10% dependent on population)
5. Press return
6. Enter reserve percentage (50%) to give a reserve list half the size of the random list – if you find that 50% is insufficient for your needs you may increase the size of the reserve list as required
7. Press F10
8. Select ‘A’ print report (random list)
9. Select printer
10. Press return
11. Press F10
12. Select ‘A’ print report (random reserve list)
13. Select printer
14. Press return
15. Press F10
16. Collect lists from printer

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Appendix 6

Roles of Mandatory Drug Testing Staff

Job Description – Drug Test Co-ordinator

Role

To be responsible for the management of all local mandatory drug testing arrangements and ensuring that they comply with the overall drug strategy.

Grade/skills

Task would be undertaken ordinarily by a first-line manager or above, depending upon the skills available and the complexity of the prison's programme. The person selected should have good organisational skills, sound judgement and an ability to liaise effectively with senior management and internal and external agencies. In order to carry out their duties fully, drug test co-ordinators must have attended or must attend within three months of appointment the MDT sample collectors course.

Main responsibilities

- to organise, brief and supervise the sample collectors and provide suitable training when required;
- to ensure that proper procedures are followed and that all documentation is completed accurately;
- to decide, in liaison with key drug workers, appropriate control/supportive responses to positive test results in individual cases;
- to produce monthly random and reserve lists;
- to act as the authorising officer for the random testing and reception testing programme and for reasonable suspicion, risk and frequent tests in liaison with the security department as required;
- to authorise (and lay) disciplinary charges under Rule 51(9)/YOI Rule 55(10) in liaison with Healthcare and testing laboratories;
- to arrange for the notification to prisoners of test results; and
- to be a member of the drug strategy team.

Other responsibilities

- to liase with and respond to requests for information from the establishment drug strategy co-ordinator.

Deputy

The nature of the duties will require the appointment of a deputy to cover during periods of absence.

Job Description – Authorising Officer

Role

To authorise the collection of samples on grounds of reasonable suspicion/risk/

frequent testing.

Grade/skills

This role should normally be undertaken by the mandatory drug test co-ordinator whenever he/she was on duty (assuming they are at least first-line manager). Alternatively, another manager at least one grade above that of the first-line manager may authorise such tests.

Support

The work of the authorising officer is strictly limited to the authorisation of the collection of samples and it is unlikely that any support will be required.

Main responsibilities

To assess the strength of the grounds for testing any prisoner on reasonable suspicion/risk/frequent testing grounds and to give written authorisation for testing in appropriate circumstances.

Deputy

A list should be published of those staff delegated to carry out this role. Good practice suggests that this role should be limited to as few people as possible to maintain continuity and consistency.

Job Description – Sample Collectors

Role

To require prisoners to provide samples for testing for the presence of any controlled drug in accordance with Section 16A of the Prison Act.

Grade/skills

Any prison officer grade trained in the collection procedures may require a prisoner of the same sex to provide a sample. The staff selected should have good interpersonal skills and be interested and involved in other aspects of the drug strategy. Sample collectors must have attended and passed the sample collectors course before carrying out any collections.

Support

While only a prison officer grade may require a prisoner to provide a sample, he/she may be assisted in the collection procedure by any other grade of the same sex, who need not have been trained formally as a sample collector. Non-prison officer/prison custody officer grades cannot however take part in full searches of prisoners (normally conducted on first reception into the MDT suite).

Responsibilities

-to collect samples when authorised to do so in accordance with the requirements of Rule 50/YOI Rule 53;
-to collect samples in accordance with the methods set out in this manual and with chain of custody procedures;
-to complete all documentation related to the collection, storage and despatch of samples;
-to despatch samples when required to the laboratory for testing;
-to comply with all health and safety requirements;
-to prepare disciplinary charges against prisoners as necessary.

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Appendix 7

(as amended by PSI 11-2007 - 06/03/07)

MDT CONTACT LIST

Query	Contact	Phone Number.
MDT policy and procedures.	Rupert Woods/ Jeffrey Tribe Drug Strategy Unit, 3rd Floor, Fry Building, 2 Marsham Street. London, SW1P 4DF.	020 7035 6138 020 7035 6137 Fax: 020 7035 6131
Voluntary drug testing policy and procedures	Carlo Azzopardi Drug Strategy Unit, 3rd Floor, Fry Building, 2 Marsham Street	020 7035 6139 Fax: 020 7035 6131
Toxicology - drug test results and their interpretation, laboratory procedures.	Medscreen	020 7712 8020 Fax: 020 7712 8001
General - non-technical administrative laboratory assistance.	Medscreen	020 77217 8000
Couriers - problems with collection and delivery of sample packages.	Medscreen	020 7712 8023
MDT Training	Julie Martin ATDT EAST East Midlands South Gartree Learning Centre Gallow Field Road Market Harborough Leicestershire LE16 7RP	Tel 01858 436662 Mobile 07968 908056
Adjudication and Prison Discipline policy.	Andrew Stonham Offender Policy and Rights, 1st Floor, Fry Building, 2 Marsham Street	020 7035 1547
Blind performance challenge, procedures and results.	Phil Houldsworth Tackler Analytical	0870 9504015 Fax: 01579324153
Orders for collection kits, forms, and information to prisoners leaflets.	Melody Blackwell Jane Ashby Diane Kennedy Customer Liaison Team, Enterprise and Supply Services	01536 274675 01536 274674 01536 274672
Problems extracting monthly list from LIDS	EDS Helpline	0191 5878388

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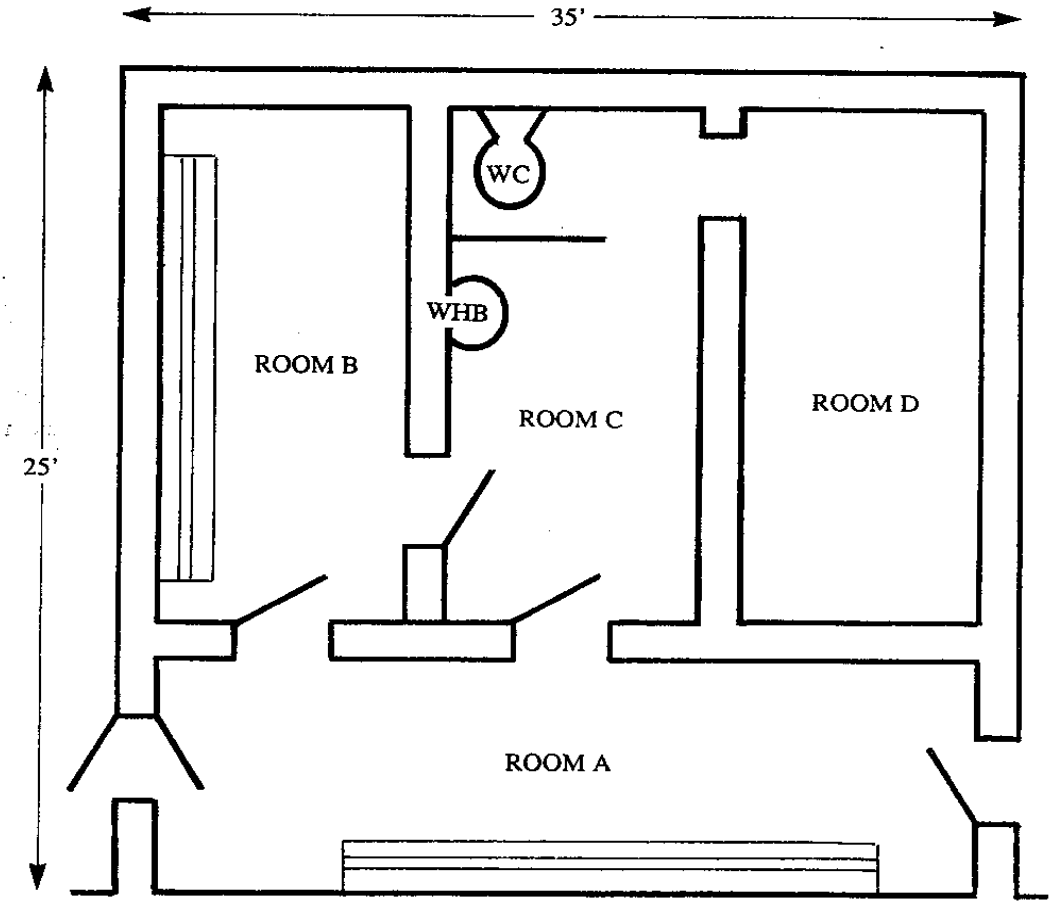
Appendix 8

Examples of designs for sample collection sites.

SAMPLE COLLECTION SITE - EXAMPLE 1



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Sample Collection Site – Example 1

Comment

1. This design was purpose built and included part way through the refurbishment of a house-block. The design has been found to be useful although experience has indicated some possibility for changing the way the facility could be used compared to initial plans**.**

2. Design

Room A This is a small section of a corridor with a secure gate and door at either end. It is used principally as a prisoners' waiting room after they have been collected from their cells or places of work, to provide a sample. It is also used to hold prisoners who are temporarily unable to provide samples.

Room B This is used as a search room. In reality it offers more space than needed and consideration is now being given to how this room could be used differently.

Room C Sample collecting area equipped with a wash-hand basin and WC. The WC can be supervised indirectly by staff positioned in Room C or at a greater distance through a window from Room D. It is felt this space would be sufficient to accommodate the strip-search procedure.

Room D Administration area, fitted with sink, cupboards, fridge, freezer and suitable worktop, where the sample is packaged after collection and stored until despatch to the testing laboratory.

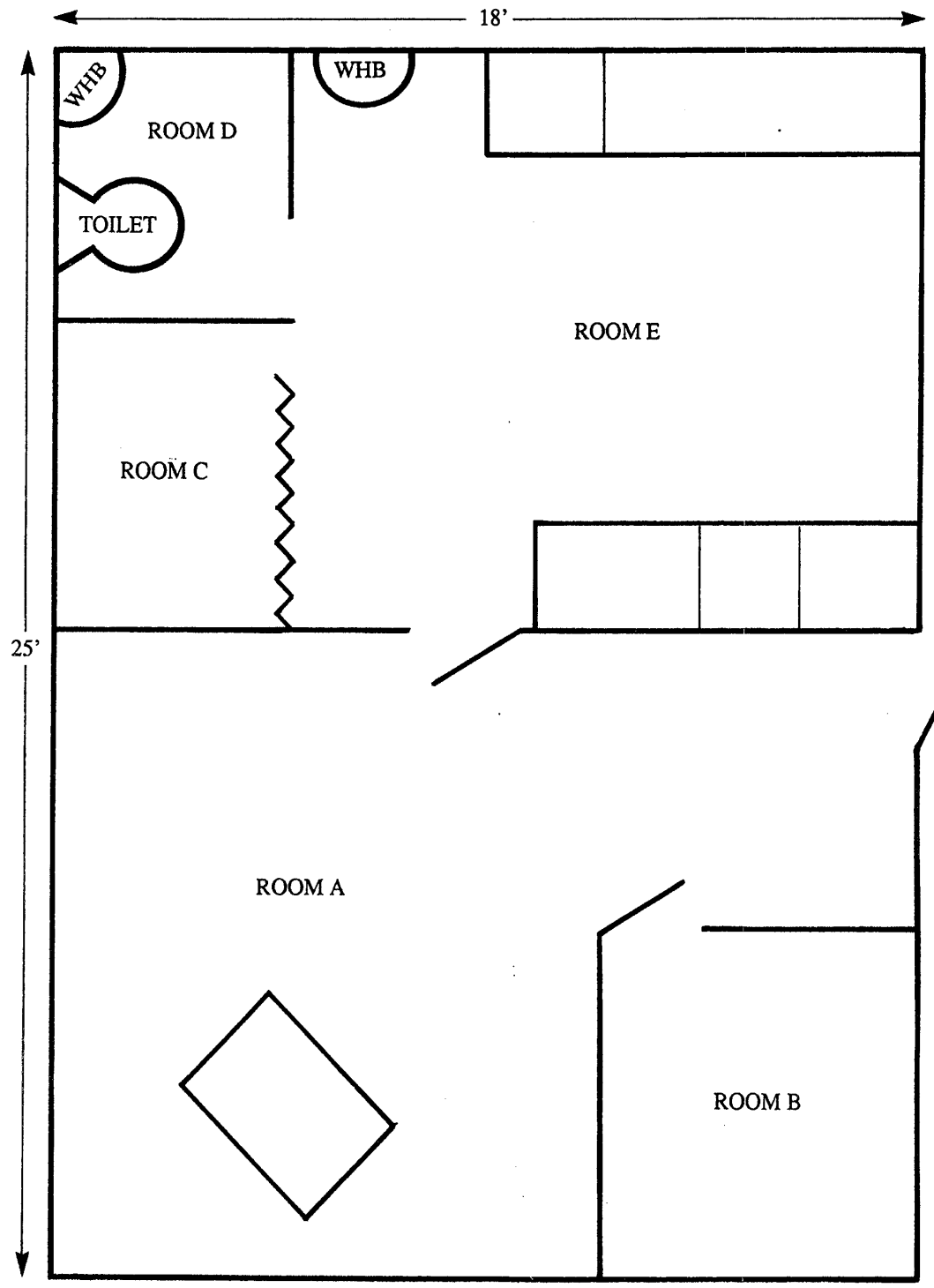
3. Advantages

The site is compact with sufficient visibility between each of the rooms to offer correct balance between supervision and privacy. It is located in a small unit with 12 cells to accommodate prisoners undergoing a drug treatment programme but reasonably central to limit the time involved in escorting prisoners.

4. Disadvantages

The site has no area specifically allocated for the confinement of prisoners who are unable to provide samples. Theoretically, this weakness could present significant problems were prisoners regularly to require confinement for 4 to 5 hours. In reality, however, this has not been presented as a problem and the staff have simply held those few inmates who needed some time in the waiting area until they were able to provide a sample. No prisoner was required to be held for longer than 90 minutes and the greater majority of those needing confinement for much shorter periods.

SAMPLE COLLECTION SITE - EXAMPLE 2



Sample Collection Site – Example 2

Comment

1. This unit was constructed within a former classroom, which was rarely used for that purpose. The design has proved to be very useful**.**

2. Design

Room A Reception area where prisoners are briefly interviewed on arrival and informed about collection procedures.
Room B Holding area where prisoners are held while they wait to provide a sample or are confined (briefly) when unable to provide a sample immediately.
Room C Small screened area used for strip-searching prisoners.
Room D Small cubicle fitted with hand-wash basin and WC for the provision of sample. Angled mirror is fitted above hand-wash basin to allow indirect observation of the sample provision.
Room E Area fitted with cupboards, sink, refrigerator, freezer and used for packaging the sample and completion of the relevant paperwork.

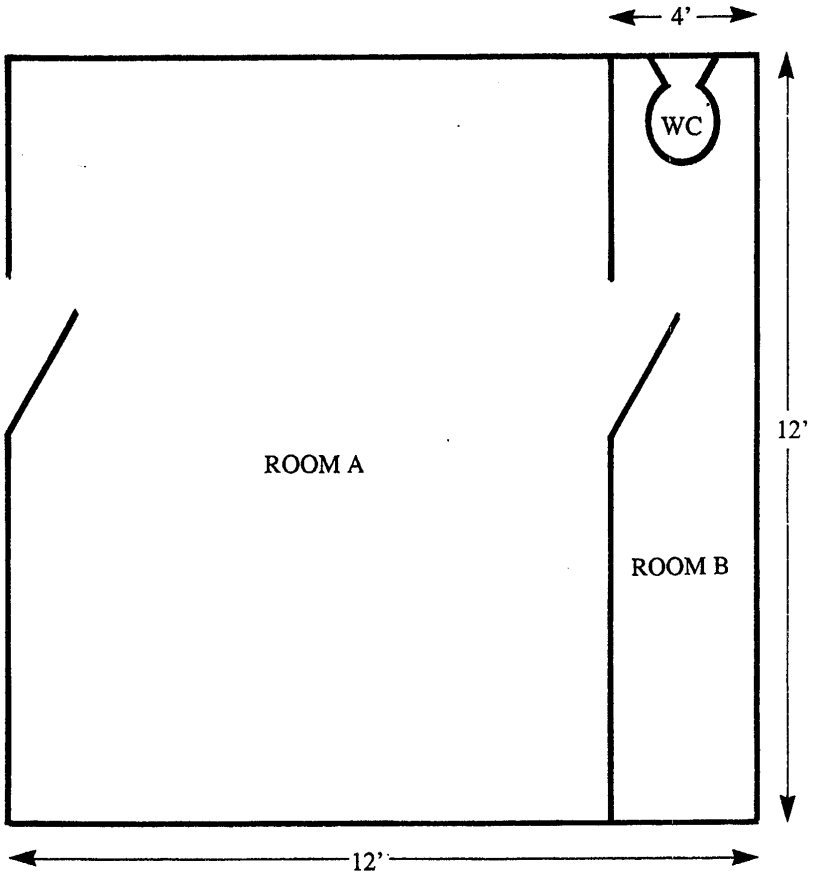
3. Advantages

The site offers abundant space with good levels of supervision. It is located centrally in close proximity to the Health Care Centre and the Segregation Unit. Because of all these aspects, the unit is able to accommodate several prisoners at the same time thus saving on escort costs. A confinement cell is provided on the landing above for those prisoners who need to be confined for longer periods.

4. Disadvantages

None have come to the fore to date but it should be recognised that the modifications required to construct this site were greater than any other – £12k.

SAMPLE COLLECTION SITE - EXAMPLE 3



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Sample Collection Site – Example 3

Comment

1. This site was constructed at almost nil cost using a room that was under-used**.**

2. Design

Room A General purpose area used for strip-searching prisoners before the sample is provided and packaging the sample and completing the necessary paperwork.

Room B Small room fitted with a toilet designed so that sample collecting officer can effectively supervise the provision of the sample while standing in room A.

A confinement cell measuring 10 x 10 is located a few yards away and is capable of accommodating several prisoners at the same time if it became necessary. (In reality it has not been necessary to confine very many at all.)

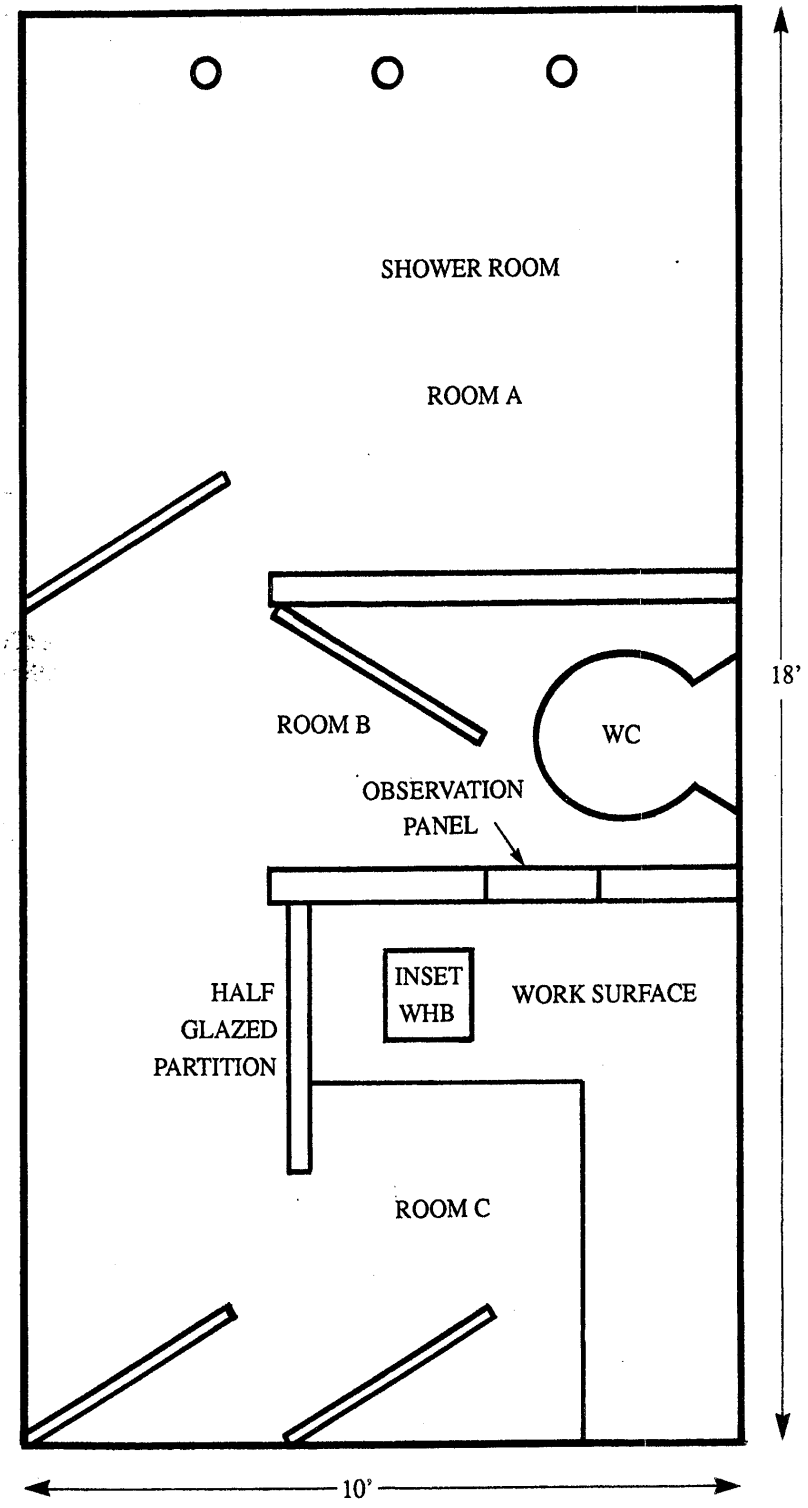
3. Advantages

This site is sufficient for its purpose, compact and produced at very little cost.

4. Disadvantages

Collection site is located away from the main accommodation in the prison. The supervision of prisoners who would require to be confined during staff meal breaks presents practical staffing problems.

SAMPLE COLLECTION SITE - EXAMPLE 4



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Sample Collection Site – Example 4

Comment

1. This site was constructed by alterations to a shower/recess area which was under-used**.**

2. Design

Room A Shower area which is used for the strip-searching of prisoners.
Room B Small cubicle fitted with WC. Indirect observation can be carried out either from behind or from room C via observation panel.
Room C Small compact room used for the packaging of the sample and the completion of relevant paperwork.

Confinement cell is located close by within the Healthcare centre.

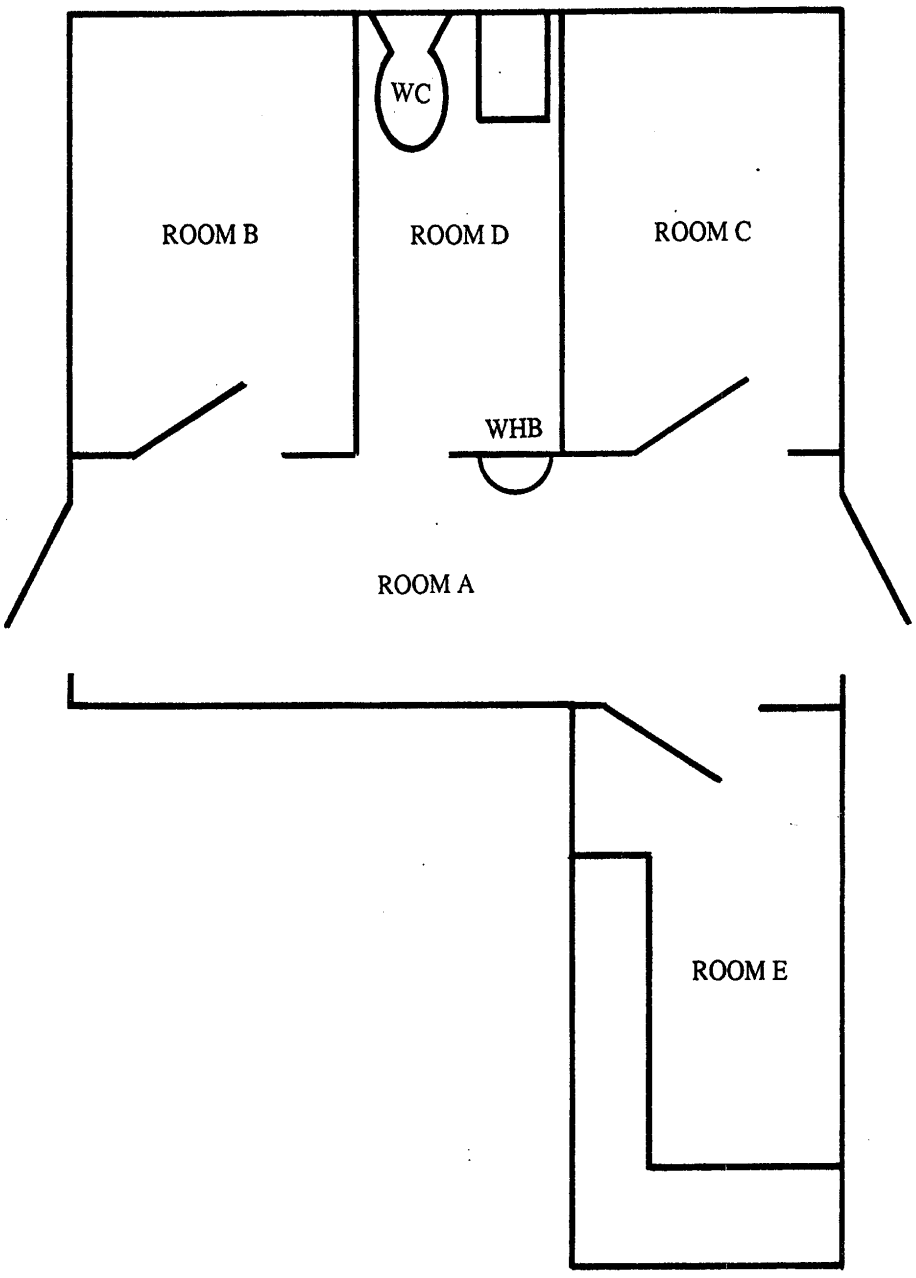
3. Advantages

Unit was constructed at minimal cost. Reasonably accessible. Location of confinement cell presents no problems in the event of an extended confinement as staff supervision is routinely in place.

4. Disadvantages

The unit is probably too small. Its size leaves little room for flexibility in the levels of supervision to be applied during sample collection. Secondly, because of the need to allow Healthcare to maintain some distance from any involvement in mandatory drug testing, the unit should be quite separate from the Healthcare centre.

SAMPLE COLLECTION SITE - EXAMPLE 5



Sample Collection Site – Example 5

Comment

1. This site was constructed during renovations of the former healthcare building. The design has proved useful apart from the size of the office area which is cramped.

2. Design

Room A	Corridor which has restricted access and is therefore usable as a reception area where prisoners are briefly interviewed on arrival.
Rooms B & C	Two confinement cells, one of which doubles as a full search area.
Room D	Sample collection area fitted with WC and sluice. Angled mirror fitted high in corner allowing indirect observation: space in the room allows staff to stand in the room without it being too oppressive.
Room E	Small office area where sample is packaged and the necessary paperwork is completed.

3. Advantages

Site offers all the necessary facilities with sufficient space (apart from the office area).

4. Disadvantages

The site is in a discreet part of the prison not used to accommodate any other prisoners and as a result lengthy confinements over meal breaks present problems for supervision. In practice this has not occurred too often. Lack of space in the office area presents a minor problem but it has been overcome by placing cabinets in unused space in the corridor area – Room A.

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Appendix 9
(as amended by PSI 11-2007 - 06/03/07)

Information to Staff

N.B. This document, with its attached annex, is merely an example and if prisons wish to use it, they should amend the text and layout to suit their local circumstances.

Mandatory Drug Testing

1. Where does the authority for mandatory drug testing come from?

The Criminal Justice and Public Order Act 1994 introduced Section 16A into Prison Act 1952. This section gives the power to prison officers to require prisoners to provide:

- A sample of urine, and/or
- Any non-intimate sample

for the purpose of testing for the presence of drugs.

2. When can this power be used?

While the Prison Act 1952, as amended by the Criminal Justice and Public Order Act 1994, gives prison officers the power to require prisoners to provide a sample for testing for the presence of drugs, it does so with two provisions:

I. The governor of the prison must have issued a written authorisation defining the types of sample that prisoners may be required to provide.

II. Prison officers requiring prisoners to provide samples must do so within Prison Rules.

3. What has the governor authorised?

The governor has authorised that from …… prisoners may be required to provide a sample of their urine for the purpose of testing for the presence of drugs. That notice has been published and drawn to the attention of all prisoners.

The governor has only authorised the collection of samples of urine for testing for the presence of drugs. If, in the future, the policy is changes to include samples of saliva, sweat or non-pubic hair, a new authorisation will be published.

4. What do Prison Rules say about the collection and testing of samples for drugs?

Prison Rule 50 defines:

- Who may order a prisoner to provide a sample;
- What information a prisoner must be given before he/she is required to provide a sample;
- When a prisoner can be segregated to assist in the provision of the sample;
- What degree of privacy should be given to a prisoner while the sample is being collected.

5. Who can order a prisoner to provide a sample?

Only a prison officer who has been formally trained can require a prisoner to provide a sample of urine. Training is important to ensure that all the procedures required by the **chain of custody** are fully met as any failure to meet these standards will invalidate the result.

The prison officer who gives the order to the prisoner to provide a sample must observe the collection of the sample and remain with the prisoner until the collection procedure is completed and the sample is sealed.

6. What is meant by the chain of custody and why is it so important?

The chain of custody is designed to provide a legally defensible system of controls recording the progress of any sample from the time of its collection from the prisoner to the declaration of the results. It is designed to link the sample with the prisoner and the result with the sample.

To ensure that this chain is maintained throughout the process of collection, transport and testing of the sample, the officer collecting the sample, the courier, and those responsible for testing the sample are required to follow a clearly defined set of procedures and to maintain a record of each of the key steps in the process.

Failure to complete any of these key steps, or even a failure to properly record any of these key steps, will almost certainly invalidate the test result. Such failures waste money and are liable to undermine the credibility of the entire testing procedure.

7. On what grounds can a prisoner be required to provide a sample?

A prisoner can be required to provide a sample for testing lawfully if it is done on the correct grounds and with the correct authority. The table below describes the relevant grounds and authority required for each type of test.

Type of test	Grounds for testing	Authority
Random Testing	Prisoners may be tested as part of the national random testing programme. Names will be selected on a truly random basis by computer. 10% of prisoners will be selected at random each month.	Mandatory drug test (MDT) co-ordinator (normally at least a first line manager)
Reasonable Suspicion	Prisoners may be tested if there are reasonable grounds to suspect that they have recently misused drugs (see Manual). Reasonable grounds would exist if a prisoner were found in possession of drugs or drug implements, or drugs were found in an area over which the prisoner had some control or a prisoner was showing potential symptoms of drug misuse.	MDT co-ordinator or a designated manager (at least one grade above that of the MDT co-ordinator).
Frequent Test Programme	Prisoners may be tested more frequently if there is evidence that they have regularly misused drugs. Any prisoner, for example, who has been found guilty of a drugs-related offence on one or more occasions may be liable to tests on these grounds.	MDT co-ordinator or a designated manager (at least one grade above that of the MDT co-ordinator).
Reception Testing	Prisoners may be tested immediately after reception into prison or on return from release on temporary licence.	Mandatory drug test (MDT) co-ordinator (normally at least a first line manager)
Risk Assessment	Prisoners may be tested if they are being considered for release on temporary licence or allocation to certain work parties or any other situation	MDT co-ordinator or a designated manager (at least one grade above that of the MDT co-ordinator).

Type of test	Grounds for testing	Authority
	where a greater degree of trust is required. The result of the drug test will be considered in the overall risk assessment.	

8. What should I do if I suspect that a prisoner has been misusing a controlled drug?

Evidence of drug misuse can be found in the body for a few days, and in some cases weeks after the administration of a controlled drug. No urgent action is required; nevertheless you should report the facts promptly to the security department using an SIR, especially in the case of suspected Class A drug abuse. This information will be passed on quickly to the mandatory drug test co-ordinator or other designated manager in their absence to consider whether a test is appropriate. Your SIR will be acknowledged by the security department.

9. How long after the misuse of drugs can evidence be found in urine samples?

Drugs can remain in the body for different periods depending on the nature of the drug, the amount used, the frequency of use and the individual's metabolism. Table 1 below describes the maximum length of time, after last use, that a person's urine might reasonably be positive for that particular drug.

Table 1 – Minimum waiting periods for drugs

Drug	Comment	Minimum waiting period (days)
Amphetamines	Including MDMA (ecstasy) and methamphetamine	4
Barbiturates	Except phenobarbital	5
	Phenobarbital	30
Benzodiazepines		30
Buprenorphine	Temgesic/Subutex	14
Cannabis		30
Cocaine		4
Methadone		5
LSD		3
Opiates	Including morphine, codeine and dihydrocodeine	5
	6-Monoacetylmorphine (6-MAM)	3

10. Where will the sample be collected?

Samples will be collected in ……by staff trained in the procedures for the collection of samples. These procedures are designed to ensure that the chain of custody linking the prisoner with the urine sample and the test result is maintained throughout the collection and testing procedure.

11. How will the sample be tested?

Two different types of test will be carried out on each urine sample. The first of these tests is a screening test which is designed to screen out negative samples. The degree of accuracy and specificity of the results obtained through screening tests varies across the range of drugs being tested. While screening tests for some drugs (e.g. cocaine) are much more specific and accurate, screening tests for other drugs (e.g. opiates and amphetamines) may be liable to false readings due

to interference from other substances such as properly prescribed medication. The potential weaknesses of screening tests make them unsuitable as a basis for evidence at an adjudication.

Because of this and the possibility of operator error, a more sophisticated (and expensive) confirmation test capable of producing highly accurate results will be undertaken. This secondary test is not liable to produce false positive results.

There may be occasions where the secondary test is not needed. A prisoner may, for example, give an unequivocal plea of guilt at an adjudication and in that case there may be no need to seek the result of a confirmation test, notwithstanding that all opiates and amphetamines positive screens must be sent for confirmation, as do any screens that are likely to be referred to independent adjudication.

12. What will happen if the screening test result is positive?

Where the initial screening test is positive, the mandatory drug test co-ordinator will where necessary (and with the prisoner's consent) consult with the Healthcare department to consider whether the prisoner has received any treatment which may account for the positive test result. Whenever the drug test co-ordinator believes that the prisoner may have misused a controlled drug, he/she will make arrangements for the prisoner to be charged under Prison Rule 51(9).

If the prisoner is found guilty a member of the drug strategy group will review the information available and consider whether the prisoner may need to be referred for a formal assessment of his/her problem to find out whether he/she may need some support.

13. Will all prisoners who provide positive tests be placed on report?

In the vast majority of cases and where there is no evidence that the positive test result has been caused by medication properly prescribed, prisoners will be placed on report. However the results of the drug tests do on occasions need careful interpretation and the drug test co-ordinator must be consulted before any prisoner is placed on report under Prison Rule 51(9).

14. Who will place prisoners on report?

Normally the MDT co-ordinator or their deputy or other designated staff dealing with administration of MDT in their absence.

15. What will happen if a prisoner refuses to provide a sample?

If a prisoner refuses to provide a sample when ordered to do so, he/she will be liable to be charged under Prison Rule 51(22) for disobeying a lawful order.

16. How will prisoners be prevented from adulterating the urine sample?

To minimise any possibility of cheating, prisoners will be given no prior warning of the request to provide a sample. In addition they will be escorted to the sample collection site, given a full search and then required to provide a sample with prison officers in the room. In any case where an individual prisoner has been caught cheating he/she may be subject to closer supervision (but not including direct observation of sample provision) and a more frequent degree of searching during confinement. During the collection of the sample a checklist will be followed to ensure that a full legally defensible chain of custody history is maintained recording the progress of the sample from the point of collection to the declaration of the results.

17. Will the results of drug tests be published?

Each month data will be published in the [insert local arrangements] reporting the number of tests carried out, the number of positive test results for each drug tested and the number of adjudications arising from these test results. While staff and other prisoners will inevitably hear about the result of tests simply because a prisoner is placed on report, the need to maintain medical confidentiality in certain circumstances means that test results for individual prisoners will not be published.

18. What are the symptoms which indicate the misuse of drugs?

The Supply Reduction Good Practice Guide contains advice on the common symptoms associated with the range of drugs that we suspect prisoners are misusing.

Appendix 9
Annex 1

MANDATORY DRUG TEST ADJUDICATIONS: SOME FREQUENTLY ASKED QUESTIONS

Q. How can I be sure that it was this prisoner's sample that produced these results?

A. The prisoner's sample was divided between two sample tubes in your presence. The tubes were closed and sealed with tamper-evident seals that the prisoner was asked to sign. The sample tubes were then sealed into a chain of custody bag in the prisoner's presence. That bag is not opened until it reaches the laboratory. On arrival at the laboratory, staff check the sample tubes and the seals. If there is any sign of damage or tampering, the sample is rejected for testing. It is also checked that the bar-codes on the seals match each other and the bar-code label on the chain of custody form that you were asked to sign. If any of the codes do not match the sample is rejected for testing. Bar-codes are used to track all movements of the sample in the laboratory. When the prisoner is shown a copy of the laboratory report he can check that the bar-code on the report matches the one on the copy of the chain of custody form that he is given when charged.

Q. How do I know that the tests are accurate?

A. There are three ways in which the Prison Service checks on the accuracy of testing. The first is a blind performance challenge (BPC) programme in which samples formulated in a lab to test positive or negative are dummied up to look the same as real Prison Service samples and are sent to our laboratory for testing. The BPC is operated by an independent company specialising in quality assurance. The programme has operated since May 1997 and over 1,900 BPC samples are submitted to the laboratory used by the Prison Service each year. There have only been a handful of false positive screening results to date, which would have tested negative at confirmation. The causes of the false positive result were investigated and steps were taken to tighten up laboratory procedures so that it would not happen again.

The BPC is supported by a programme of laboratory audits. Two interim audits and two full audits are carried out each year. Interim audits consist of a critical review of quality control procedures and quality control data of the laboratory. An audit trail of up to 100 positive test results is also performed to verify the documentation procedures of the laboratory. Full audits review all areas of the laboratory's operation, including chain of custody, security, personnel, the storage and use of reagents and the maintenance of equipment.

The third way is through the independent analysis of prisoners' samples. Prisons authorise the release for independent analysis of samples. To date, Drug Strategy Team has only been informed of two cases in which the results of independent analysis contradicted those of our own laboratory. (Approximately 750,000 samples have been analysed under the MDT programme since 1996.)

Q. The prisoner has refused to let me see the report on the independent analysis. What should I do?

A. The independent laboratory's report is the prisoner's property and he can do what he likes with it. If the prisoner does not wish to present it as evidence, then the adjudicator must reach a verdict on the basis of the available evidence. Do not accept copies of odd pages of the report; these might not tell the whole story. Demand to read the whole report.

Q. What should I do if the results of the independent analysis contradict the results from our laboratory?

A. Notify the Drug Strategy Team straight away. Drug Strategy Team can then liaise with our laboratory to advise on how best to proceed.

Q. I've been shown some research literature which states that cannabis can be detected in urine for much more than 30 days. Does that mean that the waiting period quoted in the MDT Manual is wrong?

A. No, it doesn't. Two cut-off levels are commonly used in screening urine samples for cannabis. A 20 nanogrammes per millilitre (ng/ml) cut-off represents the lowest reliable limit of detection. It is at this level that researchers have detected cannabis in urine for 70 days or more. The Prison Service uses the higher 50 ng/ml level for screening purposes. We use this cut-off level so that a passive smoking defence can be ruled out. At the 50 ng/ml cut-off level our 30-day waiting period can be relied upon.

Q. Could a prisoner test positive for cannabis through passive smoking?

A. No. A review of the research literature has revealed only one experiment in which levels of cannabis above our 50 ng/ml cut-off level were achieved through passive smoking. In that experiment, subjects were exposed for one hour to 16 marijuana cigarettes smoked in a tiny, unventilated room, on six consecutive days. The smoke was so thick that those involved had to wear goggles to protect their eyes. Ask yourself if that experiment could be replicated in your establishment and if any prisoner wishing to remain drug-free would voluntarily put himself through it. A full toxicologist's statement on passive smoking is available on request from headquarters.

Q. My MDT co-ordinator has assured me that cannabis screening is totally reliable. Can I find a prisoner guilty on the basis of a positive cannabis screening result if he pleads not guilty?

A. No. Cannabis screening is very reliable, but even so about 4% of screen positives confirm negative. The MDT Manual makes it quite clear that it would be unsafe to find a prisoner guilty on the basis of a screening report. Whenever the prisoner enters a plea other than one of unequivocal guilt, a confirmation test must be requested.

Q. Isn't a confirmation test just a re-run of the screening test?

A. No, it isn't. The screening test uses an immunoassay process which is quick and cheap and allows samples that are definitely negative to be screened out. The confirmation test uses a more sophisticated two-stage process known as gas chromatography/mass spectrometry (GC/MS). GC/MS is a much more sophisticated and reliable technology and therefore can use a different set of cut-off levels.

Q. Couldn't a false positive test result be caused by the cross-reaction of a perfectly legal substance with the chemicals used in testing?

A. Some medications can cross-react with the reagents used in the screening test to produce a false positive result. This is one reason why a confirmation test should always be requested if the prisoner does not enter an unequivocal plea of guilt. As described above, the confirmation test uses a completely different technology which does not suffer from cross-reactions. All false positive screening results should confirm negative.

Q. If the prisoner was not asked to wash his hands is this a serious breach of procedure?

A. Hand washing before the sample is provided is our safeguard against adulterants on the prisoner's skin or, more likely, under the finger nails, being dropped into the sample. In normal circumstances the prisoner's hand should not come into contact with the sample, so accidental contamination should not be possible. Hence, although this would be a worrying breach of procedures from our point of view, it would not invalidate a positive test result.

Q. Why are the prisoner's sex, age, religion and ethnic code recorded on the chain of custody form? Are samples from different groups treated differently?

A. This information has no effect on the testing carried out. This information is collected only to enable Drug Strategy Team to break down drug test statistics by sex and ethnic code.

Q. How should I respond to a prisoner who has refused to give a urine sample but is prepared to provide a sample of blood?

A. It is illegal for us to take a sample of blood. It is categorised as an intimate sample by the Police and Criminal Evidence Act and section 16A(2) of the Prison Act bars us from taking intimate samples.

Q. How should I respond to a prisoner who has refused to provide a urine sample but is prepared to provide a sample of hair, sweat or saliva?

A. We could use these types of samples in the future, but for the moment urine sampling is our chosen method. There is no reason why anyone except those excluded for medical reasons should be unable to provide a urine sample. Section 16A(2) of the Prison Act gives us the power to require the prisoner to provide a non-intimate sample other than urine, if the governor's authorisation so specifies. The technologies of hair, sweat and saliva testing are newer and relatively untested in court. NOMS has no contract with a laboratory to undertake these kinds of tests.

Q. The screening was positive, the confirmation was positive, but still the prisoner is adamant that the results are wrong. Couldn't I order another sample to be taken and tested and handle the case on a best-of-two basis?

A. If this practice became common knowledge amongst prisoners, any drug misuser with any sense would stop taking drugs after a positive test result and start drinking large quantities of water to flush their system. There would then be a high probability of the sample testing negative or dilute the second time. A prisoner who disputes the results of the confirmation test has the option to obtain an independent analysis on the B sample.

Q. How should I respond to a request for the laboratory scientist to give evidence?

A. A prisoner's request for the laboratory scientist to give evidence should be treated in the same way as any other request for an expert witness. You should ask the prisoner why he wants to call the witness and what relevant evidence the prisoner believes the witness could give over and above that provided by the confirmation test report. Where the prisoner's questions are straightforward (such as the effects of passive smoking or possible contamination of the sample), the adjudicator should be able to answer these without the need to call the expert witness. It might be appropriate to agree to request the attendance of the laboratory scientist when, for instance, the prisoner raises complex issues relating to the interpretation of laboratory results for his sample. You should also be aware that on 3 May the case of R v Governor HMP Swaleside *ex parte* Wynter was heard in the High Court. The court found that the laboratory screening and confirmation reports are hearsay evidence but as classified as expert evidence are a higher quality than other forms of hearsay evidence. Therefore the confirmation test can continue to be used in evidence when a prisoner disputes the result of a test and there will be no automatic right to call the laboratory scientist as a witness.

Q. If the lab does a confirmation test will there be any of the sample left for the prisoner to have an independent analysis done?

A. After the prisoner has provided the sample it is divided equally between two sample tubes, labelled A and B. The B tube is regarded as the prisoner's half of the sample and is merely sent to our laboratory for safekeeping and correct storage. On arrival at the laboratory the B tube is put into a freezer unopened. All our screening and confirmation tests are done using urine from the A tube. Hence, whenever a prisoner requests an independent analysis, there will be no question of there being too little sample left.

Q. Should we charge a prisoner who could have taken a drug whilst in police custody?

A. It is only necessary to note any breaks in continuous prison custody on the charge sheet, for example, when prisoners are released into police custody for short periods to further the investigation of crime. It goes without saying that prisoners who are in police custody should not have access to illicit drugs. If a prisoner claims to have taken drugs while in police custody, it is for the adjudicator to test the evidence to establish whether the drug could have been taken whilst the prisoner was outside of prison custody. Evidence from police officers responsible for the custody of the prisoner will be important in success.

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Appendix 10

Health and Safety Arrangements for the Collection and Testing of Urine Samples

Introduction

1. Purpose

The primary objective of these instructions is to avoid contamination of any person, or of the collection and testing area, during the collection and/or the testing of urine samples. The safe handling of urine samples requires care, common sense and forward planning.

2. Nature of risk

While there are some infectious agents that can be carried in urine, the actual risk of infection from contaminated urine is **extremely** low, provided reasonable hygiene, as outlined in this guidance, is practised **consistently.** The collection of urine samples for testing for the presence of drugs is undertaken regularly and safely by non-healthcare staff in industrial settings and prisons throughout the world. In addition, it is worth noting that while a small number of healthcare workers have been infected with HIV via needle-stick injuries, there is no evidence of any transmission of HIV via urine.

3. Method of transmission of infection

Urine has been known to carry a number of infectious agents, principally when contaminated with blood. Some of these can be present even without the individual's knowledge and without any obvious symptoms.

The greatest risk of infection from urine would come from puncturing of the skin. The risk of such an occurrence can be reduced significantly, however, by ensuring that sharp instruments are kept out of the collection and testing area at all times. Skin itself is a very good barrier to infection.

Infections can also be transmitted through contamination of open wounds and skin lesions such as eczema, or through blood splashing the mucous membranes of the eye, nose and throat. Infections of this nature are, however, less common.

Compliance with the following guidance will ensure that the possibility of **any** infection from the collection of urine samples is **extremely unlikely**.

4. COSHH (Control of Substances Hazardous to Health) Regulations 1988

It is the responsibility of the governor in each prison to ensure that a safe system of work is drawn up for the collection of urine samples and the use of disinfectants for the cleaning/disinfecting of the collection/testing area. In drawing up this safe system of work, the drug test co-ordinator should consider the advice contained in this document, the **Domestic Cleaning Manual** and any instructions issued by the suppliers of cleaning agents or disinfectants to be used.

The Health and Safety policy statement at PSO 3801 contains more detail and staff can also contact the Health and Safety Policy Section in HQ for advice.

5. Health and safety training requirements

No personnel should engage in any tasks that involve exposure to urine without receiving appropriate training on both the work practices and protective equipment required for this task. A signed document recording the completion of this training should be filed in the employee's personal file and updated with details of any subsequent refresher training.

The training programme should ensure that all staff involved in the collection and testing of urine samples are able to:

a) Carry out their work in a safe manner;

b) Recognise and differentiate between:

- all procedures or other job-related tasks that involve an inherent potential for mucous membrane or skin contact with blood and body fluids, or a potential for spills or splashes of them;
- tasks that involve no exposure to blood or body fluids;

a) Describe the types of protective clothing and equipment generally appropriate for various tasks, and explain the basis for selection of clothing and equipment;

b) List the actions to take and the people to contact if accidental contamination occurs;

c) Explain the reasons for adopting work practices and wearing the protective clothing specified in work instructions covering the tasks they perform;

d) List where protective clothing is kept, explain how it should be used and how to remove, handle, decontaminate and dispose of contaminated clothing or equipment;

e) Explain the limitations of protective clothing and equipment;

f) List the corrective actions to take in the event of spillages or personal exposure to body fluids.

6. Immunisation

The Prison Service recommends that all prisoners and staff are immunised against hepatitis B virus. The collection of urine samples in accordance with the procedures set out in this document does not increase the risk of contracting the virus.

7. General principles for the collection/testing of urine samples

A special urine collection/testing area must be designated for the purpose of collection and testing of samples. The site must include toilet and hand-washing facilities.

a) All urine samples must be stored, handled and prepared within this area. The working surfaces must be of a type suitable for frequent decontamination with disinfectant and the whole area kept clean and tidy at all times.

b) Before any work with samples is started, all necessary equipment should be to hand and unnecessary equipment removed.

*c) Sharp instruments in particular must **never** be present during the collection or testing of samples as they are not required in the collection process.*

d) Smoking, eating, chewing, drinking or application of cosmetics must be prohibited in this area and all contact with the mouth with hands, pens and other objects such as gummed labels should be avoided.

e) Staff working with samples must wash their hands thoroughly with ordinary soap immediately before and after handling samples and again before leaving the collection and testing area.

f) All used equipment must be cleared away safely after work is finished.

8. Arrangements for the collection of samples

A plastic containment tray, large enough to contain all the equipment required for the collection and testing of samples and any accidental spillages that may occur while working with the samples, should always be used when handling samples and must be disinfected after use and left empty.

All urine samples must be stored in a designated refrigerator until they are ready to be analysed on site or despatched to an external laboratory for analysis. The designated refrigerator must not be used for the storage of any foodstuffs.

Because the exterior of urine sample containers is likely to be contaminated, they should be placed in a sample transport bag before being transported to another part of the building or another site for testing. Care needs to be taken in the handling of the sample transport bag to prevent the contamination of its exterior.

9. Protective clothing

All staff handling urine samples, or directly involved in the collection or testing of samples, should wear a laboratory coat, or a disposable plastic waterproof apron, and disposable gloves.

All disposable protective clothing should be hygienically disposed of in a biohazard waste bag/container.

Laboratory coats should be changed regularly and immediately they become soiled.

Laboratory coats should be bagged and laundered at the correct temperature.

10. Gloves

Disposable gloves should be worn during all procedures involving urine samples.

NOTE: While gloves provide an important protection against infection, contaminated gloves contaminate everything they touch. Contaminated gloves can spread infection on paperwork, doorknobs, telephones, keyboards, pens, glasses, etc. A fresh pair of gloves should be used for each sample collection and gloved hands should be washed frequently. Gloves exposed to urine must be disposed of before making notes.

Staff with wounds to their hands must cover the wounds with a waterproof dressing and use waterproof gloves.

NOTE: **Chronic skin diseases, such as eczema, weaken the natural effectiveness of the skin's protective barrier and increase the risk of infection for anyone with such conditions. Staff with such conditions may wish to exclude themselves from this type of activity. While the additional risk of contamination is slight, there may well be a problem with irritation of the skin caused by the frequent washing required. Staff must, however, be excluded from this task if their skin condition is severe.**

Disposable gloves should be replaced as soon as possible when visibly soiled or their ability to function as a barrier is compromised.

Disposable gloves should be removed and disposed of on the completion of each sample collection. They should not be washed or disinfected for re-use during the collection of fresh samples.

11. Hand-washing

Both prisoners and staff must wash their hands thoroughly using ordinary soap immediately after handling any urine sample, or its container, and before leaving the urine testing area.

12. Disposal of surplus urine and contaminated equipment

Urine samples, their containers and disposable equipment should be disposed of safely in the following ways:

Item	**Method of disposal**
Urine	Poured down a toilet.
Collection cup Sample containers Sample bags Disposable gloves Disposable aprons Disposable towels	Placed in a bio-hazard bag in a box designed to hold the bag.
Laboratory coats	Placed in a laundry bag designed to contain contaminated clothing, delivered to the laundry.
Containment trays	Surplus urine poured down the toilet and trays washed with disinfectant.

All biohazard waste bags/containers must be sealed and disposed of to a registered carrier for incineration when full. These bags/containers must not be overfilled.

Arrangements for the incineration of all the above disposable bio-hazard waste products (similar to that already provided for Healthcare) should be made with a company registered for the disposal of such waste.

13. Cleaning of contaminated areas

Effective disinfectants, such as the hypochlorite solutions already in use within prison kitchens, should be readily available for routine disinfection and immediate use in the event of work-area contamination or spillage. These solutions should be made available in two different strengths, one to deal with spillages and the other for routine cleaning, as recommended by the manufacturer/supplier.

Note: Disinfectant can be purchased in liquid form or as granules or tablets and must always be used in accordance with the manufacturer's instructions. Granules or tablets (to be dissolved in water according to the manufacturers instructions) will probably be much easier to use and provide a more accurate and standard concentration.

Disposable gloves must be used during any cleaning and contamination procedure.

Care should be taken at all times to prevent spillages and the transfer of contamination to any other work surfaces. In the event of any spillage, the urine should first be soaked up using paper towels (to be disposed of as bio-hazard waste) and the area cleaned with the appropriate solution in accordance with the manufacturer's recommendations.

All disposable materials used to soak up any spillage must be placed in a bio-hazard waste bag/container.

Any non-disposable equipment and surfaces must be disinfected after use. A less concentrated disinfectant solution – as recommended by the manufacturer/supplier – is sufficient to disinfect those surfaces only lightly contaminated and for routine cleaning up after work is finished.

The entire collection and testing site, including the refrigerator and freezer, must be cleaned regularly in accordance with the instructions contained in the *Domestic Cleaning Manual*.

14. Accidents

Any accidents and incidents involving urine must be dealt with promptly and reported correctly through the appropriate health and safety channels in accordance with the advice in Table 1.

Table 1 – Response to incidents involving urine

Incident	First aid	Response	Reporting
Puncture wound.	Rinse under cold running water and encourage bleeding.	Seek advice and treatment immediately from a designated first aider.	Incident should be reported in the Accident Book and to the drug test co-ordinator who is responsible for investigating the incident and reporting the results of investigation in accordance with PSI 11/2002 (accident reporting).
Splashes on mucous membranes i.e. eyes, nose, ear or throat.	Rinse affected area thoroughly in cold water.	Seek advice and treatment immediately from the Healthcare centre.	Incident should be reported in the Accident Book and to the drug test co-ordinator who is responsible for investigating the incident and reporting the results, in compliance with PSI 11/2002.
Splashes on hands or other parts of body.	Wash thoroughly with soap and water.	No action required.	No action required.
Spillage.	No action required.	Soak up spillage with paper towels and treat the affected area in accordance with the advice contained in paragraph 13 above.	No action required.

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Appendix 11

(as amended by PSI 11-2007 - 06/03/07)

DRAFT COPY

Link to Printable Form

CHAIN OF CUSTODY REPORT : MANDATORY DRUG TESTING CHAIN OF CUSTODY PROCEDURE

Prisoner Name_____Prisoner Number_____

NON-RANDOM

If non-random reason for test: Suspicion__ Frequent__ Reception__ Risk__

Sample Collected on Date _____Time _____

Checklist for sample collection - tick boxes as you proceed. Refer to guidance notes if in doubt.

1 __ Only **One** sample collection kit present.

2 __ Check identity of prisoner. Complete details above and in sample collection register.

3 __Carry out search and handwashing procedures. (No soap).

4 __ Show the prisoner that the collection cup and bottles are empty.

5 __ Ask prisoner to provide enough urine to be split **equally** between the two sample bottles.

6 __ Take temperature using the temperature strip. If temperature is out of range (32-38C) (90-100F), make note in comment section and refer to guidance notes.

7 __ **Watched by prisoner,** transfer urine **equally** between the two bottles. Fill each **above** **15ml line and below 30ml line. Press caps on securely.**

8 __ Ask prisoner to initial and date both bottle seals.

9 __ **Watched by prisoner,** place a seal over each bottle cap.

10 __ Dispose of any surplus urine and the cup.

11 __ Pack two bottles in mailing container and then in chain of custody bag - **Do not seal bag.**

12 __ Ask the prisoner to sign and date the Prisoner's Declaration below.

13 __ Complete Chain of Custody Report, tear off and place in chain of custody bag facing outwards.

14 __ Seal bag.

15 __ Place sealed bag in secure refrigerator until ready for dispatch to laboratory.

16 __ Allow prisoner to leave.

Prisoner Declaration - I confirm that:

(i) I understand why I was required to provide the sample and what may happen if I fail to comply with this requirement;
(ii) the urine sample I have given was my own and freshly provided;
(iii) the sample was divided into two bottles and sealed in my presence with seals initialled and dated by me;
(iv) the seals used on these bottles carry a barcode identical to the barcode on this form.
Signature of prisoner _____
Date _____

Prisoner Name:_____

Prisoner Number: _____

Test Reference Number: _____

NON-RANDOM TESTING PROGRAMME
----------Tick box on tear-off section to indicate reason for test----------

RANDOM TESTING PROGRAMME

For tests conducted as a part of the MDT random programme (i.e. where prisoners have been selected by the random number generator)

RANDOM _

Sample Collected on Date _____Time_____

Name of Collecting Officer:

(Print)_____

Prison:_____

For laboratory use only

Comments:_____

_____

I confirm that the enclosed sample, bearing the Barcode identified above, was collected in accordance with the sample collection procedures agreed between National Offender
Management Service and the laboratory.
Signature of Collecting Officer _____

(Tear off along perforation)

* W1: British. W2: Irish. W9: Any Other White Background. M1: White & Black Caribbean. M2: White & Black African. M3: White & Asian. M9: Any Other Mixed Background. A1: Indian. A2: Pakistani. A3: Bangladeshi. A9: Any Other
Asian Background. B1: Caribbean. B2: African. B9: Any Other Black Background. O1: Chinese. O9: Any Other. NS: Not Stated.
** As defined by the Disability Act.
U.K. PRISON COC
SMOOTHSEAL®
Prisoner Details: (Tick one box in each case)
Sex M __ F __

Age Under 18 __ 18 - 21 __ 22 - 26 __ 27 - 30 __ 31 - 40 __ 41 - 50 __ 50+ __ Unknown __

Ethnic Code* W1 __ W2 __ W9 __ M1 __ M2 __ M3 __ M9 __ A1 _ A2 __ A3 __ A9 __ B1 __ B2 __ B9 __ O1 __ O9 __ NS __

Religion Christian __ Muslim __ Buddhist __ No Religion __ Other __ Unknown __

Disability** Disabled __ Not Disabled __ Unknown

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Appendix 12

MDT Register

1 TEST REF NUMBER	2 BAR-CODE LABEL	3 PRISONER'S NAME	4 PRISON NUMBER	5 REASON FOR TEST	6 OFFICER(S) SUPERVISING SAMPLE TAKING	7 PRISONER ON SITE		8 CONFINEMENT		9 SAMPLE TAKEN TIME	10 TIME OFF SITE	11 DATE TO LAB SCRN	12 DATE SCRN RSLT BACK
						DATE	TIME	START	END				

13 SCREENING TEST RESULT	14 DATE TO MO	15 DATE FROM MO	16 DATE OF CHRG	17 PLEA AT ADJ	18 DATE CONF REQS	19 DATE CONF TEST RETN	20 CONFIRM TEST RESULT	21 FINAL ADJUDICATION RESULT AND/OR OTHER ACTION	22 OTHER INFORMATION	23 RECORD COMPLETE

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Appendix 13

Form HF014

Mandatory Drug Testing

Acknowledgement of Packages by Gate Staff

I acknowledge receipt of package(s) of mandatory drug testing samples. I confirm that these packages will remain in the custody of the gate lodge staff until signed for and collected by a courier, or until collection by a member of staff for return to the MDT suite in the event of the courier failing to attend.

If the package(s) is/are damaged in any way whilst awaiting collection I undertake to inform a member of MDT staff immediately. If none is available, I will make a written record of the nature of the damage and ensure that a member of MDT staff receives it as soon as possible.

If the package is not collected within 24 hours I will inform a member of MDT staff.

Signed…… Date……

Name……

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Appendix 14

Laboratory Screening Test Reports

POSITIVE SCREENING REPORT

1) SAMPLE DETAILS

Prisons Bar Code **:**		**11361805**
Establishment Code	:	CH
Sample Collection Date	:	14-AUG-2005
Date Sample Received	:	16-AUG-2005
Date Reported	:	16-AUG-2005
Reason For Test	:	RANDOM

2) ANALYTICAL RESULTS

The sample was screened for some or all of the following drugs: amphetamines, barbiturates, benzodiazepines, cannabis, cocaine, methadone, opiates, LSD and buprenorphine. A number of integrity checks were performed on the sample to see whether it was consistent with normal human urine, or has been substituted or otherwise adulterated.

a) Dilution / Adulteration Test(s): Pass

b) Drug Test Results – The following drugs tested positive:
OPIATES
BENZODIAZEPINES

3) INTERPRETATION

The analytical findings given above indicate the use of the following substance(s) by the person who provided this specimen:
OPIATES
BENZODIAZEPINES

4) CHARGES

Under guidance from Drug Strategy Unit (DSU) and in accordance with Prison Service Order 3601, the following charges or actions are appropriate. Any questions relating to charges must be referred to DSU.

In relation to each positive substance:
Rule 51(9) (YOI Rule 55(10)) is found with any substance in his urine which demonstrates that a controlled drug has, whether in prison or while on temporary release under Rule 9 (YOI Rule 5), been administered to him by himself or by another person, but subject to rule 52 (YOI Rule 56). ***CONFIRMATION MUST BE OBTAINED BEFORE CHARGE IS CONCLUDED FOR OPIATES***

Analytical results certified as correct, authorised and interpretation given by:
Allan Traynor BSc

SCREEN REPORT ACTION SHEET

1) SAMPLE DETAILS

Prisons Bar Code : **11361805**

Establishment Code : CH
Sample Collection Date : 14-AUG-2005
Date Sample Received : 16-AUG-2005
Date Reported : 16-AUG-2005
Reason For Test : RANDOM

2) FUTURE ACTIONS –Indicate whether confirmations are required for the following drugs (in each case circle ONE, otherwise CONFIRM will be assumed):

Drug Detected	Action Requested
Opiates	CONFIRM / NO ACTION
Benzodiazepines	CONFIRM / MITIGATE / NO ACTION

3) To: Healthcare Department **From: Drug Test Coordinator**

Attached is a proforma containing the prisoner's consent to the disclosure of information from his/her IMR, signed on 14-AUG-2005. Please confirm any medicines issued to this prisoner for his/her use which, if taken in the correct dosage, would have been in use in the 30 days prior to 14-AUG-2005. Please identify the generic or trade name, dosage and date of last dose. If none, please state none.

DRUG	DOSAGE	DATE OF LAST DOSE BEFORE SAMPLE COLLECTION ON 14-AUG-2005

Healthcare Professional's Signature:_____ Date:_____

4) AUTHORISATION FOR CONFIRMATION TESTING (MEDICATION MUST BE COMPLETED, REPORT SIGNED BY HEALTHCARE PROFESSIONAL AND MDT COORDINATOR AND RECEIVED BY 17-SEP-2005)

From: (print name)
Drug Test Coordinator: _____ Establishment: _____
The laboratory is authorised to perform confirmation analysis on this sample for the presence of the controlled drugs specified above. If no drugs have been specified I understand that confirmation analysis will be performed on all drugs that tested positive at screening.

Signed:_____ Date:_____

PLEASE COMPLETE THIS SHEET IN BLACK BALL-POINT PEN ONLY. REQUESTS FOR CONFIRMATION WILL ONLY BE ACCEPTED ON THIS OFFICIAL FORM. PLEASE FAX TO MEDSCREEN ON 020-7712 8048 BY 17-SEP-2005
NO ACTION WILL BE TAKEN BY MEDSCREEN IF RECEIVED AFTER THIS DATE UNLESS AUTHORISED BY DSU. IN THIS EVENT ADDITIONAL FINANCIAL COSTS MAY BE INCURRED.

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Appendix 15

Laboratory Confirmation Reports

CONFIRMATION REPORT

1) SAMPLE DETAILS

Prisons Bar Code **:**		**11361649**
Establishment Code	:	CF
Sample Collection Date	:	6-AUG-2005
Date Sample Received	:	11-AUG-2005
Date Screen Reported	:	11-AUG-2005
Date Confirm Requested	:	12-AUG-2005
Date Confirm Reported	:	16-AUG-2005
Reason For Test	:	RANDOM

2) ANALYTICAL RESULTS

a) Dilution / Adulteration Test(s): Pass

b) Drug Test Results

Screen Test Results
The following screening tests were found to be positive on the above sample:
AMPHETAMINES

Confirmation Test Results

AMPHETAMINES	Amphetamine	1000 ng/ml

3) STATED MEDICATION
NONE

4) INTERPRETATION
In relation to AMPHETAMINES, based on the analytical findings given above, these results are consistent with the unauthorised use of:
CLASS B DRUG – AMPHETAMINE

NOTE: A positive urine test for drug use confirms the fact that the substance was used. It should not be used to infer judgement about size route frequency or time of dose etc.

 11361649 ****** END OF PAGE ******

CONFIRMATION REPORT 11361649

5) CHARGES
Under guidance from Drug Strategy Unit (DSU) and in accordance with Prison Service Order 3601, the following charges or actions are appropriate. Any questions relating to charges must be referred to DSU.

In relation to CLASS B DRUG - AMPHETAMINE
Rule 51(9) (YOI Rule 55(10)) is found with any substance in his urine which demonstrates that a controlled drug has whether in prison or while on temporary release under Rule 9 (YOI Rule 5) been administered to him by himself or by another person (but subject to Rule 52 (YOI Rule 56).

Analytical results certified as correct, authorised and interpretation given by:
Allan Traynor BSc

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Appendix 16
(updated by PSI 24-2006 - 15/08/06)

F1127A

MODEL EXAMPLES FOR LAYING CHARGES IN RESPECT TO MISUSE OF DRUGS

Form

F1127A - For Administering Controlled Drugs

Explanatory Notes for F1127A

F1127A - For Refusing to Provide a Sample

F1127A - NOTICE OF REPORT
COPY FOR PRISONER

Charge Number

Misuse of Drugs

First name(s) Surname

Number

You have been placed on report by:

for an alleged offence which was committed

between (date) and hours on (date)

Place Whilst in prison custody or on temporary release.

The offence with which you are charged is that you:

Had a substance in your urine which demonstrated that has, whether in

prison custody, or while on temporary release under Rule 9, been administered to you by yourself, or by another person between the dates of and hours on

Contrary to Rule 51 Paragraph 9 Prison Rules

Is found with any substance in his urine which demonstrates that a controlled drug has, whether in prison or while on temporary release under Rule 9, been administered to him by himself or by another person (but subject to rule 52).

The report of the alleged offence is as follows:

At hours on I received a report from HM Prison Service contracted laboratory, stating that a screen*/confirmation* test had been carried out on the sample of urine collected from [prisoner] at hours on

and the sample tested positive for . The sample of urine was collected under the terms of the Governors Authorisation. [Prisoner] has been in continuous prison custody or on temporary release throughout the period when the offence could have taken place.

Copies of the Test Authorisation Form, the Screen*/ Confirmation* report and the Chain of Custody Form are attached.

Signature of reporting officer……

Your case will be heard at…….hours on…….…. (date)

You will have every opportunity to make your defence. If you wish to write out what you want to say you may ask for writing paper. You or the adjudicator may read it out at the hearing.
You may also say whether you wish to call any witnesses.

This form was issued to you at……hours on……. (date)
By…….. (Name of issuing officer- BLOCK CAPITALS)* Delete if not applicable

Explanatory notes for F1127A – MISUSE OF DRUGS

Details of alleged offence

Time and date. The precise time when the offence of misusing the drug is alleged to have taken place will not be known. The details recorded in this section should normally be the time and date of the sample collection and a date 31 days before (in the case of cannabis). Days and dates for different drugs should be amended accordingly to the waiting periods in the MDT Manual in Table 8.1, plus one day.

Place. It is unlikely to be known with any certainty where the prisoner was when he administered the controlled drug, or the controlled drug was administered to him. It will be sufficient to say that it took place whilst in prison custody or on temporary release. Note: prisoners attending court under escort should be considered to be under Prison Rules for the entire period apart from the time that they are actually in the court room.

Offence committed

The text should mimic the wording of Rule 51(9)/55 (10).

Officer's report of alleged offence

Very little detail is likely to be known about the alleged offence as we are likely to be solely dependent on the screening/confirmation test report as evidence. The officer's report of the alleged offence should include the following information in all cases:

- date/time when the prison was informed of the screening/confirmation test result. This would be the time when the report was received from the laboratory;
- date and time when the sample was collected;
- result of the screening/confirmation test;
- copies of the test authorisation form, screening/confirmation certificate and the chain of custody procedure checklist;
- confirmation that the prisoner had been in prison custody or on temporary release throughout the period when the offence could have been committed including any details of reception into custody, escort to court or transfer during the previous 31 days.

The officer's report may include the following information if relevant:

- any information discovered which suggested the possibility that the prisoner may have been coerced into taking a controlled drug, or may have taken a controlled drug without knowledge or intent;
- any other evidence the reporting officer believes may be relevant.

Note: If a prisoner tests positive for two or more drugs arising from a single test (e.g. misuse of cannabis and misuse of opiates) *separate charges must be laid for each of them.*

Express defences contained in Rule 52: As Rule **52/56** is inextricably linked with Rule 51(9)/55 (10), you should provide the prisoner with a copy of Rule 52/56 at the same time as F1127A is issued. This could be done quite simply by stamping the text of Rule 52/56 on F1127A.

F1127A - NOTICE OF REPORT
COPY FOR PRISONER

Charge Number

Refusing to Provide a Sample

First name(s) Surname

Number

You have been placed on report by:

for an alleged offence which was committed at hours on (date)

at (place).

The offence with which you are charged is that:

You disobeyed a lawful order given by Officer to go with him to the sample collection site, as you were required, in accordance with the mandatory drug testing programme, to provide a sample of urine for testing for the presence of any controlled drugs.

Contrary to Rule 51 Paragraph 22 Prison Rules

Disobeys any lawful order.

The report of the alleged offence is as follows:

At hours on (date) at (place) I ordered to accompany me to the sample collection site at as he was required, in accordance with the mandatory drug testing programme, to provide a sample of urine for testing for the presence of any controlled drug. refused to comply with the order.

The incident was observed throughout by Officer and prisoners .

The sample of urine was required under the terms of the Governor's Authorisation.

A copy of the test authorisation form is attached.

Signature of reporting officer……

Your case will be heard at…….hours on……..…. (date)

You will have every opportunity to make your defence. If you wish to write out what you want to say you may ask for writing paper. You or the adjudicator may read it out at the hearing.

You may also say whether you wish to call any witnesses.

This form was issued to you at……hours on……. (date)

By…….. (Name of issuing officer- BLOCK CAPITALS)

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Appendix 17

(as amended by PSI 11-2007 - 06/03/07)

PROCEDURES FOR THE INDEPENDENT ANALYSIS OF MANDATORY DRUG TEST SAMPLES

CHAPTER ONE: INTRODUCTION

1.1 General

1.1.1 This Order sets out instructions and guidance on new procedures for managing prisoner requests for the analysis of mandatory drug test (MDT) samples by an independent laboratory. The new framework will enable adjudicators to better track progress on these cases and ensure adjudications are concluded within a set timescale, thereby preventing prisoners from delaying the adjudication process and avoiding punishment.

1.2 Contents of the Order

1.2.1 The Order contains mandatory instructions and guidance on the following:

(i) responsibility for authorising the release of a sample will be devolved from the Drug Strategy Unit to governor grade staff or the MDT co-ordinator at establishment level
(ii) introduction of a set timescale to which prisoners and solicitors must ensure the arrangement and completion of an independent analysis of a sample which has tested positive under the MDT programme.

1.2.2 The new procedures replace current guidance in version 5 of the MDT Manual of Policy and Procedures.

CHAPTER TWO: PROCEDURES FOR THE INDEPENDENT ANALYSIS OF MANDATORY DRUG TEST SAMPLES

2.1 Introduction

2.1.1 Prisoners are entitled to have a sample which tests positive under the Mandatory Drug Testing (MDT) programme analysed by an independent laboratory before any disciplinary proceedings concerning that charge are completed. This practice is an important procedural safeguard and integral feature of the overall fairness of the MDT programme.

2.1.2 When mandatory drug testing began in 1995, it was believed that very few prisoners would opt for an independent analysis of their sample. However, this has proved not to be the case and there has been a sudden and unexpected rise in the number of requests. Between February 1995 and March 1998 there were 176 requests for an independent analysis. During 1999 there were 325 requests. That significant rise was in spite of a failure to prove mandatory drug test results wrong. In more than five years of operating the MDT programme, only one independent analysis has contradicted the results from the Prison Service's laboratory. Potentially the most common reason for requesting an independent analysis of a sample is to delay the adjudication process. This is particularly significant as the prisoner approaches the end of their sentence and can lead to the case being dropped.

2.1.3 The aim of this order is to improve our management of requests for independent analysis, to set a clear framework within which prisoners and their legal representatives must operate and to reduce the potential to obstruct the adjudication process and avoid punishment.

2.1.4 Information for prisoners and solicitors on the Procedures for obtaining the independent analysis of a mandatory drug test sample is at Annex A. Throughout this Order that document will be referred to as the Procedures.

3.1 Mandatory Action

3.1.1 An adjudicator or the MDT co-ordinator must ensure that any prisoner who requests an independent analysis and any solicitor acting on behalf of a prisoner have a copy of the Procedures, within three days of any request. The Procedures are at Annex A of the Order.

3.1.2 An adjudicator may conclude the adjudication if no evidence of intent to arrange an independent analysis has been received within 14 days after the first adjournment of the adjudication for that purpose.

3.1.3 An adjudicator may conclude the adjudication if the prisoner or their solicitor fails to write to them to request release of the sample to a nominated laboratory within 14 days of providing evidence of intent to arrange an independent analysis.

3.1.4 With effect from 1 May 2000, responsibility for authorising the release of a sample from the Prison Service's laboratory direct to a nominated laboratory for independent analysis will be devolved to governor grade staff or the MDT co-ordinator at establishment level.

3.1.5 An adjudicator or MDT co-ordinator must authorise release of a sample within two working days of receipt of a request from a solicitor for release to a nominated laboratory.

3.1.6 An adjudicator or MDT co-ordinator must contact the Drug Strategy Unit (DSU) if the laboratory nominated by the solicitor is not one on the list of laboratories in the Procedures.

3.1.7 Template letters for use in authorising release of the sample are at Annex B of the Order.

3.1.8 Letters to the Prison Service laboratory authorising release of a sample must be written on the establishment's headed paper and show the signatory's name in print, otherwise they will not be accepted. The letter should be sent by fax and enclose a copy of the solicitor's original request.

3.1.9 Letters to the solicitor confirming authorisation to release the sample must also be written on the establishment's headed paper and show the signatory's name in print, and enclose a copy of the letter to the Prison Service testing laboratory.

3.1.10 Every request for independent analysis entails a cost for the Prison Service's laboratory and for the prisoner or the legal aid system. Therefore, before authorising release of the sample an adjudicator or the MDT co-ordinator must ensure that:

(i) *where the prisoner has recently tested positive more than once, it is known which particular sample he/she wishes to have independently analysed;*
(ii) *the sample was positive for drugs and that charges have not been dismissed;*
(iii) *the prisoner has not pleaded guilty to charges relating to this sample;*
(iv) *MDT staff have requested a confirmation test if charges are outstanding; and*
(v) *the correct bar-code is quoted in the authorisation letters.*

3.1.11 If, two weeks after authorisation to release the sample has been given, the prisoner or solicitor have not completed the independent analysis, an adjudicator may conclude the adjudication on the basis of available evidence.

*3.1.12 Adjudicators have discretion to not adhere rigidly to the timescales set out in the Procedures. Where delays in arranging the independent analysis are not due to the prisoner or his/her solicitor, further time **must** be allowed to complete the process.*

3.1.13 If the results of an independent analysis contradict the results from the Prison Service's laboratory, an adjudicator must refer the case to the Drug Strategy Unit before completing the adjudication.

4.1 Advice

4.2 New Responsibilities for Solicitors and Prisoners

4.2.1 The Procedures place the onus on solicitors and prisoners acting without representation to:

(i) provide written evidence of real intent to arrange an independent analysis within two weeks of the first adjournment of the adjudication for that purpose;
(ii) find a laboratory willing to perform the analysis and to arrange payment for it;
(iii) write to the adjudicator requesting release of the sample once an independent laboratory has agreed to do the work within four weeks of the first adjournment for that purpose;
(iv) ensure that the sample is independently analysed within two weeks of receipt of the confirmation from the adjudicator or MDT co-ordinator that the sample has been authorised for release
(v) when the independent analysis has been completed, advise the adjudicator whether the report will be produced in evidence at the adjudication; and
(vi) inform the adjudicator if there are delays which will mean that the Prison Service's timescale is not met, and to give reasons for those delays.

4.3 Timescale for Obtaining an Independent Analysis

4.3.1 There is a need in the adjudication process for reasonable speed (for example, the requirement to charge prisoners within 48 hours of the identification of the offence). This applies as much to MDT cases as any others. If the timescales set out in the Procedures are

not met, any decision to proceed with the adjudication must **not** be automatic. It is the responsibility of the prisoner or their solicitor to account for the delay. If no credible explanation for the delay is offered, then it is reasonable to proceed with the adjudication.

4.3.2 If the delay is explained, it is important to consider who is responsible for the delay. If the prisoner or their solicitor is directly responsible for the delay, it would be reasonable to proceed with the adjudication, except in exceptional circumstances such as ill health or bereavement. If an agency over which the prisoner has little or no control, for example, the Legal Services Commission (which replaces the Legal Aid Board with effect from 1 April 2000) or a laboratory has caused the delay and the explanation appears credible, then more time **must** be allowed.

4.4 Laboratory Documentation/Data Pack

4.4.1 Occasionally a solicitor will request documentation or a data pack on their client's sample from the Prison Service's laboratory. A standard data pack includes basic technical information about the testing of the sample. The solicitor is entitled to this information.

4.4.2 The Prison Service's laboratory will only release a data pack on receipt of written authorisation from an adjudicator. If the data pack is requested at the same time as release of the sample, the standard letters to the Prison Service laboratory can be amended to include this. The Prison Service's laboratory will normally release the data pack within a week of receiving authorisation.

4.5 If an Unfamiliar Laboratory is Chosen

4.5.1 The list of laboratories included with the Procedures is not a Prison Service approved list, it is just a list of some laboratories known to have expertise in testing urine samples for illicit drugs. The prisoner may have their sample analysed by any laboratory of their choice.

4.5.2 If you are asked to authorise release of a sample to a laboratory that is not on the list in the Procedures, you should contact the Drug Strategy Unit (DSU) (☎ 020 7035 6137). The DSU can check for any records of that laboratory and advise whether it has the expertise to carry out the analysis. If there is no record of the laboratory, the DSU will request evidence of its expertise from the prisoner or solicitor.

4.5.3 If information provided by an independent laboratory shows that it has limited expertise in testing urine samples for illicit drugs, the DSU will ask you to warn the prisoner or solicitor in writing that results from that laboratory will not be given equal weight at adjudication as those from the Prison Service's laboratory. If the prisoner still chooses to have the sample analysed by the same laboratory, you must authorise release to that laboratory.

4.6 The Result of the Independent Analysis

4.6.1 In the absence of United Kingdom regulations on the reporting of an independent analysis, many laboratories adhere to guidelines published in the United States by the Substance Abuse and Mental Health Service Administration (SAMHSA). Drugs and their metabolites are liable to degrade in a urine sample over time. Therefore, SAMHSA guidelines are that only the presence or absence of a drug should be reported. **Only the absence of a drug is sufficient evidence to cast automatic doubt on the Prison Service's confirmation test result**.

4.6.2 Independent laboratories have been known to report finding an amount of a drug that is below the Prison Service's cut-off level. For the reasons explained above, that is not sufficient to cast doubt on the Prison Service's confirmation test result.

4.7 If the Independent Analysis is Negative

4.7.1 If the result of the independent analysis is negative, an adjudicator must contact the DSU before completing the adjudication. Whilst DSU does not wish to interfere in the adjudication process, whenever the Prison Service's laboratory is challenged, it is essential for the credibility of the MDT programme that the case is thoroughly investigated. An investigation may instead reveal errors in the independent laboratory's analysis which would discredit its results.

4.7.2 In the only case to date of a negative result from an independent analysis, the DSU tried to investigate after charges against the prisoner were dropped. It was found that the solicitor and the independent laboratory no longer had any interest in co-operating and the investigation could not be completed. In most cases, the forum for exploring the relative strengths of contradictory evidence is the adjudication process itself. It should not be assumed automatically that a contradictory analysis constitutes grounds for dropping the charges at adjudication. In the event of a challenge the DSU will conduct a preliminary review to ascertain the strength of the Prison Service laboratory's analysis and inform the adjudicator of any concerns.

4.8 Independent Analysis as Part of the Appeal Process

4.8.1 Adjudicators should note that a prisoner is entitled to obtain an independent analysis as part of an appeal against a finding of guilt but not normally if he or she pleaded guilty at adjudication. If the prisoner pleaded guilty, the finding of guilt was based on their admission, not on the drug test result. If however, the prisoner later contends that their guilty plea was entered in error, he or she may then require an independent analysis of their sample as part of the appeal.

5.1 Monitoring and Reporting

5.1.1 Prisoners who have less than six weeks to serve of their sentence at the time they request an independent analysis must have an opportunity to arrange an independent analysis of their sample in the same timescale offered to other prisoners. In such cases adjudicators should not conclude an adjudication on the basis of available evidence as the prisoner will not have had the opportunity to fully question the evidence against him. The only exceptions will be, as with any other case, where the prisoner is unable to provide any evidence of real intent to obtain an independent analysis within 14 days of the first adjournment for that purpose (see paragraphs 4.3.1. and 4.3.2) or when evidence of intent to arrange an independent analysis has been given and the prisoner or their solicitor subsequently fail to write to the adjudicator to request release of a sample to a nominated laboratory within the 14 day period specified for that purpose.

5.1.2 To monitor the scale of this problem, prisons must notify the DSU at the end of each quarter of the number of samples sent for independent analysis and of the number of cases where the charges against the prisoner have been dropped prior to release, on the grounds that the prisoner had less than six weeks of their sentence left to serve at the time they gave notice of their wish to seek independent analysis of their sample. If this proves to be significant, the DSU will review current procedures and seek further legal advice on implementing more stringent measures.

ANNEX A

THE PROCEDURES

INFORMATION FOR SOLICITORS AND PRISONERS ON OBTAINING THE INDEPENDENT ANALYSIS OF A MANDATORY DRUG TEST SAMPLE

Introduction

1. This information sheet has been produced by the Drug Strategy Unit, which is responsible for mandatory drug testing (MDT) policy at Prison Service Headquarters. It is aimed principally at solicitors who have been asked by a prisoner to arrange an analysis of an MDT sample by an independent laboratory. It sets out the steps that must be taken, the timescale within which those steps must normally be completed, and describes some recent changes to the way in which the Prison Service manages such cases.

Is My Client Allowed an Independent Analysis?

2. Anyone charged with the offence of misusing a drug under Prison or Young Offender Institution Rules, and who does not plead guilty to this charge, has the right to arrange an independent analysis of their MDT sample.

3. Analysis of a sample by an independent laboratory is only available for mandatory drug test samples. While many prisons also operate voluntary drug testing programmes, prisoners do not face disciplinary charges following a voluntary drug test and there is no provision for a voluntary sample to be independently analysed.

Tests Carried Out on the Prison Service's Behalf

4. All MDT samples undergo an initial screening test. The tests are undertaken by an independent laboratory contracted by the Prison Service. The screening test uses a process known as immunoassay, where biochemical assays are formulated to react with particular drugs or their metabolites. This allows those samples testing negative to be screened out. It is usual for a prisoner to be charged following a positive screening test.

5. If the prisoner enters any plea other than a definite "guilty", the adjudication must be adjourned to request a confirmation test. Confirmation testing uses a more sophisticated technology. It is a two-stage process known as Gas Chromatography/Mass Spectrometry (GC/MS). An extract of the urine sample is injected into a tube inside the gas chromatograph. The liquid turns to vapour and any drug molecules present are swept through the tube by a flow of gas. The mass spectrometer shatters each molecule as it leaves the tube. The length of time a substance takes to pass through the tube, the pattern a molecule makes when it shatters, and the weight of the fragments combine to make a unique "fingerprint" for every drug. Results obtained from such tests are able in most cases to clearly distinguish between medication taken as prescribed, and drug misuse.

6. It is open to a prisoner to obtain an independent analysis at any stage in the adjudication process. However, clearly, it makes sense to wait until the result of the confirmation test has been received as that may be negative.

Where Does the Sample for Independent Testing Come From?

7. When a prisoner gives a sample for mandatory drug testing, the urine is divided equally between two sample tubes. The tubes are sealed in the prisoner's presence with tamper-evident, bar-coded labels marked A and B. Both tubes are sent to the Prison Service's

contracted laboratory. On receipt, the “B” tube is put into cold storage. All tests (screen and confirmation) carried out on the Prison Service’s behalf use urine from the “A” tube. Whenever a confirmation test has been carried out on a sample indicating the possibility that an independent analysis may follow the “B” tube is stored for nine months from the date of the confirmation test.

Requesting the Independent Analysis

8. When the prisoner informs the adjudicator that he/she wishes to have an independent analysis, a period of two weeks will be allowed for evidence to be provided of real intent to arrange the analysis. You must inform the adjudicator without delay if you are acting on behalf of a prisoner to obtain an independent analysis. Where you fail to provide the adjudicator of evidence of intent to arrange an independent analysis within the 14-day period, the adjudication will normally be reconvened and concluded on the basis of the available evidence.

Arranging for an Independent Analysis to be Performed

9. It is the prisoner’s responsibility to arrange for the independent analysis of their sample and to pay for it. Legal aid has been granted for this purpose in some cases.

10. First, you must find a laboratory that is prepared to undertake the work within the timescale required by the Prison Service (see paragraph 19) and agree a price. Analysis must be by the GC/MS method used in Prison Service confirmation tests. The results of an immunoassay screening test do not have the same evidential value.

11. The Prison Service is satisfied that the laboratories listed in the Procedures have the capability and expertise to undertake this work. Please note that this is not an approved list of laboratories that must be used. If you wish to use a laboratory which is not on the list you should satisfy yourself that its staff have sufficient expertise in testing urine samples for illicit drugs. The Prison Service cannot comment or advise on the likely costs of having a sample analysed by an independent laboratory that is a matter for negotiation between yourself, the prisoner and the laboratory concerned.

12. When a laboratory has been chosen to undertake the analysis, you must write to the adjudicator asking for the release of your client’s sample to be authorised and naming the laboratory you want it to be sent to. The letter must include your client’s full name, prison number, the establishment in which they are held in custody and if known, the sample bar-code reference. The adjudicator will then write to the Prison Service’s contracted laboratory authorising release of the sample and send a copy of that letter to you. If following evidence of intent to arrange an independent analysis you fail to write to the adjudicator to request release of a sample within the 14 day period specified for that purpose, the adjudication will normally be reconvened and concluded on the basis of the available evidence.

13. If you chose a laboratory which is not on the Prison Service’s list, an adjudicator may ask you for documentary evidence of the laboratory’s expertise in testing urine samples for the presence of illicit drugs before authorising release of your client’s sample. If the Prison Service is not satisfied that a laboratory has the necessary expertise, you will be warned, before release of the sample is authorised, that results from that laboratory will not be given equal weight to those obtained from the Prison Service’s contracted laboratory.

14. The MDT programme incorporates a rigorous framework the chain of custody which is designed to provide a legally defensible system of controls recording the progress of any sample from the time of its collection from the prisoner to the declaration of the results. This framework is designed to prevent tampering and link unequivocally the sample with the prisoner and the sample with the result. Therefore, the ‘B’ sample will only be released by the Prison Service’s contracted laboratory to the nominated laboratory on receipt of two

letters; one from the adjudicator authorising release of the sample and the other from yourself stating the nominated laboratory. After release of the sample is authorised, it is the responsibility of the nominated laboratory to contact by telephone or letter the Prison Service's laboratory to arrange a date for a courier to collect the 'B' sample giving at least 24 hours' notice. Transfer of the sample is at the prisoner's expense.

Loss or Damage

15. If the B sample is lost or damaged whilst in the possession of the Prison Service or its agents, charges against the prisoner will be dropped. The Prison Service accepts no responsibility for loss or damage to samples in transit to or at the independent laboratory. In such cases the adjudication will be concluded on the basis of the available evidence.

Results Of The Independent Analysis

16. In the absence of United Kingdom regulations on the reporting of an independent analysis, many laboratories adhere to guidelines published in the United States by the Substance Abuse and Mental Health Service Administration (SAMHSA). Drugs and their metabolites are liable to degrade in a urine sample over time. Therefore, SAMHSA guidelines are that only the presence or absence of a drug should be reported. Only the absence of a drug is sufficient evidence to cast doubt on the Prison Service's confirmation test result.

17. It is not acceptable for extracts from the report on an independent analysis to be presented in evidence at adjudication. Only a complete report will be accepted.

Timescales

18. A period of 14 days will normally be allowed for each major stage of the process (as outlined in the summary below). Where the timescale has not been met and you are unable to provide a valid reason for the delay, the adjudication will normally be concluded on the basis of the available evidence.

Summary

19. The stages involved where a prisoner seeks an independent analysis of a urine sample, and the normal timescales to be met, are as follows:

Stage	Timescale
1. Prisoner notifies the adjudicator that he/she is to seek an independent analysis	day 1
2. Prisoner contacts solicitor	
3. Prisoner/solicitor provides adjudicator with evidence of intent of arranging an independent analysis (e.g. solicitor informs adjudicator that he/she is acting for the prisoner).	within 14 days of stage one
4. Solicitor asks the adjudicator to release the sample to a named laboratory.	within 14 days of stage three
5. Adjudicator authorises release of the sample.	within two working days of request from solicitor
6. Independent analysis of sample is undertaken and prisoner decides whether to produce the report as evidence and advises the adjudicator.	within 14 days of stage five
7. Adjudication normally completed on basis of available evidence.	after prisoner has received result or where timescale not met
Maximum elapsed time from Stage 1-7	**Six weeks and 3 days**

URINE TESTING FOR DRUGS OF ABUSE: SOME LABORATORIES CAPABLE OF CARRYING OUT INDEPENDENT ANALYSIS OF SAMPLES

Can test for standard MDT panel of drugs, but NOT Buprenorphine

LGC
Queens Road
Teddington
London, TW11 0LY

Contact: Dr Keith Williams ☎020 89437000

SCIENTIFICS
500 London Road
Derby DE24 8BQ

Contact: ☎01332 268440

FORENSIC SCIENCE SERVICE
Washington Hall
Euxton
Chorley
Lancashire
PR7 6HJ

Contact: ☎0121 607 6948 Fax: 0121 666 6803

Can test for standard MDT panel of drugs AND Buprenorphine

DEPARTMENT OF FORENSIC MEDICINE
University of Glasgow
Glasgow G12 8QQ

Contact: Dr John Oliver ☎01413 304574

JMJ LABS
Gravenny Court
Brecon Road
Abergavenny
Monmouthshire, NP7 7RX

Contact: Dr Phil Kindred ☎01873 856688

RELEASE is not a laboratory, but it does offer a 24-hour helpline for advice on legal and drugs issues: ☎020 77299904

ANNEX B

Solicitor Name,
And Address,

Your ref: xxxxxxx

Date

Dear Sir/Madam,

Re: Mr P. Smith No. DD 4269HMP Lowmoor

Please find enclosed a copy of the letter that I have just sent to Medscreen.
You may now make arrangements for the release of your client's sample to the XX Laboratory, 1 The Street, Nowhere, NW1 5AP.

Please quote the sample bar-code in all correspondence with Medscreen.

Yours faithfully,

R. Jones

Challenge Samples Administrator,
Medscreen Ltd,
1A Harbour Key,
100 Preston's Road,
London, E14 9QZ.

Date

Dear Challenge Samples Administrator,

I am writing to authorise the release of a sample, your reference **2345678**, to XX Laboratory, 1 The Street, Nowhere, NW1 5AP. The prisoner's solicitor will be in touch shortly to discuss arrangements for the transfer of the sample.

I have included a copy of the letter detailing the solicitor's request.

Yours sincerely,

R. Jones

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Appendix 18

(as amended by PSI 11-2007 - 06/03/07)

Form for Consent to Medical Disclosure

Consent to medical disclosure

*(i) During the past 30 days I have not used any medication issued to me by Healthcare

*(ii) During the past 30 days I have used medication issued to me by Healthcare. I understand that some medication issued by Healthcare may affect the result of the test. I give my consent to the Medical Officer to provide details of this treatment to the prison authorities. In the absence of medical disclosure, positive tests will be presumed to be due to illicit use of drugs.

Signature of Prisoner: ……..... Date: .....…….
~~*(*Delete as appropriate)*~~

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