



National Offender Management Service

Drug appointment and drug testing for licence conditions and post-sentence supervision requirements

This instruction applies to :-		Reference :-
Prisons Providers of Probation Services		PSI 32/2014 PI 30/2014
Issue Date	Effective Date	Expiry Date
1 May 2014	1 November 2014	31 March 2016
Issued on the authority of	NOMS Agency Board	
For action by	<p>All staff responsible for the development and publication of policy and instructions (<i>Double click in box, as appropriate</i>)</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> NOMS HQ <input checked="" type="checkbox"/> Public Sector Prisons <input checked="" type="checkbox"/> Contracted Prisons* <input checked="" type="checkbox"/> Governors <input checked="" type="checkbox"/> National Probation Service (NPS) Directorate <input checked="" type="checkbox"/> Community Rehabilitation Companies (CRC) <input checked="" type="checkbox"/> NOMS Rehabilitation Contract Services Team <input checked="" type="checkbox"/> Other providers of Probation and Community Services. <p><i>* If this box is marked, then in this document the term Governor also applies to Directors of Contracted Prisons except where specified</i></p>	
Instruction type	Service improvement/ Legal compliance	
For information	Supervising officers Victim Liaison Officers and Victim Unit Managers	
Provide a summary of the policy aim and the reason for its development / revision	This PI covers the new provisions introduced by the Offender Rehabilitation Act concerning drugs for both the licence and post sentence supervision periods, and provides clarity to both the NPS and CRC about application of the conditions and requirements brought in by these provisions	
Contact	For general enquiries: Ken Elliot ken.elliott@noms.gsi.gov.uk 0300 047 5064	
Associated documents	PI 11/2014 – Licence Conditions, Polygraph Examinations and Temporary Travel Abroad PI 29/2014 – Post Sentence Supervision Requirements PI 27/2014 – Recall, Review & Re-Release of Offenders PI 24/2014 – Enforcement of Post Sentence Supervision Requirements PI 08/2014 – Process for CRCs to refer cases in the community to NPS for Review/Risk Escalation Review	
<p>Audit/monitoring: The Director of NPS in England, Director of NOMS in Wales and NOMS Director of Rehabilitation Services for CRCs will monitor compliance with the mandatory requirements in this instruction.</p> <p>NOMS contract management will hold providers to account for delivery of mandated instructions as required in the contract.</p>		

NOMS Deputy Directors of Custody and Controllers, will monitor compliance with the mandatory actions set out in this Instruction.

Notes: *All Mandatory Actions throughout this instruction are in italics and must be strictly adhered to.*

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1. Executive Summary

- 1.1.1 This Instruction has been written for probation staff who will manage offenders serving a licence period as well as those sentenced to a custodial term of less than two years who will therefore be subject to a licence and a post-sentence supervision period, following implementation of the Offender Rehabilitation Act 2014 (OR Act).
- 1.1.2 The requirements set out in this PI relate to all those listed in the associated documents section above.
- 1.1.3 Throughout this Instruction, where the term Offender Manager is used, this can include, for both the NPS or the CRC, the Responsible Officer, Supervising Officer or Supervisor¹ which are the statutory roles carried out under relevant legislation. An Offender Manager provides the end-to-end process of supervision of an offender throughout any period of statutory supervision. The offender management function is discharged by implementing the sentence of the Court (including within a custodial setting), the licence conditions, and post sentence supervision requirements. This is most effectively achieved by liaising with all agencies involved with the offender to deliver any conditions / requirements in a manner that maximises the rehabilitation of offenders and the protection of the public.

Background

- 1.2.1 The purpose of both the licence condition and the supervision requirement is to support those with substance misuse issues to achieve recovery, and to ensure continuity of treatment and or support on entering the community. The instruction provides for the drug appointments and drug testing elements of licence and post sentence supervision and the offender management role of the NPS and CRC in recommending the conditions / requirements to governors and management in the community thereafter.
- 1.2.2 The first section covers drug appointments; and the second covers drug testing. These may be applied separately where one condition / requirement has been applied alone, but in many instances the conditions / requirements will be applied together, and where they are, there will be read across between the two. Therefore, this PI provides that all drug related guidance on post release conditions and requirements are in one place.
- 1.2.3 These conditions and requirements are different from those that form part of a community sentence Drug Rehabilitation Requirement (DRRs) where the offender has agreed to participate in a course of treatment.
- 1.2.4 *The Drug Appointment Condition/requirement makes attendance at a treatment service mandatory (i.e. if the condition is imposed the offender must attend, though engagement with treatment remains voluntary).* The purpose of the condition is to encourage those in need of treatment to engage (or in the case of those already in treatment in prison to continue to engage) in order to stabilise their transition to the community.
- 1.2.5 The Drug Appointment condition is *not* restricted to controlled drugs in class A and B, and can be applied whichever illegal drug (or multiple types of drug) is being misused. However, it should only be used where drug misuse is associated with dependence because treatment is not appropriate for occasional or recreational use. Drug testing *is* restricted to the specified Class A and B drugs. *For application of both the Drug Appointment and the Drug Testing conditions/requirements there must be reason to believe that misuse of illegal drugs is linked to previous or potential future offending.*

Desired Outcomes

¹ Subject to commencement of the relevant sections within the Offender rehabilitation Act 2014

- 1.3 This Instruction has been issued to ensure that NPS and CRC staff:
- are aware of the new drug appointment and drug testing condition / requirements available upon commencement of the relevant parts of the OR Act 2014.
 - that they know what is required of them in administration and monitoring of those conditions / requirements, and how they may relate to one another.
 - understand the distinction between drug appointment and testing conditions / requirements (as part of a post-release licence or post-sentence supervision period) and a Drug Rehabilitation Requirement (as part of a Community Order or Suspended Sentence Order).

Application

- 1.4 This Instruction applies where an offender has received either a drug appointment condition / requirement, or a drug testing condition / requirement, or both. This guidance applies to both the licence period and the post sentence supervision period, and the wider guidance for management of those periods applies. This PI is supplemental to that guidance and does not replace any part of it. Guidance on enforcement, particularly in relation to the good behaviour condition / requirement equally applies.
- Annex A provides a flow chart setting out the process for considering, approving, and overseeing drug appointments and testing conditions [to be completed]

Mandatory Actions

- 1.5 There are some mandatory actions in this instruction which duplicate requirements placed on the CRC in the agreed contracts (specifically in Schedule 7). For any duplicated mandatory actions the description in this instruction should be read as guidance only, with the basis for the requirement located in the Schedule rather than this instruction.
- 1.6 Where the instruction requires actions to be taken by the Governor of the releasing prison establishment, for Contracted Prisons, this should be read by as the Controller.

Providers of probation services (NPS and CRC)

- 1.7 *Heads of NPS regional delivery units and CRC must ensure that all relevant staff are aware of and comply with the mandatory requirements which are summarised below.*

Drug Appointments Condition / Requirement

- *liaise with relevant custody and community treatment providers to determine the details of any initial appointment arranged by them*
- *upon release, monitor compliance with attendance at the appointment in line with the duration set out in the license*
- *ensure the offender is provided with all the necessary information to enable them to attend each appointment*
- *oversee and support any co-ordination with a drug testing requirement or any other drug testing activities carried out by others along the offender or treatment pathway*
- *ensure accurate record keeping of attendance, and to arrange for this information to be provided to the Offender Manager, who will then pass it to the NPS if it forms part of the evidence relied on in recommending breach or recall decisions, as well as any other relevant evidence.*
- *report any refusal to attend drug appointments, including failure to attend a full session to the Offender Manager, who will then pass it to the NPS if it forms part of the evidence relied on in recommending breach or recall decisions, as well as any other relevant evidence.*

Drug Testing Condition / Requirement

- *ensure their activities support compliance with the individual testing requirements of the offender*
- *arrange appropriate processes for the testing of offenders for the misuse of Class A and Class B drugs in accordance with Good Industry Practice*
- *ensure those responsible for carrying out testing and the taking of samples have been trained to do so in accordance with Good Industry Practice,*
- *use only a nationally contracted provider of laboratory testing and / or testing kits approved by the Authority*
- *fully consult with stakeholders and partner agencies (for example any treatment providers), to ensure well informed decision making about use of the testing requirements*
- *ensure accurate record keeping of tests, samples and results, and to arrange for this information to be provided to the Offender Manager, who will then pass it to the NPS if it forms part of the evidence relied on in recommending breach or recall decisions, as well as any other relevant evidence.*
- *Report any refusal to comply with testing to the Offender Manager, who will then pass it to the NPS for consideration of breach or recall decision, , as well as any other relevant evidence.*

Providers of custodial services (public and private sector prisons)

- 1.8 *Governors must ensure that all relevant staff are aware of and comply with the mandatory requirements which are summarised below:*
- a) *Governors are responsible for approving additional licence conditions and post-sentence supervision requirements.*
 - b) *Following a recall to custody, the Governor must ensure that the appropriate amendments are made to the relevant release licence.*
 - c) *Where the Offender Manager has supported a court-recommended amendment to a supervision condition, the Governor must ensure that the appropriate amendments are made to the relevant requirements.*
 - d) *Governors must ensure that they only apply these conditions / requirements where the relevant criteria under the Act applies (see Sections 11 and 12 of the OR Act).*
 - e) *The wording of any condition must not be modified except where allowed by the use of square brackets.*

Resource Impact

- 1.9 The drug appointment and testing conditions / requirements are a new responsibility for probation providers. This includes monitoring of compliance with attendance with the drug appointments, and administering of drug testing. The provider will also be required to fund the drug testing, utilising a national call off contract held by NOMS. It will be for the Offender Manager to exercise their own discretion in the number of tests they carry out. The additional resources to fund this new commitment will be drawn from the savings from the move from 35 probation trusts to a single National Probation Service and 21 Community Rehabilitation Companies.

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Director of Commissioning, NOMS

2. Drug Testing and Drug Appointment Conditions/Requirements

Background

- 2.1 As stated in sections 11 and 12 of the Offender Rehabilitation Act 2014, there are two new licence conditions and supervision requirements which may be requested by the Offender Manager to manage the offender in the community. These requirements may only be imposed where there is a reason to believe that misuse of illegal drugs (for testing this applies to specified Class A and specified Class B drugs) caused or contributed to an offence of which the person has been convicted or is likely to cause or contribute to the commission of further offences by the person; and the person is dependent on, or has a propensity to misuse illegal drugs. The conditions are:

The Drug Appointment Condition

- (a) Attend **[INSERT APPOINTMENT TIME DATE AND ADDRESS]**, as directed, to address your dependency on, or propensity to misuse, a controlled drug;

The Drug Testing Condition

- (b) Attend **[INSERT NAME AND ADDRESS]**, as reasonably required by your Offender Manager, to give a sample of oral fluid / urine in order to test whether you have any specified Class A or specified Class B drugs in your body, for the purpose of ensuring that you are complying with the condition of your licence requiring you to be of good behaviour.

2.2 The Drug Appointment Condition/Requirement

- 2.2.1 This condition is aimed at offenders who have been or continue to be in treatment in prison, and they are in need of continuity of treatment or support upon release. It should only be used where drug misuse is associated with dependence because treatment is not appropriate for occasional or recreational use.
- 2.2.2 This is different to appointments that form part of a community sentence Drug Rehabilitation Requirement (DRRs). The Drug Appointment Condition makes attendance mandatory (i.e. if the condition is imposed the offender does not have a voluntary choice about attendance), but take up of treatment itself is not mandatory and would be up to the offender – non undertaking would not constitute a breach so long as the appointment was attended for the duration specified by the appointment provider. The purpose of the condition is to encourage those in need of treatment to engage (or in the case of those already in treatment in prison to continue to engage) in order to stabilise their transition to the community.
- 2.2.3 Additionally the Drug Appointment condition can apply for appointments for any kind of drug problem, and is not restricted to the misuse of any controlled drug (i.e. not just class As and Bs).
- 2.2.4 They may also be applied to those who have achieved recovery but for which there is a chance of relapse upon release. The Offender Manager should seek and be guided by advice from the relevant treatment provider or other drug workers in prison, as to the offender's suitability for this condition / requirement. The following guidance is to support the Offender Manager in making that decision for recommendation to the Governor:
- i. that the misuse by the offender of a controlled drug caused or contributed to an offence of which the offender has been convicted or is likely to cause or contribute to the commission of further offences by the offender; and,
 - ii. that the offender is dependent on, or has a propensity to misuse, a controlled drug; and,

- iii. that the dependency or propensity requires, and may be susceptible to, treatment; and,
- iv. the prison based treatment provider or health worker should liaise with their counterparts in the community to ensure that appropriate appointments are in place upon release. The Offender Manager will then need to confirm this before making a recommendation to the Governor or Director of the prison that the condition is applied. The Governor / Director will need to be satisfied that an appointment, with a known time and place, is identified before the condition can be applied.
- v. The type of appointment(s) offenders are required to undertake will be determined following a recommendation or referral by a health professional, with input from the Offender Manager.
- vi. *An offender can only be breached or recalled for non attendance, and must not be breached or recalled for failing to cooperate with treatment plans. In line with other licence conditions, any offender who poses an unacceptable risk to the public must be recalled, or the post sentence supervision period enforced through the court.*

2.2.5 It is the Offender Manager's role to monitor compliance with attendance at appointments. The Offender Manager should ensure that the offender has all the information they need in order to comply, for example the date time and place of any appointment(s). In addition, the Offender Manager should liaise with the treatment provider in an endeavour to gain information where possible, for example on attendance and engagement / progress with any treatment plan (it should be noted that although there is no national or standard requirement upon treatment providers to share information with probation services, the probation provider should seek to build relationships so that exchange of information can be achieved). However, as engagement with treatment is voluntary, and information upon engagement will be for information purposes, and cannot be used as evidence of non-compliance. However, non-attendance should lead to consideration of breach action.

2.2.6 Where it transpires that an offender has successfully completed treatment, or that treatment is no longer appropriate for any other reason, this should be clearly recorded by the Offender Manager. .

Breach

2.2.7 Guidance in PI 27/2014 – Recall, Review & Re-Release of Offenders, PI 24/2014 – Enforcement of Post Sentence Supervision Requirements, and PI 08/2014 Process for CRCs to refer cases in the community to NPS for Review/Risk Escalation Review apply. For drug appointments, non-attendance at the drug appointment should be analogous to non attendance at any other mandated appointment (e.g. with the Supervising Officer), and consideration as to the need for breach action should be the same. There are a number of reasons why offenders may fail to comply and it is not the intention of this Instruction to provide an exhaustive list. *Clearly, every effort must be made by the Offender Manager to allow the offender to submit reasonable excuse for non-compliance.* However, Offender Managers should guard against condoning under-compliance and be guided by the principles of failure of the offender to comply which are:

- the failure to comply is indicative of a serious, gross, wilful or fundamental failure to comply or;
- a significant rise in the risk of serious harm (under such circumstances the risk escalation processes should be activated where appropriate) or likelihood of re-offending is presented by the offender

2.3 The Drug Testing Condition

2.3.1 Offender Managers should aim to support offenders to become or remain drug free (and therefore testing negative). However, Offender Managers will need to recognise that i) this may not happen immediately, especially if access to treatment (where relevant – see instructions on the Drug Appointments condition) is slow; ii) that people may have dips

where they use but overall their drug taking is reducing / treatment is working and this should be allowed to continue.

The Offender Manager will have flexibility in deciding when and for what to test (and to step frequency up or down), as well as making recommendations for breach for a failed test. The first part of the following guidance is to support the decision making process in when to test, and the second part in supporting decision making for when to refer to NPS for breach or recall (2.3.9 – 2.3.11).

Criteria for application of the Condition / Requirement:

2.3.2 *The Following must apply:*

- i. *that the misuse by the offender of a specified class A drug or a specified class B drug caused or contributed to an offence of which the offender has been convicted or is likely to cause or contribute to the commission of further offences by the offender; and,*
- ii. *that the offender is dependent on, or has a propensity to misuse, a specified class A drug or a specified class B drug.*

The decision to test is a matter for the discretion of the offender management officer. *When considering if testing is needed, the offender management officer must first determine the basis under which they are testing.* This should fall into three categories: random testing; suspicion testing; and risk based testing.

Random testing

2.3.3 This is testing of the probation caseload, for whom this condition applies, on a random basis. E.g. the Offender Manager(s) should choose a number of people (as specified by the probation provider) at random to test over a designated period (again as specified by the probation provider). For example, 10 offenders from the cohort each week, picked at random. This type of testing should be carried out as a kind of 'dip sample', with the aim of ensuring that offenders are remaining abstinent

Suspicion testing

2.3.4 This should be aimed at people that the Offender Manager has reason to believe, through intelligence or otherwise, that the offender has been misusing one or more of the specified class A and B drugs. The aim is to confirm or deny that suspicion. Past history of drug misuse alone should not constitute practical or reasonable grounds for suspicion, there should be additional grounds such as unexplained violent or unpredictable behaviour, or intelligence of an association with drugs (possibly from police or a local Integrated Offender Management team). Additionally, this may apply if an offender had been voluntarily engaging in a course of drug treatment, and they then disengage, and this leads the Offender Manager to believe their risk of reoffending, or of harm, is increasing. This type of testing should be carried out as soon as possible after the action / behaviour which gave rise to the suspicion.

Risk based testing

2.3.5 This kind of testing is for offenders for whom there is a reason to believe that either their risk of harm or their risk of reoffending is elevated through misuse of illegal drugs. This relates to the purpose of the licence period: the protection of the public; as well as the prevention of re-offending. Where it relates to the post sentence supervision period, this relates to the prevention of re-offending and the re-integration of the offender into the community. As such, tests for reasons of risk may be pre-emptive in relation to the offenders personal circumstances.

Other Considerations

- 2.3.6 When proposing conditions for the post-sentence supervision period, the offender management officer should take into account the continuity of supervision across both the licence and supervision period, as well as any relevant information from health practitioners. For example, where a drug testing condition is imposed in the licence period then consideration should be given to whether it should also be imposed during the post sentence supervision period and vice versa. In most cases, it is expected that testing or drug appointments for the purpose of treatment that begin during the licence period would continue during the supervision period. *It should be noted that only attendance at the appointment is mandatory, as engagement in any treatment itself must be voluntary.*
- 2.3.7 Where an offender is also engaging in treatment, with or without the requirement to do so under a licence condition or post sentence supervision requirement for drug appointments, the offender may also be tested by the treatment provider as part of their treatment plan. Where this is the case, it is recommended the Offender Manager should liaise with the treatment provider in an endeavour to gain information where possible on any test results (it should be noted that although there is no national or standard requirement upon treatment providers to share information with probation services, the probation provider should seek to build relationships so that exchange of information can be achieved). If this information is forthcoming, it may inform the Offender Manager's decision on whether / when to test under their own powers. There is nothing to say that an offender cannot be tested both under this condition / requirement as well as being tested by a treatment provider, if the condition / requirement has been imposed by the Governor / Director, and the Offender Manager feels use of the power is appropriate, having regard to this PI.

Breach and Recall

- 2.3.8 However, compliance with providing a sample for testing is a mandatory element of the licence condition/supervision requirement, and any refusal would be a breach of the condition/ requirement. Testing resulting in a positive result may also lead to breach of the Good Behaviour Condition / Requirement as set out below.

Positive Tests and Breach of the Good Behaviour Condition / Requirement

- 2.3.9 Whilst this condition / requirement can only be directly breached by refusal to take the test, production of a positive test result should instigate consideration of a breach of the Good Behaviour Condition / Requirement. Taking of illegal drugs in of itself could be seen to fail the test for Good behaviour (for example if the Offender Manager believes the offender has been in possession of illegal drugs, which would be a 'further offence') Following testing for any of the above reasons, if the offender tests positive (for any of the specified class A or class B drugs), testing should be repeated a number of times over a designated period to verify the nature of the drug taking, and whether it should constitute a breach of the good behaviour condition. The frequency of testing and the period over which the testing needs to continue will vary between the different types of drug that can be tested for. The table below indicates, by each individual drug, the frequency intervals for follow-up testing (after an initial positive test) and the period during which this continue. The reason for the different frequencies is the amount of time needed to elapse in order for the drug to leave the body, before testing will pick up a new instance of drug taking. That differs for each drug. For the shorter acting drugs, in particular crack cocaine and amphetamines, for suspicion based testing, the test should be carried out as soon as practicably possible, as after 24 hours the drug may have become undetectable. The efficacy of the evidence for

oral testing is less strong than for urine testing, so this guide should only be taken as indicative for offender management purposes².

Drug	Recommended frequency of Testing	Cut off levels and detection window	Trigger for Breach
Cocaine	Minimum twice a week	30 ng/ml with detection window of 12 hours	2 consecutive positive tests (i.e. a positive test on the next occasion following the first initial positive test); or 3 non consecutive positive tests during a 6 week period following the initial test
Crack Cocaine	Minimum twice a week	30 ng/ml with a detection window of 12 hours	2 consecutive positive tests (i.e. a positive test on the next occasion following the first initial positive test); or 3 non consecutive positive tests during a 6 week period following the initial test
Heroin	Twice a week	40 ng/ml with a detection window of 24 hours	2 consecutive positive tests (i.e. a positive test on the next occasion following the first initial positive test); or 3 non consecutive positive tests during a 6 week period following the initial test
Cannabis / cannabinoids (THC) (NB urine testing is preferred as THC is less reliably detected through oral swabs)	Twice a week via oral swabs Once a month using urine testing	25 ng/ml with a window of detection of 24hrs for oral swabs 25 ng/ml with a window of detection of 24 to 96 hours for urine testing	2 consecutive positive tests (i.e. a positive test on the next occasion following the first initial positive test); or 3 non consecutive positive tests during a 2 month period following the initial test
Amphetamines	Twice a week	50 ng/ml with a detection window of 1-2 days	2 consecutive positive tests (i.e. a positive test on the next occasion following the first initial positive test); or 3 non consecutive positive tests during a 6 week period following the initial test

² Urine and oral fluid testing are based on different pharmacology. The waiting times, cut-off levels and frequency of testing displayed in this table are for the detection of drugs in oral fluid (with the exception of cannabis and cannabinoids where both are displayed as urine testing is more reliable). Oral detection windows are much shorter than for urine, but this information is based on testing for oral fluids, as testing this way, through a mouth swab, is likely to be easier to administer in the community.

2.3.10 However, there are may be a number of reasons why offenders provide a positive test and it is not the intention of this Instruction to mandate the instigation of breach action as outlined above in every case. Discretion should be used. *Clearly, every effort must be made by the Offender Manager to allow the offender to submit reasonable excuse for non-compliance.* However, Offender Managers have discretion to move straight to breach procedures following only one instance of a positive test result, if they believe there are other factors involved such as:

- the failure to comply is indicative of a serious, gross, wilful or fundamental failure to comply or;
- a significant rise in the risk of serious harm (under such circumstances the risk escalation processes should be activated where appropriate) or likelihood or re-offending is presented by the offender

2.3.11 If at the initial test the result is negative, the Offender Manager will use their own discretion to determine whether and when to test again, giving thought to the three main bases for testing outlined above (random, suspicion or risk based).