

## Chapter 21

### Compulsory drug testing (CDT) and post incident drug and alcohol testing (PIDAT)

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## Chapter 21

# Compulsory drug testing and post incident drug and alcohol testing

### Part 1 - Misuse of drugs and alcohol

#### Introduction

- 1. Drugs.** The misuse of drugs is incompatible with the demands of Service life and poses a significant threat to operational effectiveness. The implications of drug misuse are particularly damaging and the illegal possession and misuse of controlled drugs is an offence under both Service and civil law. Drugs impair judgement and reliability, reduce fitness, damage health, degrade performance, harm team cohesion and Service ethos - as well as being harmful personally, to family relationships and to society generally. It is Service Personnel Board policy that there is no place in the armed forces for those who misuse drugs. Only in exceptional circumstances will any member of the armed forces be retained following drug misuse.
- 2. Alcohol.** The nature of the Services' role demands the highest standards from its personnel, who are required to perform exacting duties, which often directly affect the lives of their colleagues. Social drinking may play a part in group bonding; however, it is recognised that those who misuse alcohol or suffer from alcohol dependency are a potential hazard to themselves, their families and their colleagues. Personnel are liable to be called for duty at any time. Therefore, the excessive consumption of alcohol and, in some situations, any alcoholic consumption, may adversely affect their capability to perform their duties safely and accurately. Misbehaviour, unfitness for duty due to alcohol, and drinking and driving offences may be dealt with as offences under the Armed Forces Act 2006 (the Act).
- 3. Testing.** To reflect the risks posed by the misuse of drugs and alcohol within the armed forces and to act as a major part of the Services' deterrent strategy the Services operate CDT and PIDAT regimes. The following guidance outlines the law and tri-Service policy in relation to alcohol and drug testing within the Services and should be seen as initial guidance and background information to inform Commanding Officers (COs) of their responsibilities in this area. Further detailed guidance on policy and procedures is contained in JSP 835 (Alcohol and Substance Misuse and Testing).

## Part 2 - Legislative provisions

### The law

4. The Armed Forces Act 2006 (the Act) and regulations made under it<sup>1</sup> provides for testing for drugs and alcohol to be carried out in specified circumstances on personnel subject to Service law and in some cases, on civilians subject to Service discipline. The results of such tests are not admissible<sup>2</sup> as evidence in disciplinary proceedings for a Service offence. However, the provisions contained within the Act do not limit the statutory powers to test for alcohol and/or drugs under the Police and Criminal Evidence Act 1984 or the Road Traffic Act 1988<sup>3</sup>; nor do they affect the admissibility of evidence obtained under those statutes in any proceedings<sup>4</sup>.

### Definitions

5. For CDT purposes drug<sup>5</sup> means a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971 whilst for PIDAT it means either a controlled<sup>6</sup> drug as above or any other drug specified by subordinate legislation for these purposes. Sample, encompasses a sample of breath or urine where it is required to test for alcohol or a sample of urine where it is required to test for drugs. Samples may not be invasive samples, such as blood. Persons being tested must consent to the taking of any sample<sup>7</sup>. Failure to comply with a requirement to give a CDT sample is an offence and failure without reasonable excuse to comply with a requirement to give a PIDAT sample is also an offence<sup>8</sup>.

### Regulations

6. Regulations governing the obtaining and analysis of samples, the Armed Forces (Drug Testing) Regulations 2009 and the Armed Forces (Post Incident Alcohol and Drug Testing) Regulations 2009, are in [Chapter 37](#) (Armed forces Act 2006 – Statutory Instruments and Defence Council Regulations). These regulations provide authority for a number of procedural matters such as the number of samples a person may be required to provide, the procedures employed to analyse samples and the training and qualifications of those persons carrying out such analysis.

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<sup>1</sup> Sections 305-308 of the Act, the Armed Forces (Drug Testing) Regulations 2009, the Armed Forces (Post Incident and Alcohol Testing) Regulations 2009.

<sup>2</sup> Section 308(3) of the Act.

<sup>3</sup> Section 308(4) of the Act.

<sup>4</sup> Section 308(4) of the Act.

<sup>5</sup> Sections 305(4) and 307(2) of the Act.

<sup>6</sup> Within the meaning of the Misuse of Drugs Act 1971 for example: cannabis, cocaine and ecstasy.

<sup>7</sup> Sections 307(3), (4), and (5) of the Act.

<sup>8</sup> Sections 305 - 306 of the Act.

## Part 3 - Compulsory drug testing

### Policy and administration

7. **Aim.** The aim of the CDT programme is to provide an effective deterrent capability, in the most cost-effective manner, in support of the armed forces' wider measures to prevent drug misuse within the Services. Each Service conducts its own CDT programme of testing.

8. **Liability for testing.** CDT is conducted randomly among all personnel subject to Service law<sup>9</sup> serving in single-Service, NATO and joint-Service units in the United Kingdom and overseas. Civilian staffs working with the Services and personnel from other nations on exchange duty are excluded from the programme.

9. **Consequences of a positive test result.** Whilst evidence of drug misuse obtained by CDT sample cannot be used to support disciplinary action, it may be sufficient to satisfy the evidential standard (the balance of probabilities) for administrative action.

10. **Retention of personnel.** Exceptionally, in some cases of drug misuse involving young Service personnel the CO may consider that the offender need not be discharged from the Service<sup>10</sup>. Tri-Service policy allows COs to recommend the retention of personnel:

- a. Who meet all the following exceptional circumstances:
  - (1) Young (under 25) personnel;
  - (2) Below the rank/rate of leading hand or corporal;
  - (3) First time offence,
  - (4) The prospect for reforming the individual is good, and;
  - (5) In all other respects the individual is considered a promising Service person whose retention would be in the interests of the Service. Consideration should include: Service record; the contents of any representation; any expressed attitude towards drug misuse; and any background circumstances to the incident; or
- b. Who have provided a statement that satisfactorily explains the presence of a drug, for example, inadvertent or accidental ingestion such as spiking that is accepted as valid by the CO, or cannot be refuted on scientific grounds, and which is supported by independent evidence, including circumstantial evidence (e.g. drink "spikers" known to be operating in a particular pub/club).

The decision as to whether an individual may be retained is to be taken by the Appropriate Authority<sup>11</sup> in accordance with single-Service practice.

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<sup>9</sup> Including members of the Reserve Forces see section 367 of the Act.

<sup>10</sup> See RN PLAGOS, AGAI 63 Volume 5, Instruction 4. RAF personnel who deliberately and knowingly misuse Class A drugs will not be retained in the Service.

<sup>11</sup> RN: Nav Sec/Army: DMA/ RAF: Higher Authority or CO.

## The law

11. A drug testing officer<sup>12</sup> may require a person subject to Service law to provide a sample of urine to test for drugs<sup>13</sup>. This statutory power underpins the operation of our random drug testing programme (CDT) under which all members of Her Majesty's forces, regardless of rank or rate, are subject to periodic random testing. There is no requirement for a person to be suspected of drug misuse before a urine sample can be demanded. Where disciplinary action is more appropriate, a person suspected of drug misuse should not be tested under CDT arrangements; in such circumstances, the Service Police should be called to investigate. The selection of personnel for CDT should remain random to ensure that the process continues to be seen as a deterrent, any other testing must be justified<sup>14</sup> and capable of withstanding legal scrutiny. The power<sup>15</sup> to drug test randomly may not be exercised in connection with the investigation of an offence or of a serious incident<sup>16</sup>, or where the drug testing officer (or his CO) is the CO of the person to be tested<sup>17</sup>.

12. **Consequence of failure to provide a sample.** A person commits an offence<sup>18</sup> if he fails to comply with a requirement to provide a sample of urine for analysis when required to do so by a drug testing officer<sup>19</sup>. On conviction at Court Martial (CM) trial an offender will be liable to any of the punishments available to the CM<sup>20</sup>, but any sentence of imprisonment or detention imposed may not exceed 51 weeks. Administrative discharge from the armed forces<sup>21</sup> is possible where an individual is not dismissed following conviction by CM. An offence of failing to provide a sample is also capable of being dealt with summarily, but the powers of punishment of the CO do not include dismissal. Administrative discharge will need to be considered where an offence is dealt with summarily.

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<sup>12</sup> See section 305(4) of the Act and the Armed Forces (Drug Testing) Regulations 2009, regulation 2.

<sup>13</sup> Section 305(1) of the Act.

<sup>14</sup> For example when information has been received that a person or identified group of persons may be misusing drugs and there is insufficient evidence for a police investigation.

<sup>15</sup> Section 305(2) of the Act.

<sup>16</sup> Section 305(2) of the Act.

<sup>17</sup> Section 305(2) (a) of the Act.

<sup>18</sup> Section 305(3) of the Act.

<sup>19</sup> Such an offence may be dealt with summarily-see section 53(1)(i) of the Act.

<sup>20</sup> Section 164 of the Act.

<sup>21</sup> Under QRRN 3626, Army QR Chapter 9 Section 3, and RAF QR 1028.

## Part 4 - Post incident drug and alcohol testing

### Policy and administration

13. **Aim.** The purpose of PIDAT is to inform Service Inquiries, which may be convened following serious incidents or near misses that have resulted in, or created a risk of, death or serious injury to any person or serious damage to property. The PIDAT regime applies to all incidents and accidents including, but not limited to, maritime, air, range and training accidents. Currently the PIDAT regime only covers incidents occurring on the UK mainland and in home waters.

14. **Liability for testing**<sup>22</sup>. Service personnel and relevant civilians<sup>23</sup> are liable for testing where:

a. An incident has occurred which in the opinion of their CO resulted in, or created a risk of, death or serious injury to any person or serious damage to any property, and

b. In the opinion of the officer it is possible that the person may have caused or in any way contributed to:

(1) The occurrence of the incident;

(2) Any death or serious injury to any person, or serious damage to any property resulting from it, or

(3) The risk of any such death, injury or damage.

15. The CO, as the Designated Officer (DO) may, in order for it to be ascertained whether or to what extent the person had or has had alcohol or drugs in his body, require the person to provide a sample for analysis.

16. Personnel of one Service attached to another are liable to be tested under the arrangements of the Service to which they are attached as well as their own, as are certain categories of exchange officers<sup>24</sup>.

### The law

17. **Authority for sample collection/testing.** A CO may order PIDAT but may delegate the authority to his immediate subordinate<sup>25</sup> in command or to such other officer as he considers to be appropriate, as necessary and when appropriate to do so (for example, during a period of absence from the unit). Where more than one CO is involved in a single incident each can decide within their command who should be tested. This may involve consultation between COs to identify appropriate individual(s), which should be done by agreement at the time.

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<sup>22</sup> Section 306(3) of the Act.

<sup>23</sup> In reality as the regime is limited to the UK, relevant civilians are unlikely to be tested.

<sup>24</sup> Officers subject to the Visiting Forces Act – Australia, Canada, New Zealand and ROI.

<sup>25</sup> This will usually be an OF3.

18. **Consequences of failure to provide a sample.** It is an offence<sup>26</sup> for an individual to refuse without reasonable excuse to give a sample<sup>27</sup> when required to do so<sup>28</sup>. On conviction at CM an offender will be liable to any of the punishments available to the CM<sup>29</sup>, but any sentence of imprisonment or service detention imposed may not exceed 51 weeks. Administrative discharge from the armed forces<sup>30</sup> is possible where an individual is not dismissed following conviction by CM. An offence of failing to provide a sample is also capable of being dealt with summarily, but the powers of punishment of the CO do not include dismissal. Administrative discharge will need to be considered where an offence is dealt with summarily.

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<sup>26</sup> Section 306(4) of the Act.

<sup>27</sup> A sample of breath and/or urine.

<sup>28</sup> Such an offence may be dealt with summarily.

<sup>29</sup> Section 164 of the Act.

<sup>30</sup> Under QRRN 3626, Army QR Chapter 9 Section 3, and RAF QR 1028.