



NOTTINGHAMSHIRE
POLICE
PROUD TO SERVE

PD 501 **Substance Misuse & Alcohol Screening Procedures**

Version: 1.3

Registered Owner: Head of the Professional Standards Directorate

Author: Det Insp - Counter Corruption Unit

Effective Date: Sept 2013
Review Date: Sept 2014

Replaces document (if applicable) v1.3

Aligned to Strategy: Professional Standards Strategy
Linked Policies: PS 079 Substance Misuse & Alcohol Screening Policy
Linked Guidance: PD 482 - Pre-Employment Substance Misuse Screening Procedures
Home Office Guidance 11/12
Police Regulations 2012

Signed: _____ **Date:** _____

Name: R ALLISON

Post: DET INSP CCU

Authorised: _____ **Date:** _____

Name: J ALEXANDER DET SUPT

Post: HEAD OF CCU

NOT PROTECTIVELY MARKED

SECTION 1 VERSION CONTROL3

SECTION 2 BACKGROUND 3

SECTION 3 AIMS/OBJECTIVES OF THIS DOCUMENT.....3

SECTION 4 DETAILS OF PROCEDURE - INTRODUCTION....3

SUBSTANCE TESTING.....6

ALCOHOL TESTING.....12

APPENDIX A - VULNERABLE POSTS.....14

NOT PROTECTIVELY MARKED

NOT PROTECTIVELY MARKED

SECTION 1 VERSION CONTROL

Version No.	Date	Post Holder/Author	Post	Reason for Issue
1.0d	August 2005	John Hammond	Head of Vetting	Acceptance
1.1	Feb 2007	John Hammond	Head of Vetting	Amendments
1.2	Jan 2011	John Hammond	Head of Vetting	Review by Substance Misuse Working Group
1.3	July 2013	John Hammond Det Insp R Allison	Head of Vetting CCU	Updated with HO Guidance 11/12

SECTION 2 BACKGROUND

HOME OFFICE CIRCULAR 11/2012 POLICE (AMENDMENT NO 2) REGULATIONS 2012

SECTION 3 AIMS/OBJECTIVES OF THIS DOCUMENT

The purpose of these procedures is to provide structure and guidance on how Nottinghamshire Police and its police personnel respond to instances of drug and alcohol misuse. This will be achieved by outlining the principles and procedures under which individuals will be required to submit to a test. Additionally, these procedures will outline the available support for individuals with a drug or alcohol misuse problem who acknowledge their dependence, and who are prepared to undertake a programme of rehabilitation.

SECTION 4 DETAILS OF PROCEDURE

INTRODUCTION

The Chief Constable has delegated responsibility for random substance and alcohol testing to the Head of the Professional Standards Directorate. Responsibility for administering this process will be devolved to the Det Insp Counter Corruption Unit. Staff from the CCU will provide the onsite PSD presence.

NOT PROTECTIVELY MARKED

NOT PROTECTIVELY MARKED

Nottinghamshire Police is committed to the provision of a safe, healthy and productive working environment and does not approve or condone the excessive or inappropriate use of alcohol or the misuse of drugs (or other substances) whether prescribed or illegal. Any individual involved with illegal drugs or alcohol abuse exposes themselves to a vulnerability to corruption with potential criminal and disciplinary consequences. The public rightly expects that Nottinghamshire Police is a drug free organisation. It is in the interests of everyone that this is achieved and must be seen to be achieved for the procedures to have integrity.

Drug and alcohol screening is designed to help create and maintain a healthy workforce and to support the ethos of individual responsibility and accountability.

The procedures are principally focused on screening for drugs and alcohol due to the health and safety and vulnerability issues associated with their misuse.

This procedure provides guidance on changes to the provisions governing drug and alcohol testing of police officers and candidates for appointment as police officers.

The Home Secretary has approved a recommendation from the Police Advisory Board for England and Wales (PABEW) that amendments should be made to substance misuse testing determinations and protocol.

The 2003 Police Regulations have been amended and the Police (Amendment No 2) Regulations 2012 are now in force with effect from 1st April 2012.

Regulation 19(1)(d) of the 2003 Regulations has been amended so that any serving police officer selected in accordance with a regime of routine random testing may be required to provide a sample. This replaces the existing provision for the Secretary of State to specify categories of officers who may be tested.

Where testing is carried out because the Chief Constable has reasonable cause to suspect, on the basis of intelligence, that the officer has used a controlled drug, the determination now allows testing to cover one other controlled drug or drug group in addition to the five categories of controlled drugs currently set out in the determinations.

Further amendments are made in regulations 10, 19 and 19A of the 2003 Regulations to replace references to 'saliva' with references to 'oral fluid'. This is a technical change, made at the recommendation of the PABEW.

The Secretary of State has determined that, with effect from 1 April 2012, for the determination under regulations 10 and 19A of the Police Regulations 2003 (Annex DD – Testing for substance misuse) there shall be substituted the following:

NOT PROTECTIVELY MARKED

'Annex DD'

Regulations 10 And 19A

Testing For Substance Misuse

1) Subject to paragraph (2), for the purposes of regulations 10(1)(i) and 19A(1)(b)(c) and (d) the controlled drugs which testing shall cover are:

(i) amphetamines (including ecstasy)

(ii) cannabis

(iii) cocaine

(iv) opiates (eg morphine and heroin)

(v) benzodiazepines

2) Where testing is carried out in accordance with 19A(1)(a) because the Chief Officer has reasonable cause to suspect, on the basis of intelligence, that the officer has used a controlled drug, the testing may cover one other controlled drug or drug group in addition to the controlled drugs listed in paragraph (1), provided that the officer is informed prior to testing of the drug(s) or drug group(s) for which he or she is to be tested.

Testing Procedures

3) For the purposes of regulations 10(1)(i) and 19A(1), the following procedures shall apply in relation to testing for controlled drugs.

4) Testing shall be carried out without advance notice.

5) On-site testing using portable testing kits will be used to screen out members of police forces and candidates for appointment at an early stage of these procedures. Any test that is relied upon in criminal or disciplinary proceedings shall be conducted through laboratory analysis.

6) Collection of samples and initial on-site screening will be undertaken by an independent agency. There shall be a secure chain of custody through collection, analysis and medical review as set out in protocols issued by the Secretary of State. Laboratory analysis shall be undertaken by an independent agency.

7) Split samples shall be used in all cases that go forward to laboratory analysis. A member of a police force shall have the right to have one sample tested independently to challenge the result of a test on the other sample.

8) The following procedures shall apply in relation to testing for alcohol. Testing for alcohol shall be carried out without advance notice and using breath testing equipment capable of taking measurements at the 13 microgrammes percentage level.

NOT PROTECTIVELY MARKED

9) A member of a police force who is off duty shall not be recalled to duty for the purposes of testing for controlled drugs or alcohol.

Consequences of Testing Positive

10) Positive results may be referred to Professional Standards Departments for action. This may lead to criminal action or formal disciplinary proceedings or both.'

Substance Misuse Testing: Protocols for Testing Procedures

Introduction

1. These protocols are promulgated by the Home Office, on the advice of the Police Advisory Board for England and Wales, pursuant to Police Regulations 10 and 19 and associated determination.

Part 1: Controlled Drugs

Scope of Testing

2. The extent of testing by any force will be proportionate to the problem. The testing regime will not be of a scale that implies a lack of trust in the professionalism of the police, or of a nature that might undermine the existing sense of responsibility to alert senior officers to signs that a colleague might have a substance misuse problem.

3. Testing may be carried out in the following circumstances:

- testing with cause (that is, where there is a reasonable suspicion of substance misuse)
- pre-employment screening and testing in the probationary period
- as part of a random routine testing regime
- random screening of officers in posts identified by the chief officer as being vulnerable

4. The intention of the testing regime is preventive. Testing regimes are designed to:

- minimise the chances of substance misusers entering the police service in the first place
- deter officers from substance misuse through the application of a policy that makes detection a real possibility
- encourage those with a substance misuse problem to identify themselves, so that they may be supported in seeking treatment
- screen officers so as to minimise any risk of operations being prejudiced by impaired judgement

NOT PROTECTIVELY MARKED

NOT PROTECTIVELY MARKED

- protect officers in posts in which they may be vulnerable to malicious allegations of substance misuse

5. Nottinghamshire Police will have due regard to protect privacy during the testing procedures and ensure that testing is conducted in a sensitive manner. The test results will be handled in a secure and confidential manner. Records of test results should be retained in accordance with data protection principles by the Counter Corruption Unit.

6. Nottinghamshire Police has the power to test officers if they have cause to suspect that an officer is misusing controlled drugs. The requirement to take a test will be imposed by the Head of the Professional Standards Directorate. For 'cause' to be established, the test of 'reasonable suspicion' must be satisfied. It should be made clear to the officer that testing 'with cause' may either prove or disprove intelligence or allegations made. A single and unsubstantiated allegation, particularly if made by a member of the public who may have malicious intent, would not normally amount to cause. The reasons for suspecting an officer has misused controlled drugs will be recorded in writing.

7. Officers (of all ranks) will be liable to be tested as part of a random routine testing regime.

Vulnerable Posts

8. In the nature of their duties, many police officers, and particularly those working under cover, will have close associations with criminals. Those whose duties bring them into contact with drugs dealers are particularly vulnerable to malicious allegations that they are themselves drug users. A liability for such officers to be tested enables it to be demonstrated that they remain 'clean'.

9. In some forces it is possible to define the posts concerned – for example drugs squad officers and test purchase officers. However, not all forces have single function crime squads, so it is necessary to define vulnerable posts on a force by force basis. As such, the posts to which the liability to be tested attaches are identified at Annex A.

Substances Tested For

10. Testing covers the illicit use of the following substances:

- amphetamines (including ecstasy)
- cannabis
- cocaine
- opiates (eg morphine and heroin)
- benzodiazepines

NOT PROTECTIVELY MARKED

NOT PROTECTIVELY MARKED

One additional drug or drug group (for 'with cause' testing only, where the reason for the test is based on intelligence and the officer has been informed of the drug(s) or drug group(s) for which he or she is being tested)

11. There may be legitimate reasons for a drug being present in a specimen. For example, the presence of morphine may indicate heroin abuse, or the use of a legitimate medicine (eg a painkiller or an anti-diarrhoea preparation). Officers required to take a test should declare all medications they are taking to the independent person prior to providing the sample.

Procedures

Recruits & Serving Officers

12. There are some differences that may apply to the procedures used for testing potential recruits and serving officers. If a potential recruit does not wish to submit to a test, he or she may withdraw from the recruitment process. An officer is obliged to submit to a test, if so required, and may, as a consequence, have to declare information about medications that he or she is taking. These declarations may have the effect of disclosing personal information that the officer is entitled to expect will be treated in confidence.

13. A serving officer may not be recalled to duty for the purposes of testing.

Conducting the Test

14. There must be a secure chain of custody through collection, analysis and medical review. Laboratory analysis should be undertaken by an independent agency. Collection of samples will be undertaken by an independent agency.

15. For the purpose of the physical administration of the test, the suitably qualified person will be a member of the staff of the independent agency. Where completion of the paperwork by an officer involves disclosure of medication being taken, that paperwork will be treated in confidence. It is important that information about medications taken prior to the test is recorded at the time of specimen collection, and not at any later stage.

Screening & Laboratory Testing

16. Any test that may be relied upon in disciplinary proceedings should be conducted through laboratory analysis. The independent agency will not conduct on-site testing of samples. Where testing is carried out with cause, the specimen will be submitted directly to the laboratory.

Split Samples

17. Provision should always be made to allow the donor of the hair, urine or oral fluid (saliva) an opportunity to have an independent analysis of the specimen to challenge the outcome of a laboratory analysis. A split sample (at the time of collection) provides an effective means of providing this opportunity.

NOT PROTECTIVELY MARKED

Material to Be Tested

18. In the case of serving police officers and police officers transferring between forces either oral fluid (saliva) or urine may be tested.

In the case of new recruits to the police service an oral fluid (saliva), urine or hair sample may be tested.

Random substance testing will involve the provision of a urine sample

Testing Procedures

Self-Declaration

19. Officers with substance misuse problems should be encouraged to identify themselves, and should be assisted in seeking treatment. However, self-declaration cannot be used to avoid the consequences of a positive test. Any such declaration must be made before an officer is notified of any requirement to take a test. A self-declaration made after an officer is notified of the requirement to take a test cannot be used to frustrate the disciplinary proceedings that might result from a positive test result.

Random Routine Testing Regime

20. The scale of testing should be risk based. Any sample of officers selected for testing in an individual area or department within Nottinghamshire Police will be chosen on a random basis. A routine testing regime may involve selecting a higher proportion of officers for testing in an area or department where the risk is assessed as high.

21. Scale of testing will be determined at force level, having regard to perceived risk and cost. 'Scale' encompasses size of sample and frequency of testing. If initial testing produces a nil or low number of positive results, then the scale of testing need not be large. On the other hand, a higher proportion of positive results would indicate a larger scale of future testing. 'Risk' encompasses the risk inherent in the consequences of impairment of judgement or performance, and the risk of incidence of misuse. This will be reviewed on an annual basis

Vulnerable Posts

22. Testing should be routine. If a high degree of risk is assessed, universal testing covering all officers in the vulnerable category might be appropriate. If the assessment of risk is low, then a sample of officers to be tested should be selected at random. For the avoidance of doubt, the liability to be tested applies to vulnerable posts in national agencies as well as to posts in local forces.

NOT PROTECTIVELY MARKED

'With Cause' – Extended Sampling

23. An officer of at least the rank of Assistant Chief Constable may authorise a maximum of three samples of urine or oral fluid (saliva) to be required from a police officer in their force (or on secondment to or from their force) where there is corroborative intelligence which gives reasonable cause to suspect that the officer has used a controlled drug over an extended period (i.e. on more than one occasion).

24. The three samples can be required over a maximum period of 90 days, with day one being the day on which the first sample is required and the period finishing at midnight on day 90. When calculating the 90-day period, no account should be taken of any periods of sick leave.

25. The officer will not be given any advance notice of the requirement to provide each sample.

26. The officer will be informed at the time that the first sample is required that two further samples may be required within the designated time period. On each occasion a sample is taken the officer will be informed of the drug(s) or drug group(s) against which his or her samples will be tested.

27. The officer will be entitled to have a 'police friend' as defined in the Police (Conduct) Regulations 2008 present when the samples are being taken. However, a delay in a police friend attending will not delay the testing procedure provided that the officer has been able to consult a police friend.

Consultation & Monitoring

28. The scale of testing adopted, and the identification of vulnerable posts, should be the subject of consultation with the local staff associations. All random samples will be monitored by ethnicity, faith, gender, disability and sexual orientation to ensure that no unintended bias arises from the sampling technique.

Handling Confirmed Positive Results

29. A positive laboratory analysis will be subject to medical review, which involves a medical practitioner reviewing the test result and the medical history of the individual to determine if there is a legitimate explanation for the presence of a drug in the sample.

30. Test results following laboratory analysis and medical review should be returned to the Det Insp CCU. Where the result is negative the officer and his or her manager should be informed without delay.

31. A positive result from a test administered as a part of the pre-employment process should be notified to human resources, so that the candidate may be rejected.

32. All positive results should be reviewed by the Det Insp CCU. An enquiry should then be made with the occupational health unit to ascertain whether

NOT PROTECTIVELY MARKED

NOT PROTECTIVELY MARKED

the person subject of the positive test had self-declared a substance misuse problem prior to being tested. An assessment should be made to ascertain whether the result was consistent with rehabilitation treatment being undertaken. If the result suggested that an agreed programme of rehabilitation was not being followed, the matter should be referred back to the Det Insp CCU.

33. Any positive result will be brought to the attention of the Head of the Professional Standards Directorate (PSD). It is for PSD to notify both the officer and the line manager of the result, and of any immediate action, including suspension from duty where appropriate.

34. Any claim by the officer or student officer concerned that there was a reason (other than a medical reason) for the positive result should be declared at the earliest opportunity. Such claims would include any claim that a positive test was a result of the officer having consumed unknowingly a 'spiked' drink.

Liability

35. An officer who has misused controlled drugs suffers a double jeopardy. He or she is at risk of disciplinary proceedings that might lead to dismissal, and may also be at risk of criminal prosecution. Because of this double jeopardy, and whether or not criminal proceedings are contemplated, cautioning and interviewing should be to the standards required under the Police and Criminal Evidence Act (PACE).

36. The penalty for refusal to take a test is no less than the penalty for failing a test. The liability to take a test is established in Police Regulations, thus a failure to take a test when required to do so is a failure to obey a lawful order. There is no substantive criminal offence of having an unlawful substance in the body, only a presumption that the offence of 'possession' must have been committed beforehand. Such a presumption may be rebuttable by medical evidence that the positive test resulted from use of a lawful medication. The presumption of possession that would arise from a positive, medically confirmed test result should be treated as discreditable conduct. The maximum penalty for both failure to obey a lawful order and discreditable conduct is the same. Any positive result may also have an impact upon the level of security vetting clearance held by the officer.

Occupational Health Support

37. The introduction of testing must be accompanied by a commitment, from the occupational health service for each force, to provide support to any officers who may approach them to declare, in confidence, a substance misuse problem.

38. There are, however, some circumstances in which the interests of the proper administration of justice may over-ride an absolute confidentiality. In particular, Chapter 18 of Disclosure Manual which details the joint operating instructions (JOPI) agreed between ACPO and the Crown Prosecution

NOT PROTECTIVELY MARKED

NOT PROTECTIVELY MARKED

Service (CPS) which place on the individual officer a personal responsibility to declare any matter that may affect their credibility as a witness in a court case. In some circumstances substance misuse on the part of an officer acting as a witness may have to be revealed to the Crown Prosecution Service (CPS), as the damage to the credibility of the officer as a witness may be a factor to be considered in a decision whether to proceed with a prosecution.

39. The personal responsibility under JOPI should be drawn to the attention of an officer, by the occupational health service, at the time at which any self-declaration of a substance misuse problem is made. The need to make a declaration to CPS will not arise in every case; each should be considered on its own facts and merits. Any declaration to CPS should be properly managed, with appropriate support provided to the officer.

Part 2: Alcohol

40. Alcohol is a substance that can be misused, and which can impair judgement. As part of the random testing regime, an officer subject of a random substance test will also be subject to a breath test. However, it is in a different category from controlled drugs, in that its use is not illegal. Some misuse of alcohol can be an offence. An officer who is drunk and disorderly in a public place commits an offence. An officer who attempts to drive a vehicle whilst over the prescribed limit commits an offence.

41. Officers have a general responsibility to present themselves fit for duty. If their judgement is impaired by the consumption of alcohol, they are unlikely to be fit for duty. It is for a senior officer to determine whether an officer is unfit for general duties, due to consumption of alcohol. However, reporting for duty whilst having previously consumed alcohol (for example, on the previous evening) does not equate with the criminal offence of using drugs. Managerial action needs to reflect this.

42. As with drugs, self-declaration of a drink problem is a matter that should be managed through the occupational health service, rather than being regarded as a disciplinary matter.

43. There is a power to conduct tests with cause, if it appears that an officer is under the influence of alcohol. Officers should be liable also to random testing should risk of impairment appear to warrant this, on a scale to be agreed with the local staff associations.

44. There is a presumption that a person is unfit to work if they have more than 29 mg per cent in blood (39 mg per cent in urine, 13 micrograms per cent in breath). This compares with a limit of 80 mg per cent in blood for driving.

45. Where testing is carried out, it should be conducted using breath testing equipment capable of making measurements at the 13 micrograms per cent level (equivalent to the 29 mg per cent blood level). Officers should never be tested on apparatus held in a custody suite, unless the suite is cleared of all other users.

NOT PROTECTIVELY MARKED

NOT PROTECTIVELY MARKED

46. Each 'breath test' should consist of two consecutive breath specimen tests from the officer, with the final result being declared as the lower of the two results. Where a breath sample is provided in excess 13 micrograms in breath, the on site PSD presence will be informed immediately by the independent agency's staff member. Consultation should then be made with the officer's manager immediately to assess the risk in continuing to deploy the officer on the full range of police duties. The on site PSD presence will refer the result to the Head of Complaints & Misconduct Unit for PSD assessment.

47. Nothing in this process prevents a supervising officer from dealing with officers where they smell alcohol on the breath of an officer liable to alcohol testing; a breath alcohol test can be administered after a wait of 15 minutes. (This is to deal with the eventuality that at the time the suspicion of excess drinking is aroused, a proportion of the alcohol consumed may still be in the officer's stomach. Alcohol must be absorbed into the body to register in a breath alcohol test.) Any result in excess of 13 micrograms will be referred to the Head of Complaints & Misconduct Unit

48. It should always be open to an officer to declare that they suspect they might have inadvertently exceeded the limit. Any such declaration should be made before the officer is notified of any requirement to take a test. Such declarations should not result in the officer being penalised, provided there is no pattern of continuing excess. A declaration may be particularly appropriate in circumstances of an unexpected change of duty, for example being allocated to driving duties involving possible use of the police exemptions under the Road Traffic Act, due to a staff shortage

ANNEX A

LIST OF VULNERABLE POSTS

NOT PROTECTIVELY MARKED

NOT PROTECTIVELY MARKED

Test Purchase Operatives
Undercover Operatives
Source Handlers & Controllers

NOT PROTECTIVELY MARKED