

PRIVACY IMPACT ASSESSMENT - Drug and Alcohol Policy

Purpose

What personal information do you intend to collect or use and why?

The proposed Drugs and Alcohol policy proposes moving to a system of random testing for Council employees occupying posts considered "safety critical". Other staff may be asked to undergo testing "with cause".

The data which will be recorded will be the results of any initial screening tests, and in the case of an initial positive screening for drugs, a urine sample will be collected by an external laboratory. This will include storing records of the employee's name, date of birth, NI number and gender.

The reasons for undertaking testing are as follows:

- to ensure that staff are fit to attend work, especially when undertaking safety critical roles;
- to protect staff and members of the public;
- under the Health and Safety at Work Act 1974, the Council has a duty to ensure a safe place of work and safe systems of work for its staff and has duties to assess the risks to their health and safety under the Management of Health and Safety at Work Regulations 1999 (SI 1999/3242); and
- random tests are aimed at deterring drug or alcohol misuse in safety critical roles due to the unpredictable intervals at which they can be carried out.

Processing

What do you propose to do with the personal information?

e.g how will you collect the information, where will you keep it, how will you use it, who might you share it with, how and when will you delete it?

An electronic record will be made of the testing, the outcome of the screening and any lab results. This can only be accessed by HR, or by the relevant line manager.

Justification

Why is what you propose a necessary and proportionate thing to do?

e.g is the impact on privacy proportionate to the aims of the project?

We have had a number of instances of drug and alcohol tests which have shown positive results. These were mainly carried out following whistleblowing allegations, which proved to be at least partially justified. There is evidence from local drug and alcohol support organisations that some drugs, such as cannabis and cocaine, are being used on a widespread basis in the area. Many of our jobs are safety critical because they use machinery or hazardous substances, drive vehicles, operate beside the public highway, or because they involve regular conflict and / or lone working.

We believe that testing for health and safety reasons is justified as the risk to health and safety outweighs the adverse impact that the testing could have on the individual in terms of data protection, interference with human rights and damage to the relationship of trust and confidence.

Testing "with cause" is testing where there is a reasonable suspicion that the employee's performance or conduct is impaired by drugs or alcohol, giving rise to a safety risk. In these circumstances, the Council will attempt to investigate the situation before carrying out a test, including asking the employee for an explanation of his or her behaviour. However, we will also bear in mind that the need to investigate must

be balanced against the fact that time is of the essence in determining accurate results.

In safety-critical areas, we believe that we are justified in testing employees following the occurrence of a workplace accident that caused or could have caused a danger to health and safety, regardless of whether or not the employees' behaviour suggests drug or alcohol use.

Consultation

Have you consulted the people who may be affected by what you propose?

Please give details of the consultation – who did you consult, how did you consult them, what did they say and has this led you to change your proposal in any way?

If you do not intend to consult, please explain why.

The initial draft policy was sent out to all staff in November 2017. Staff whose posts were identified for the random testing pool have also been asked to feed back any comments about their inclusion. Only one team have commented on the risks attached to their role and this is being considered via the job evaluation process.

The Trade Unions have been consulted. GMB and Unite returned no comments. Unison suggested some changes, some of which have been incorporate into the draft policy. However, the local branch has been advised by the Regional office not to agree to the changes. We understand their position but believe the changes are required. Management Review Committee will be advised of Unison's position before making a decision.

Privacy Risks

What are the privacy and other risks ?

Drug and alcohol testing are protected by Article 8 of the European Convention on Human Rights - the right to privacy. Any infringement of that right must be:

- in accordance with the law
- in pursuance of a relevant legitimate aim, and
- necessary in a democratic society

This test of 'proportionality' involves balancing the potential infringement of the individual's rights against the specific objectives of the employer.

Under the Act, the term 'processing' includes 'obtaining, recording, holding, using or disclosing' data. Data which reveals information about criminal conduct or health, as drug and alcohol testing is likely to do, can only be processed in accordance with the principles contained in the Act. We will therefore ensure that we are fair to the employee, specific as to why we are keeping the information, and that this is relevant, accurate, not kept longer than necessary, kept secure and processed and transferred in accordance with the Act.

The results of drugs tests may disclose that an employee is taking prescribed drugs and is disabled for the purpose of the Equality Act 2010.

We will use the most non-invasive testing methods for drugs and alcohol that we can. Our proposed methods are sweat / saliva wipe for the initial drugs screening and a breathalyser for alcohol. These are the same as the Police use so we can be confident in their reliability. Employees may need to give urine samples in the event of a positive drugs screen but privacy will be respected as far as possible while maintaining the necessary chain of custody procedures.

How will you reduce the risks?

Mitigation measure(s) (use a continuation sheet if you need to)	Risk reduced or eliminated?
Where tests are carried out, they will be done in a way that assures the dignity and confidentiality of the employee is kept intact. Tests will be carried out in a private location. Employees may request to have a witness present.	Reduced
We will use the least intrusive methods possible to conduct tests.	Reduced
We will limit testing to those substances and the extent of exposure that will have a significant bearing on safety, by using the legally defensible workplace cut off levels for drugs tested by the Police when looking at fitness for driving.	Reduced
The criteria used for selecting staff for testing are justified, properly documented, adhered to and communicated.	Reduced
Random testing will be confined to employees whose activities have a significant impact on health and safety, i.e. where their private activities could significantly impact on their safe job performance.	Reduced
We will make sure that employees are fully aware that drug or alcohol testing is taking place, and of the possible consequences of being tested by having a clear policy and communicating this.	Reduced
We will ensure that consent is properly explained and obtained before any testing goes ahead.	Reduced
If a positive test result is received, we will consider whether or not the drug or alcohol issue impacted on the employee's work, other staff or health and safety before reaching any decision on disciplinary action.	Reduced
We will give due consideration to whether or not any assistance can be given to an employee with an addiction problem.	Reduced
We will ensure that drug and alcohol testing is conducted by trained testers.	Reduced
Only those who need the information to manage the employee should have access to it.	Reduced

**Completed by Kirsten Burnett, Head of HR
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