Prison Service Order

ORDER NUMBER
3620

Date of Issue / Amendment
11/07/2000

Amendments can be tracked in the Numerical Index.

PSI Amendments should be read before and in conjunction with PSO

Contents

Introduction

1 Purpose
3 Performance Standards
4 Output
6 Impact and Resource Assessment
8 Implementation
9 Mandatory Action
12 Audit and Monitoring
16 Contact Point

Chapter 1

1.1 Voluntary Drug Testing Units

Chapter 2
2.1 Voluntary Drug Testing Programmes

Chapter 3 Common Procedures and Practices

3.1 Introduction
3.2 Estimating Demand
3.4 Management Oversight
3.5 Eligibility Criteria
3.6 Admission
3.7 The Compact
3.10 Removal
3.15 Confidentiality of Information
3.16 The Wider Use of Voluntary Drug Testing Results

Chapter 4 The Drug Testing Process

4.1 Introduction
4.4 Frequency and Nature of Testing
4.6 Sample Collection
4.8 Sample Analysis

Chapter 5

5.1 Management Information

Chapter 6 Compliance Testing

6.1 Introduction
6.2 The Link with IEPS
6.4 Drug Test Results in Context

Chapter 7

7.1 The Distinction Between Voluntary, Mandatory and Clinical Drug Testing
INTRODUCTION FROM THE DIRECTOR OF REGIMES

Purpose

1. The purpose of this Order is to provide a framework for the creation and operation of Voluntary Drug Testing Units and voluntary drug testing programmes which need not be undertaken within the confines of a unit. The Order describes the broad principles of drug testing and the wider context in which drug testing might be conducted. It supports delivery of the Prison Regime Drugs Strategy.

2. This Order provides for the first time a central framework for VTUs and voluntary drug testing programmes, which should result in a more co-ordinated and consistent approach with the reduced risk of legal challenge. The associated single call-off contract for drug testing kits should result both in significant savings and improved quality of results.

Performance Standards

3. A Performance Standards on Drugs Policy is being developed with publication expected in March 2001.

Output

4. The expansion of voluntary drug testing programmes and VTUs in particular should reduce the demand for drugs and create more drug-free areas in prisons. Voluntary drug testing is not a new concept to the Prison Service, however developments have been based, in the main, on local initiatives. The issue of mandatory instructions and central guidance will inevitably lead to changes in existing practice.

5. This PSO is likely to impact most on the following aspects:
   - VTU infrastructure;
   - voluntary drug testing methodology;
   - the action taken following a positive drug test; and
   - the links with Incentives and Earned Privileges Schemes (IEPS).

Impact and Resource Assessment

6. A number of prisons have already introduced voluntary testing units and/or programmes of voluntary drug testing and funded that provision from existing resources. In recognition of the commitment to introduce voluntary drug testing programmes more extensively across the Prison Service, additional Comprehensive Spending Review funding of approximately £16 million was provisionally identified to provide additional staff for drug testing, capital projects and drug testing kits, for the period 1999 - 2002 on the basis of bids received from Area Managers. It is recognised however that proportionate deployment of staff between prisons to match voluntary testing demand, will present difficulties.
Those bids were based on very early estimates of the likely demand. It is therefore particularly important to make as soon as possible, much firmer estimates of demand and to develop the approach locally on aspects such as the frequency of testing, in order to place the provision of voluntary testing on a firmer financial footing. Establishments must ensure that within planned resources they deliver targets on voluntary testing. The resourcing of drug testing in support of compliance testing, although reliant on the same testing technology, should be resourced separately from CSR provision for voluntary drug testing programmes.

7. The exact opportunity costs in terms of staff time will depend entirely on the extent of VTU development and take-up of voluntary drug testing programmes, factors which will vary from prison to prison. The creation of VTU is likely to require the deployment of existing staff to new roles within the VTU infrastructure rather than the introduction of additional staff, with the range of normal control duties remaining the same. The expansion of testing programmes will require additional staff deployment for sample-taking and drug testing duties. There will be no immediate compensatory savings in staff time. In the longer term, the less confrontational nature of drug-free environments should lead to opportunity cost savings in staff time.

Implementation

8. The framework described in this PSO comes into force on 14 July 2000.

Mandatory Action

9. Annually all establishments must have conducted a needs analysis to estimate the number of prisoners wishing to participate in a voluntary testing programme. Establishments already providing voluntary testing must consider whether their arrangements are sufficient to meet future demand and the mandatory elements of this order. Establishments must ensure that within planned resources they deliver targets on voluntary testing.

Access to a voluntary drug-testing programme must be available in all prisons by April 2001 for those prisoners who wish to make a commitment to remain drug free and are otherwise eligible to participate by meeting the standard criteria. Beyond that date, prisons must review their arrangements every six months to ensure that any further increase in demand can be met. Suitable prisoners must be allowed to undergo a programme of voluntary testing, wherever located.

Establishments must devise a compact to be signed by all inmates who agree to a voluntary testing programme. The compact must explain the prisoner's obligations, the procedures to be followed, the standards to be applied, the consequences of failing a test (including random MDT), how the results might be challenged and reasons which might result in exclusion from the programme. Compacts should also state what the prison will provide.
Selection criteria must be clear and consistently applied. Reasons for removal from a voluntary testing programme must be clearly stated. A clear audit trail must be available in support of all decisions.

A positive voluntary drug test result must be followed only by administrative measures and not disciplinary procedures and must not be used to target MDT.

Voluntary drug testing programme decisions must not overlap or displace decisions on facilities and/or local IEPS.

Failure to provide a sample, on request, is to be treated as a positive test unless there are grounds for believing that the prisoner is temporarily physically unable to do so.
Prisoners must be clear from the outset about the consequences of testing positive. This does not necessarily mean they will be excluded immediately from the drug testing programme, although that is an option. Prisons may consider a more flexible approach, such as issuing a warning after the first test and only excluding after a second or third failure. A positive voluntary drug test alone is not grounds for requesting an on suspicion mandatory drug test or for placing the prisoner on the mandatory frequent testing programme.

Supplies of dip and read testing kits must be obtained only from the preferred supplier, Euromed Limited.

References to prisons and Prison Rules must be taken to include young offender institutions and to the equivalent Young Offender Institution Rules. References to governor grades must be taken to include the equivalent grading under the new pay and grading arrangements.

10. Although a key element of the Prison Service drug strategy, the introduction of VTUs is not mandatory for all prisons and will be determined by Area Managers on the basis of local constraints and prisoner need, linked closely to the implementation of local drug strategies.

11. The limit of discretion is that, in order to respond proportionately and in a way that reflects legal requirements, no sanctions should be based solely on a single positive drug-screening test. Positive tests should act as the trigger point for a wider review of behaviour and performance, upon which all substantive decisions must be based.

Audit and monitoring

12. The mandatory requirements will be the subject of compliance auditing by Standards Audit Unit.

13. DSU will on behalf of Areas monitor progress with the voluntary testing programme and will manage the call-off contract for drug testing kits.

14. Voluntary drug testing programmes will be the subject of a key performance indicator with data collected through the PUMIS system. This will be the subject of a separate PSO to be issued by Planning Group.

15. In addition, quarterly management information will be necessary locally to ensure effective operation of voluntary drug testing programmes and centrally, to monitor progress with policy implementation and to account for CSR expenditure. The management information required will be the subject of separate consultation and a PSO to be issued by the Drug Strategy Unit which will contain an integrated proposal for the collection of financial and other management information for the drug strategy.
Contact Point

16. For advice and guidance on the content of this PSO contact:

Martin Lee
Room G22B
Abell House
John Islip Street
London SW1P 4LH

020 7217 5045

NOTE FOR ESTABLISHMENT LIAISON OFFICERS

ELOs must record the receipt of the Prison Service Order - Voluntary Drug Testing in their registers as issue 96 as set out below. The PSO must be placed with those sets of orders mandatorily required in Chapter 4 of PSO 0001.

<table>
<thead>
<tr>
<th>Issue no.</th>
<th>Date</th>
<th>Order no.</th>
<th>Title and / or description</th>
<th>Date entered in set</th>
<th>ELO signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>96</td>
<td>11/07/00</td>
<td>3620</td>
<td>Voluntary Drug Testing</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Ken Sutton
Director of Regimes
Chapter 1

Voluntary Drug Testing Units

1.1 A voluntary drug testing unit is defined as a discrete unit, normally with restricted access and with an infrastructure designed to provide sanctuary and support for those prisoners who seek a safer and more secure environment and make a clear commitment under compact to remain drug-free. VTUs should aspire to provide drug-free accommodation and are likely to have in place enhanced peer group support networks and have prison staff with enhanced drug awareness and counselling skills. A voluntary drug-testing programme is an essential element of the VTU infrastructure. The greatest benefits for prisoners are therefore achieved within VTUs, which are very much an integral part of the overall drug strategy and an essential element of the wider treatment and support programme. There must be clear links with CARAT, rehabilitation and detoxification provision. But VTUs are not in themselves treatment units although various treatment elements may form an integral part of VTU activity.

1.2 The development of VTUs is not mandatory for each prison and should be determined on the basis of need and reflect local drug strategy objectives as agreed with Area Managers.

1.3 In determining the potential locally for voluntary testing units a number of factors will be of relevance to varying degrees:

- the nature and extent of the drug problem;
- the requirements of specific groups of prisoners;
- the availability of treatment programmes; and
- geographical and physical constraints.

1.4 There are considerable pressures on prison accommodation and VTU structure will be influenced significantly by geographical and population constraints and the number of eligible prisoners wishing to reside in a VTU. The use of accommodation flexibility in response to population pressures remains an over-riding requirement. The accommodation reserved for VTUs will therefore differ from prison to prison. Normally, there will be no need for extensive and expensive structural alterations to create the VTU infrastructure.

1.5 The regime in open prisons means that it is that much more difficult and at times impractical to designate discrete VTUs. Perimeter vulnerability and lower levels of supervision place the onus on prisoners to behave responsibly. The greater use of non-location-based compacts might be more appropriate in open conditions.

1.6 Random mandatory drug testing figures show that a number of prisons routinely report very low levels of drug misuse. Prisons housing large numbers of immigration detainees in discrete accommodation, tend to have very low MDT returns. Where the underlying level of drug misuse is low, it is much less likely that discrete voluntary testing units will provide significant added value. Such
prisons will also wish to consider carefully the nature and extent of their voluntary and testing programmes.

1.7 A VTU might not necessarily be the ideal location for those undergoing detoxification where the more specific and immediate needs are likely to be better addressed within a detoxification unit or the healthcare wing. Whilst this should remain a matter for local judgement, there is a need to consider carefully issues such as the extent of support and monitoring required and the access to medication.

1.8 The potential benefits of VTUs apply equally to all prisoners - remand/sentenced, male/female, short/long sentence. In the first instance all prisoners should be considered as eligible, although the support programme within the VTU may have to be tailored to meet the needs of specific groups. VTU residency will be appropriate for:

- those who have never misused drugs but who wish to be free from the pressures associated with the drug culture;
- graduates from treatment programmes and those who otherwise have stopped using drugs but who need continued support in order to sustain progress and minimise the risk of relapse; and/or
- drug misusers who make a clear and demonstrable commitment to stop misusing drugs.

1.9 It is essential to maintain the positive VTU environment for the benefit of all residents. Given the concentration in one place of high-risk prisoners in drug misuse terms, VTUs may act as a magnet for drug dealers who themselves may not misuse drugs. Every effort must therefore be made to prevent dealer infiltration into VTUs.

1.10 Prisons must ensure proper managerial oversight of the VTU. Overall responsibility should be vested in a governor grade, who should also be a full member of the prison drug strategy team. Day to day management of VTUs will depend to a large extent on the size and location of the VTU and management structures should follow existing staff deployment principles.
Chapter 2

Voluntary Drug Testing Programmes

2.1. Whilst a programme of voluntary drug testing is a key element of the VTU infrastructure, it is not the exclusive preserve of a VTU. Prisoners wishing to make a commitment to remain drug-free need not reside exclusively in VTU accommodation. The Public Service Agreements (PSA) commit the Prison Service to provide access to voluntary drug testing for all (suitable) prisoners by April 2001. For the purposes of the PSA, prisoners under compact to remain drug-free and subject to a frequent testing programme, whether or not they reside in a VTU, will count towards meeting the PSA targets. In order to fulfil the PSA commitment, all prisons must have in place a voluntary drug testing programme to meet identified need. In contrast to a VTU, a drug testing programme will involve the prisoner submitting to voluntary drug testing having made a commitment to remain drug-free and signed a compact to that effect but with no location specific requirement. Whilst compact prisoners on normal location will not enjoy the added benefits of a VTU, it is important to build quickly on every prisoner commitment to remain drug-free. The greater the number of drug-free prisoners, the closer the prison becomes to being drug-free, for the benefit of all prisoners. In turn, this should reduce the demand for drugs in prisons.
Chapter 3

Common Procedures and Practices

Introduction

3.1 Voluntary drug testing units and voluntary drug testing programmes, although distinct in nature, share a number of common elements and where the same principles and procedures should apply;

- the need to plan and resource in order to meet estimated demand;
- managerial oversight;
- eligibility and removal criteria and associated administrative processes;
- the need for prisoners to sign a compact;
- the nature of the action taken in response to positive results;
- drug testing methodology;
- the need for management information; and
- the link with incentive and earned privilege schemes.

Estimating Demand

3.2 The Public Service Agreements (PSA) commit the Prison Service to providing access to voluntary drug testing programmes for all prisoners (who are eligible) by April 2001. It is important that prisons take steps to estimate future demand and make firm plans both to meet the PSA commitment and allow for resource planning. Prisons will by June 2000 have conducted a needs analysis to estimate the number of prisoners wishing to participate in a voluntary testing programme and submit to Area Managers costed proposals for implementing this initiative. The provision of voluntary drug testing unit capacity is not covered by the PSA and therefore remains a matter for local discretion.

3.3 Some prisons have experienced considerable difficulty in estimating future demand for access to testing programmes. The initial CARATs assessment should, in time, prove to be a valuable tool in estimating the demand for voluntary drug testing. But prisons may also wish to conduct a pro-active marketing exercise by circulating details to prisoners and asking whether they wish to be considered. This would provide a more immediate estimate of likely demand.

Management Oversight

3.4 Management responsibility for VTUs should be vested in a governor grade. In order to maintain an appropriate degree of focus, oversight of the wider voluntary
drug testing programme should rest within the same management line, with day to day responsibility delegated to the VTU Manager - for the purpose of this PSO, described as the Programme Manager. In the absence of a VTU, a Programme Manager should still be appointed. More detailed advice on management responsibilities will be given in the accompanying guidance note.

Eligibility Criteria

3.5 In order to provide openness, fairness and consistency of approach for the decision-making process, voluntary drug testing programme or VTU applications and removals must be the subject of a clearly auditable trail. The criteria for admission onto and removal from a testing programme must be clearly stated and consistently applied. This might be achieved through an evaluation panel constituted on the lines of an IEPS panel but at the very least should involve final decisions being taken at governor level, with the process overseen by the Programme Manager. Transfer to or refusal to transfer to a voluntary testing programme or VTU is entirely voluntary and must not stand as a disciplinary or quasi-disciplinary action. This should place the programme infrastructure on a much firmer and legally defensible footing.

Admission

3.6 The admissions process should be conducted by the Programme Manager with supervisory oversight at Governor level. Consideration will be by formal application. The applicant will be refused admission if he/she fails to meet the stated criteria and/or fails to give a clear undertaking of a commitment to remain drug-free. If the recommendation is to refuse admission, clear reasons must be given. In the event of a refused application, the course of action open to prisoners must be made clear. The prisoner has a right of appeal through the request and complaints procedure to the Area Manager. All cases of refusal should be notified to the prisoner’s treatment and support workers.

The Compact

3.7 Entry into a voluntary drug testing programme or VTU must be conditional on the prisoner signing a compact. The compact must be a balanced document explaining in clear terms what will be required of the prisoner and, in turn, what the prisons will provide. The compact must be accessible to all prisoners including those with literacy problems or where English is not the first language. A properly worded compact is an important element in reducing the risk of legal challenge but does not legitimise any procedure or practice deemed to be unfair.

3.8 PSO 4000 sets out the requirements for prisoner compacts with which voluntary testing compacts must comply. Whilst compacts must be as short as possible there is however a balance to be struck. Prisons must ensure that the rights and responsibilities of programme membership are addressed. Based on legal advice, the compact and/or the accompanying advice must as a minimum address the following points:
that use or supply of all controlled drugs, mood altering substances and all medicinal products unless prescribed is prohibited. This should include alcohol;

describe fully what voluntary drug testing involves - provide unadulterated sample when required, consent to full searching, observation of sample provision, failure to provide;

define the type of indicative screening test, not subject to confirmation testing and likely testing frequency;

define minimum waiting periods as in the MDT manual;

testing positive and/or refusal to provide an unadulterated sample will not result in disciplinary proceedings but may lead to termination of the compact and removal from the programme;

breaching any other terms of the compact, for example, standards of general behaviour may result in termination and removal and may also amount to a disciplinary offence under Prison Rules;

make clear the extent to which a ‘one strike and out’ or a ‘three strikes and out’ policy is in operation for serious breaches of the compact;

prisoners remain subject to MDT rules and are liable to be punished under Prison Rules for commission of any disciplinary offence including drug-related offences;

relevant disciplinary findings of guilt may result not only in formal punishment but in a review leading to termination of the compact;

whether and when excluded prisoners become eligible to reapply;

a commitment to explain the reasons attaching to any compact-related decision, the grounds on which decisions can be challenged or behaviour explained (Prison Rules 1999 8 (4) s2) and the appeals process;

the relationship between voluntary testing programmes and local IEPS;

refusal to sign a compact or withdrawal from the compact will not in itself result in changed privilege level unless independently determined under the provisions of local schemes; and

signing the compact signals an understanding of the terms and agreement to comply.

3.9 Prisons currently use a range of compacts. A model compact incorporating the aspects discussed above will be included in the guidance note. The standards of behaviour required of prisoners signing drug-free compacts should be based
closely on the standards of behaviour and performance described in PSO 4000 and those criteria should be set as a minimum at around the standard level.

Removal

3.10 At present, there is a wide variation in the approach taken by prisons to the removal of prisoners from a voluntary drug testing programme or VTU. The principal reason for removing prisoners should not be a punitive one but in response to breach of compact and in order to facilitate a safer, positive environment.

3.11 As is the case for the admissions process, a formal infrastructure is required with a clearly auditable decision-making process and with the criteria for removal clearly stated. This will ensure an open, fair and consistent approach and minimise the risk of legal challenge. Removal should be preceded by a formal review conducted by the Programme Manager, with appropriate supervisory oversight - an evaluation panel or at the very least at governor level. A single lapse of any aspect of behaviour will be sufficient to trigger a review, but unless serious in nature, insufficient to result in removal from the voluntary drug testing programme.
3.12 Drug screening tests do not provide conclusive evidence of drug misuse and a single failed voluntary drug test should not alone lead to exclusion. *The review must consider all facets of behaviour and standards of performance, taking into account any mitigating factors.* A single positive drug test followed by an adverse review, may lead to exclusion. Prisons should however set an upper limit for drug test failure. No more than three failed tests within a six-month period is an appropriate benchmark. The basis on which individual decisions are taken to remove prisoners from a voluntary drug-testing programme should be clearly stated.

3.13 *Positive tests and refusal to undergo testing (which will be considered equivalent to test failure) must be dealt with fairly and reasonably and in accordance with formal procedures allowing for defences, explanations and/or excuses to be put forward.* Prisoners should be entitled to challenge results:

- on the grounds expressed in Rule 52 of the Prison Rules 1999;
- because the terms of the compact were not complied with by the prison, for example, the minimum waiting periods; and/or
- for any other reason.
- The prisoner has a right of appeal through the request and complaints procedure to the Area Manager.

3.14 Full use of intermediate measures should firstly be considered, such as the issuing of written warnings, referral to more intensive treatment and increased frequency of testing. The best prisons develop a graded response to bad behaviour in order first to encourage improvement. The initial response should therefore be support rather than removal.
Confidentiality of Information

3.15 Whilst the primary function of a voluntary testing programme lies within the treatment and support framework, drug test information does not automatically attract the same degree of confidentiality afforded to clinical records. Of primary concern is the security and good order of the prison and drug testing information should be shared whenever judged appropriate, for example, for intelligence purposes. *Voluntary drug testing information must not however be used to target MDT.* Drug testing results may provide valuable contextual information for CARATs drug workers and, based on the understanding in paragraph 8.4, may be forwarded without the prisoner’s consent.

The Wider Use of Voluntary Drug Testing Results

3.16 Mandatory drug testing results constitute a legitimate parameter for wider use in the review of prisoners’ progress and as a basis for informing decisions on release, for example, lifer review, parole, home detention curfew. Voluntary drug test results in isolation do not carry the same weight in evidential terms as MDT results - a positive voluntary drug test acts as a trigger to conduct a review of overall behaviour which may lead subsequently to removal from the drug testing programme. It would be contradictory and potentially open to challenge if different standards were adopted elsewhere. *Potentially far-reaching decisions must not be based on an evidential standard lower than for MDT.* The defining point must therefore be removal from a the drug testing programme and/or a failed screening test followed by a clear admission of drug misuse by the prisoner rather than a single unsupported failed drug screening test. Accordingly, prisons should not include in parole dossiers or otherwise inform the Parole Board of any unsubstantiated positive voluntary drug screening test results. Prisons are also required to inform Lifer Unit if life sentence prisoners in Category C or D prisons fail MDT when the parole review is not in train, especially where drugs are a feature of the index offence.

In these circumstances, the same test applies to voluntary drug test results - prisons should not inform Lifer Unit of unsubstantiated results.
Chapter 4

The Drug Testing Process

Introduction

4.1 Drug testing has a number of objectives including:

- to provide some reassurance that prisoners remain drug-free and to act as a tangible output measure of programme performance;

- to act as a deterrent; and, on failure

- to act as a trigger point for the review of progress.

4.2 The extent to which such objectives are achieved will depend on the nature and frequency of the testing programme. The Programme Manager should not rely entirely on drug testing, which is best deployed as one element in a wider assessment framework.

4.3 The method approved for voluntary drug testing is on-site indicative screening (dip and read) which alone does not provide unequivocal evidence of drug misuse. The guidance contained in this Order takes fully into account the strengths and weaknesses of the chosen testing methodology and ensures that results are interpreted properly in context and proportionate action taken. Dip and read test kits must be obtained only from the Prison Service contracted supplier, Euromed Limited.

Frequency and Nature of Testing

4.4 Prisons should develop a testing programme that fully reflects identified risk, balanced against available resources. Care should be taken to ensure that the testing programme does not inadvertently create windows of opportunity for drug misuse. Drug testing programmes might screen automatically for the five more common drugs (cannabis, opiates (heroin), cocaine, amphetamine and methadone) or might screen routinely only for cannabis and opiates, matched more closely to the risk presented by individual prisoners. Factors that might be considered in a risk assessment include:

- drug testing history - type of drugs misused and timing of the most recent drug-taking episode;

- higher risk - those previously testing positive within either the voluntary testing or MDT programmes

  - recent graduates from treatment programmes
  - compact prisoners on normal location; and

- lower risk - those who have never used drugs.
4.5 Comprehensive Spending Review funding for drug testing was based on an overall frequency of 1.5 tests per prisoner per month. This may be regarded as the minimum testing frequency which can be increased according to perceived risk and available resources.

Sample Collection

4.6 A widespread view has developed that, by nature of the voluntary drug-testing ethos, sample collection procedures can be less rigorous than for MDT. This view is unfounded. Data obtained from the MDT analytical laboratory shows that a significant and disproportionate number of diluted samples arise from voluntary testing programmes. *Prisons must therefore be aware of the inherent risk of sample dilution, even where there is an explicit commitment from prisoners to remain drug-free.* The best safeguard against diluted and/or adulterated samples is to ensure that sampling is random, unpredictable, unannounced and conducted in line with MDT sampling procedures.

4.7 Whenever samples are not subjected to immediate analysis, full MDT sample continuity procedures should be applied. Consent to medical disclosure is an essential contextual element in interpreting positive screening test results.

Sample Analysis

4.8 Dip and read testing should be undertaken in close proximity to the point of sample collection. No provision is necessary for the confirmation of positive test results, provided those results are used only in the context outlined above. Nor has any funding provision been made for confirmation testing. Dip and read testing provides a flexible, rapid and cost-effective screening mechanism.

4.9 In order to ensure consistency of testing using a reliable, approved product and to obtain economies of scale, a call off contract has been negotiated to provide the dip and read solution both as a panel of five target drugs and in the form of single tests for each individual drug.

4.10 There have been reports in the scientific literature that indicative drug screening can prove unreliable. Provided the response to a failed test is proportionate and a number of precautionary steps are routinely taken, unreliability can be reduced to within acceptable bounds:

- use of reliable, validated products (as provided by our call-off contract);
- proper training of staff;
- close adherence to the manufacturer’s recommended testing methodology;
- interpretation of results must take fully into account the use of prescribed and proprietary medication; and
• where any doubt exists, consulting the test manufacturer's helpline.

4.11 The Drug Strategy Unit will provide more detailed guidance on the use of the chosen dip and read testing product. This will include the protocol to be followed when legitimately prescribed medication might affect the outcome of the test.
Chapter 5

Management Information

5.1 It is essential that management information on voluntary drug testing programmes and more specifically on the running of VTUs is collected routinely and used by Programme Managers to take informed decisions about operations. Prisons will be required to provide data centrally to Planning Group on a monthly basis in order to monitor progress against the national key performance indicator (KPI). The KPI will reflect the PSA requirement - to provide access to voluntary drug testing for all prisoners by April 2001.

5.2 A national target will be set for achieving the PSA commitment and within that context Area Managers may wish to set local targets for prisons. Central guidance on the collection of KPI data, which will be achieved through PUMIS, will be given by Planning Group.

5.3 In addition, a series of quarterly data will be required both to monitor progress with the voluntary testing programme initiative and to account for CSR expenditure. The requirements will be described in a PSO on the Collection of Financial and other Management Information for the drug strategy, which is yet to be published.

5.4 Each prison should also keep comprehensive and up to date records of the testing process based on MDT principles, which will also support the collection of performance data.
Chapter 6

Compliance Testing

Introduction

6.1 The use of drug testing has grown considerably in recent years. A significant growth area has been the use as a gateway to and a condition of continued access to incentives and earned privileges, with the requirement for prisoners to remain drug free. Test failure leads frequently to loss of privileges. Although voluntary in nature, this type of testing is better and more accurately described as compliance testing. There is a clear conceptual distinction to be drawn between drug testing in the context of a VTU and compliance testing.

The Link with IEPS

6.2 In order to minimise the risk of legal challenge, prisons must ensure that voluntary testing programme-related decisions do not overlap with or displace decisions on facilities and/or local incentives and earned privileges schemes (IEPS). Transfer to a programme and VTU residential status must therefore be operated independently of IEPS:

- membership of a programme and/or residence on a VTU must not in itself be a privilege capable of being forfeited under rule 55 (1) (b) of the Prison Rules 1999 or an earnable or losable privilege for the purposes of IEPS;

- particular IEPS levels should not in themselves be a condition of entry to a programme;

- refusal to sign a compact, membership of a programme and transfer away from the programme must not in themselves determine a prisoner's privilege level.

6.3 However, the IEPS has an important role to play within the VTU and wider programme infrastructure. It is important to have in place a framework to offer additional but necessary encouragement to prisoners, to provide a management tool to lead prisoners through progressive stages of improvement and to improve self-esteem and reward good behaviour. IEPS can be used in this regard.

Drug Test Results in Context

6.4 The practice has also grown whereby immediate administrative measures are applied based on a single failed drug test. Legal advice states that in those circumstances too much weight is given to unconfirmed voluntary drug test results. Unconfirmed indicative drug screening tests will never provide evidence to the same standard of proof as the MDT process. Nor was it ever intended to do so. Prisons must therefore ensure that administrative measures are not decided on the basis of a screening test result alone.
6.5 *In order to use voluntary drug test results proportionately and more demonstrably within IEPS guidelines and to reflect properly the evidential value of unconfirmed screening test results, a positive test must be used only as the trigger point for a wider review process. If following a positive test, a prisoner admits to drug misuse, then action can be taken on the basis of the admission. If not, decisions must be based on the outcome of that review. The review procedures detailed in PSO 4000 must be applied.*

6.6 *There will be occasions when a failed drug test demands an immediate response, for example, prior to temporary release of prisoners. If following a positive drugs test, there is perceived to be a potential risk to the public, the test result should be regarded as reasonable grounds for suspicion and as such sufficient to take immediate action to curtail release on that occasion. Factors to consider include the nature of drug misuse and the relevance of previous offences, with each case assessed on its own merits. Such a decision should however be followed up by a more detailed review.*
Chapter 7

The Distinction Between Voluntary, Mandatory and Clinical Drug Testing

7.1 There is a clear distinction to be drawn between mandatory drug testing which leads to disciplinary action and voluntary testing which leads to administrative action. Prisoners are to be charged under Prison Rules 51 (9) only as a result of a sample taken under the MDT programme. Where a prisoner tests positive under the voluntary programme, this is insufficient basis to charge the prisoner under the discipline regulations.

7.2 Prisoners who agree to participate in voluntary drug programmes must not be exempted from the random MDT programme. If a prisoner who is subject to voluntary drugs testing as part of a compact tests positive on the mandatory programme it is possible to take disciplinary measures [Prison Rules 51 (9)] and administrative measures (under the terms of the compact).

7.3 A failed voluntary test alone must not be used to target MDT testing. Nor is it the intention that a voluntary test failure should be used to trigger MDT as a means of confirming a voluntary test, not least because the testing parameters may not always be strictly comparable. Voluntary samples must not be submitted under the cover of the MDT programme for confirmation.

7.4 Drug testing as a part of treatment and support programmes (clinical testing) should remain the responsibility of healthcare staff and the wider community of treatment providers. Voluntary drug testing remains quite distinct. The results from clinical drug testing inform treatment decisions and comprise a part of the confidential medical record which can be disclosed only within the consent of the prisoner. There can be no expectation that clinical testing results will be made available to inform prisoner assessments with the voluntary testing programme.

7.5 The converse also applies. Whilst clinicians and treatment providers may use similar dip and read testing technology, under no circumstances is drug screening to be undertaken expressly on their behalf. Whilst voluntary and mandatory test results might provide useful contextual information, treatment providers are ultimately responsible for all decisions taken based on drug test results.