

Correspondence

Circular: The testing of substances suspected to be drugs controlled under the Misuse of Drugs Act 1971

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Detail

Home Office circular 015/2012

The testing of substances suspected to be drugs controlled under the Misuse of Drugs Act 1971

- **Broad subject:** Crime and disorder
- **Issue date:** Tue Jul 31 15:46:14 BST 2012
- **From:**
Crime and policing group (CPG) - crime directorate, drug strategy unit
- **Copies sent to:**
Association of Chief Police Officers in Scotland, Association of Chief Police Officers (England, Wales and Northern Ireland), Magistrates' Association, National Bench Chairmen's Forum, Judicial College
- **Sub category:** Drug offences
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- **For more info contact:**

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- **Addressed to:**
Chief officers of police (England and Wales), Chief Officer of Police (Northern Ireland), chief officers of police (Scotland), clerks to the police authorities, chief executive of Her Majesty's Courts & Tribunals Service, director of crime, delivery directors, heads of crime, customer managers, regional support units, Crown Court staff, Magistrates' Court staff, clerks to the Justices, Royal Courts of Justice - Court of Appeal (Criminal Division) staff, Lord Chief Justice, President of the Queen's Bench Division, senior presiding Judge for England and Wales, Lords Justices of Appeal, presiding Judges, High Court Judges, Queen's Bench Division, Crown Court judges, resident judges, district judges (Magistrates' Courts), chairmen of the Justices, Council of Circuit Judges

1) This circular, which replaces Home Office Circular 40/1998, provides advice to law enforcement personnel on the need for forensic analysis of substances suspected to be controlled drugs; the circumstances in which drug testing may be undertaken locally by the police; the use of drug testing devices for this purpose and the use of results from drug testing devices in prosecutions.

Law enforcement personnel will wish to note changes occurring in paragraphs 3-4 of section A, paragraph 7 in section B and to annexes A and B, which list those drug-testing devices which have been approved by the Home Office; the controlled drugs that the drug testing devices can test for and sets out the requirements for the provision of training to officers in the use of drug testing devices. This circular has been prepared in consultation with the Association of Chief Police Officers, the Crown Prosecution Service, the Forensic Science Regulator's Office and the National Policing Improvement Agency.

A Forensic analysis of drugs

All substances suspected to be controlled drugs

2) All substances suspected to be controlled drugs must be sent to a forensic science laboratory for analysis unless:

- they are seizures of cannabis, including cannabis resin but excluding cannabis (hash) oil, covered by paragraphs 3-4; or
- they are seizures of suspected controlled drugs (as listed in Annex A) which have given a positive result when tested with a Home Office approved drug-testing device (see paragraphs 10-15 and Annex A) and the criteria set out in paragraph 7 apply (but see also para 19, 'Exceptions').

Substances believed to be cannabis

3) Forensic analysis of substances believed to be cannabis (including cannabis resin, but excluding hash oil: a concentrated form of cannabis/cannabis resin) is not required in cases dealt with in a Magistrates' Court if a member of law enforcement personnel experienced in the recognition of the physical appearance, texture and smell of cannabis says that the substance is cannabis and the identification of the drug is not in dispute. A substance is deemed to be 'not in

dispute' if both the person and the law enforcement officer agree on the identification of the substance. However, in circumstances where the person makes no comment as to the identity of the substance then consideration should be given to applicable Criminal Procedures Rules (as amended), in particular Part 3.

4) Identification of cannabis by an experienced member of law enforcement personnel (paragraph 3) may also be accepted by the Crown Prosecution Service in:

- cases where the above criteria apply but the defendant is committed for sentence to the Crown Court; or
- cases dealt with in the Crown Court where the identity of the substance is not in dispute; and there is further corroborative evidence to support the identity of the substance; or
- any case in order to facilitate a remand either in custody or on conditional bail, however, subsequent analysis at a forensic science laboratory will be required if the identification of the drug is in dispute. It will also be necessary to submit the substance for forensic analysis if any of the conditions set out in paragraph 3 do not apply.

5) Cannabis is the only controlled substance for which forensic analysis or a positive result from a drug testing device is not required if the identification of the drug is not in dispute. There must always be strict compliance with the above criteria and if the identifying officer has any doubts about the identity of the substance, forensic analysis must be obtained.

6) Hash oil cannot easily be identified even by experienced officers and all seizures suspected to be hash oil should be submitted to a forensic science laboratory for analysis.

B Drug-testing devices

Circumstances in which testing may be undertaken

7) Law enforcement personnel may only test substances suspected to be controlled drugs, with the intention that the result may be used in evidence, after they have received appropriate training (paragraphs 14-16 and Annex B), using a drug testing device approved by the Home Office (paragraphs 11-13 and Annex A) in cases involving those drugs listed in Annex A:

- if the person admits both possession of the drug, its identity and indicates that the drug is for personal use only; and
- the case involves a small quantity of the drug, consistent with personal use; or
- where the [Evidential Drug Identification Testing \(EDIT\) process](#) applies;
- in any case, even if the conditions set out above do not apply; drug testing devices can be used in order to facilitate a remand, either in custody or on conditional bail. In such cases, it will always be necessary to submit the substance for confirmatory laboratory analysis as soon as practicable.

8) In deciding whether to submit substances suspected to be controlled drugs to a forensic science laboratory for analysis rather than using drug testing devices, it is worth noting that results obtained from drug testing devices cannot categorically identify controlled substances and some

drug testing devices may give positive results from common materials which are not controlled drugs. It is therefore important that such results are not used as the only evidence to support a charge.

9) Consideration should also be given to the full costs (taking into account law enforcement personnel's time, including training, the production of statements and giving evidence in courts) in comparison to the charges made for analysis by a forensic science laboratory. Consideration must also be given (by all parties, including the defence) to compliance with the Criminal Procedure Rules (as amended), in particular Part 3 and Rule 3.2(2)(a) which requires 'the early identification of the real issues'. Accordingly it is important to ensure any forensic analysis is proportionate and in accordance with Rule 3.2(e) by 'ensuring that evidence, whether it is disputed or not, is presented in the shortest and clearest way'.

10) Several other factors should also be borne in mind when considering the use of drug testing devices. The devices can only indicate the presence of the drug. A benefit of laboratory analysis is that it allows a variety of information about street level seizures to be collated and disseminated to law enforcement agencies where the information can assist in the investigation and prosecution of more serious drug offences. Laboratory analysis can provide information on purity and weight which is needed in some cases for sentencing. Laboratory analysis can also provide comparison evidence to substantiate supply charges against other individuals. The use of these devices should not be seen as a replacement for laboratory tests where investigation into the weight, purity, adulterants, batch and manufacturing methods are needed.

Types of drug testing devices

11) In order for indicative drug testing to be undertaken as detailed in paragraph 7 above the device must be approved by the Home Office and only be used for testing those drugs for which they are approved for use. A list of currently approved devices and associated drugs is given in Annex A.

12) In addition to the approved devices, there are a number of non-approved drug testing kits and devices available. Whilst these kits or devices have not been approved by the Home Office and their reliability is unknown, chief officers have the discretion to approve their use within their own force area for screening and intelligence purposes only (bearing in mind disclosure obligations under the CPIA 1996). They cannot be used either to provide evidence of, or to support an admission of, the identity of the drug in court, as their reliability has not been independently verified by the Home Office.

13) Law enforcement personnel only need to use a Home Office approved device where paragraph 7 applies. For other purposes, alternative devices may be used without the need for Home Office approval, but officers need to be aware of their potential unreliability, the inability to use any results in evidence and the need to comply with disclosure obligations. Where officers wish to facilitate a remand in custody or on conditional bail in cases involving drugs other than those listed at Annex A, they should obtain a fast-track laboratory analysis. They may otherwise lay themselves open to claims of wrongful detention if a remand is based upon the results from a non-Home Office approved device which are found to be unreliable.

Training in the use of drug-testing devices

14) Training in the use of drug testing devices is essential to ensure that they are used properly, that the results are interpreted accurately and that the kits are used safely. These kits may contain hazardous chemicals and must be handled, used and disposed of carefully with appropriate health and safety precautions.

15) Training must be both theoretical and practical such that the trainee gains experience in performing the test and interpreting the results. It must include the following topics:

- the circumstances in which it is appropriate to use the kits;
- the requirements of the Criminal Procedure and Investigations Act 1996 and Criminal Procedure Rules (particularly parts 1,3, Rule 3.2(2)(a) and (e) and 33);
- the limitations of the devices;
- avoidance of contamination;
- correct procedures and practical sampling;
- false positive/negative results; and
- health and safety.

16) The practical sessions must include testing of illicit drug preparations and emphasis should be placed on the chain of evidence, property storage procedures, exhibiting and statement provision and content. Annex B sets out the requirements for the provision of training to law enforcement personnel in the use of these devices.

Use of results from drug-testing devices in prosecutions

17) Evidence of the result from an approved drug testing devices may be accepted by the Crown Prosecution Service in:

- cases dealt with in a Magistrates' Court provided that the criteria set out in paragraph 7 apply; or
- cases where a guilty plea is entered in a Magistrates' Court, but where the defendant is committed for sentence to the Crown Court, provided that the criteria set out in paragraph 7 apply; or
- cases dealt with in the Crown Court where the identity of the substance is not in dispute; and there is further corroborative evidence to support the identity of the substance; and the criteria set out in paragraph 7 applies; or
- any case in order to facilitate a remand either in custody or on conditional bail, while awaiting the results of laboratory analysis (paragraph 7).

18) It is important that the chain of evidence is preserved and supported by proper documentation. Evidence of the result of the device or kit test must be accompanied by a signed witness statement stating that the test was an indicative test and that it was carried out by a member of law enforcement personnel who had been trained to carry out such tests in a manner approved by the Home Office (paragraphs 14-16). Training of personnel by other personnel who are not qualified to carry out such training is not acceptable. Attendance upon a course aimed at

training people in the use of drug testing kits does not confer qualification to train others (see Annex B).

Exceptions

19) Seized substances must be referred to a forensic science laboratory if any of the following circumstances apply:

- the substance is not suspected to a controlled drug as listed at Annex A;
- the result of the indicative test is disputed by the person or does not support the admission of the person with consideration having been made to the applicable Criminal Procedures Rules, particularly Rule 3.2(2)(a) (early identification of issues); or
- admission of the drug identification or possession by the person is withdrawn

If the case, although suitable in isolation for summary disposal, is subsidiary to other matters which will be committed for trial at the Crown Court a decision on whether the case should be fully analysed should be informed by, and compliant with the applicable Criminal Procedure Rules, parts 1,3 in particular Rule 3.2(2)(a) and (e), and Part 33.

Enquiries

20) Any enquiries about this circular should be addressed to [Simon Franklin](#), at NPIA, or on +44 (0) 203 113 7177.

Annex A

Approved drug-testing devices

1) Indicative drug testing devices for evidential purposes must be approved by the Home Office. Currently there are two types of kit that exist to identify drugs, which are Marquis Reagent kits that rely on colour change, and immunoassay kits that provide a line indication. A number of kits have been approved by the Home Office for use in testing for the following drugs only:

- heroin
- morphine
- amphetamine
- cocaine

in accordance with sections paragraphs 7-16 of Home Office Circular 015/2012 - Testing of substances suspected to be drugs controlled under the Misuse of Drugs Act 1971.

The Home Office approved kits for heroin, morphine and amphetamine are:

BDH Marquis Test Kit

VWR International Ltd, Poole, Dorset, BH15 1TD, telephone: 0800 223344. Product number 321761 U.

MMC Opiate/Amphetamine test

- Tetra Scene of Crime, Hygro Farm, Kennel Lane, Billericay, Essex CM11 2SU, telephone 01277 626100. Product number MMC 0100.
- Crack-Down Drug Testing, Unit 11, Boarshurst Business Park, Boarshurst Lane, Greenfield, Saddleworth, OL3 7ER, telephone 01457 877988. Product number MMC001.
- Forensic Pathways UK, Unit 3 Ninian Park, Ninian Way, Wilnecote, Tamworth, B77 5ES, telephone 01827 255170

NIK Marquis Reagent Test A

- Tetra Scene of Crime, Hygro Farm, Kennel Lane, Billericay, CM11 2SU, telephone 01277 626100. Product number NIK 800-607.

The Home Office approved kits for cocaine are:

Cozart Rapid Solids Cocaine Test Kit

Concateno UK Limited, 92 Milton Park, Abingdon, Oxfordshire, OX14 4RY, telephone 01235 861483. Catalogue number CST 523.

Drug-ID Cocaine Test Kit

D.tec International Limited, PO Box 13, Lytham St Annes, Lancashire, FY8 1GE, telephone 0800 371898.

2) Suppliers of other devices who would like their devices to be considered for addition to this list should contact the NPIA (tel:+44 (0) 203 113 7177 or email [drug test kit](#)). The Home Office will arrange for the device to be tested at the supplier's cost. In considering whether a device should be added to the Home Office approved list, particular attention will be given to its suitability for use by non-scientific staff; clarity of instructions; specificity of results; avoidance of contamination; labelling and packaging; and health and safety.

3) Home Office approval is subject to periodic renewal and at any time the device is modified. The Home Office must be notified in advance of any changes in the packaging, instructions or composition of the device. Any changes which in the view of the Home Office may affect the efficacy and safety of use will require re-testing at the supplier's cost. Failure to notify the Home Office of changes will result in approval being withdrawn.

Annex B

Training in the use of drug-testing devices

1) The following organisation remains approved by the Home Office for training law enforcement personnel in the use of drug testing devices as specified in paragraphs 14-16 of Home Office Circular 015/2012 (testing of substances suspected to be drugs controlled under the Misuse of Drugs Act 1971).

- LGC Forensics, Queens Road, Teddington, Middlesex, London TW11 0LY (telephone 020 8943 7540)

2) A new drug-testing device training syllabus for police forces and training organisations is under development. The syllabus will cover the use of all approved drug-testing devices and will include the theoretical and practical considerations of drug testing in order for the trainee to gain experience in performing the test and interpreting the results.

3) Any change to the requirements for the provision of training to law enforcement personnel in the use of drug-testing devices as specified in paragraphs 14-16 of Home Office Circular 015/2012 will be set out in a revised Annex B, to be published by November 2012.

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