



02504 PROCEDURE – EVIDENTIAL BREATH SPECIMENS: STATIONS PROCEDURE

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ECHR **Potential Equality Impact Assessment:** High

1. About This Procedure

- 1.1. This document explains the procedure that is followed by Hampshire Constabulary when requiring evidential breath specimens from a person, at a police station, after being arrested during an investigation into suspected offences under sections 3A, 4 or 5 of the Road Traffic Act 1988.
- 1.2. This Procedure also applies to the requirement and taking of evidential breath specimens under the Transport and Works Act 1992.

2. Risk Assessments / Health & Safety Considerations

- 2.1. There are no specific risks associated with the implementation of this procedure.

3. The Procedure

3.1. Approved Intoximeter Operators

- 3.1.1. A person arrested in relation to a suspected offence under sections 3A, 4 or 5 of the Road Traffic Act 1988 will be taken to a police station where there is an evidential breath testing machine. At that police station the procedure set out in forms MGDD/A and MGDD/B must be followed by an approved Intoximeter Operator and the relevant MGDD forms will be completed, contemporaneously, by the Operator.
- 3.1.2. This procedure will only be carried out by approved Intoximeter Operators.
- 3.1.3. An approved Intoximeter Operator is a police officer who has successfully completed the Hampshire Intoximeter Course.



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3.2. Initial Action

- 3.2.1. The arrested person will in all cases be put before the custody officer who will decide whether or not to authorise their detention.
- 3.2.2. If, when given their rights, a detained person requests to consult with a solicitor the custody officer shall inform that person that efforts will be made to contact a solicitor forthwith but that the commencement of the procedure will not be delayed nor will it, once commenced, be interrupted or suspended to facilitate this request.
- 3.2.3. Where officers conducting the procedure encounter communications difficulties with detained persons in relation to language, visual or hearing impairment expert help (e.g. verbal or sign language interpreters) will be arranged through the Custody Officer.
- 3.2.4. In cases where a juvenile is detained and required to provide evidential specimens there is no requirement to delay the commencement of the procedure to allow an appropriate adult to be present. The procedure is not an interview. Normal arrangements will be made to contact an appropriate adult requesting their attendance but the procedure to obtain the evidential breath specimens will be commenced at the earliest opportunity.
- 3.2.5. Once the detained person has had their detention authorised they will be taken to the 'Intoximeter area/room' where the procedure will be commenced by an approved Intoximeter Operator.

3.3. Requirement For Evidential Breath Specimens

- 3.3.1. Before commencing the procedure the Intoximeter Operator shall in all cases commence video recording the process - see Procedure 02505 – Audio Visual Recording of Breath Test Procedure.
- 3.3.2. It is simpler to prosecute for 'excess alcohol' rather than for 'impairment' and therefore in all cases where alcohol is suspected of being a factor evidence of alcohol will be sought in the first instance. This applies where a person has been arrested for an offence of impairment, whether in relation to drink or drugs. Only if it is clear to those dealing with the detained person that alcohol is definitely not a factor then, in accordance with the MGDD/A and MGDD/B, the Operator



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may deal with the person as impaired through drugs and no requirement for breath need be made (see Procedure 02506 – Impairment: Station Procedure).

- 3.3.3. In a case where drugs are suspected but the lower evidential breath specimen result is 51 or more microgrammes of alcohol in 100 millilitres of breath proceedings will be taken for the 'excess alcohol' offence.
- 3.3.4. In a case where drugs are suspected and the lower evidential breath specimen result is between 40 and 50 microgrammes of alcohol in 100 millilitres of breath and the detained person does not opt to have the breath specimens replaced by blood or urine specimens proceedings will be taken for the 'excess alcohol' offence.
- 3.3.5. In a case where drugs are suspected and the lower evidential breath specimen result is between 40 and 50 microgrammes of alcohol in 100 millilitres of breath and the detained person does take the statutory option to have the breath specimens replaced by blood or urine specimens they must be allowed to do so. The Intoximeter Operator shall then consider whether the circumstances also justify further investigation into the possible impairment of that person. If further action is justified the procedure contained within the MGDD/B will be followed.
- 3.3.6. In a case where drugs are suspected and the lower evidential breath specimen result is less than 40 microgrammes of alcohol in 100 millilitres of breath the Intoximeter Operator will follow the 'impairment' procedure contained in the MGDD/A and MGDD/B. See Procedure 02506 – Impairment: Station Procedure.
- 3.3.7. Where a detained person fails to provide a specimen of breath when required to do so the 'mouthpiece' used on the Intoximeter will be retained by the Intoximeter Operator, in accordance with the MGDD/A, to refute any later allegations that it was defective.

3.4. Blood Or Urine Evidential Specimens

3.4.1. If, due to one of the following reasons:

- a) There is reason for the Intoximeter Operator to believe that for medical reasons a specimen of breath cannot be required;



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- b) At the time of making the requirement there was no reliable Intoximeter instrument available;
- c) There is reason for the Intoximeter Operator to believe that the Intoximeter has not produced a reliable indication of the proportion of alcohol in the breath of the person concerned

It is necessary for the officer conducting the procedure to require a blood or urine specimen or, where appropriate, offer the statutory option of providing blood or urine to replace breath specimens it will be the choice of that officer whether the specimen provided will be blood or urine.

- 3.4.2. Before making a decision as to whether any specimen to be taken will be blood or urine the officer conducting the procedure will listen to any representations made by the person being tested. Although under normal circumstances the preferred option will be blood (see 3.4.6) below regarding juveniles) if the detained person states a preference for providing urine that wish will be acceded to if supported by a medical reason which the officer has no reason to doubt.
- 3.4.3. Where, based upon medical reasons, the detained person states a preference for providing urine rather than blood and the officer dealing has genuine doubt as to the validity of that reason he/she will either accede to the request or obtain medical advice before making the decision.
- 3.4.4. Where a detained person states a preference for providing urine rather than blood and the reason supporting that preference is not a medical one but appears to be both genuine and reasonable, for example a religious or cultural custom or belief, then the officer will accede to that request.
- 3.4.5. Where the officer conducting the procedure has decided which type of specimen is to be required or, in the case of the statutory option, requested and has made that requirement/request he/she may subsequently change their mind. This right applies up to the time the specimen is actually provided. If, for example, the decision is made to take a blood specimen but for reasons beyond the officers control no doctor or registered health care professional is available to do so within a reasonable time the officer could require/request urine instead.
- 3.4.6. In the case of a person under 16 years of age who is offered the statutory option of having their breath specimens replaced by a blood or urine specimen it is desirable but not



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essential that they receive the advice from an appropriate adult before they make their decision. If an appropriate adult is not available and is not likely to be available in the short term the officer conducting the procedure shall ensure that they fully explain to the juvenile, in simple language, the statutory option and the consequences of any decision the juvenile takes. Where an appropriate adult is not available the preferred option for the specimen to replace the breath specimens will be urine. A urine specimen is provided by the suspect by their own actions where as a blood specimen must be taken by a doctor or registered health care professional and it is unlikely that they will do so without the consent of an appropriate adult.

- 3.4.7. Blood or urine specimens taken will be submitted to the relevant laboratory for analysis in accordance with Procedure 02509 – Submission of Specimens for Analysis.

3.5. Blood Specimens

- 3.5.1. Blood specimens will be taken by either a doctor or a registered health care professional.
- 3.5.2. The blood kit will be opened by the doctor or registered health care professional who is to take the sample, in the presence of the detained person.
- 3.5.3. The doctor or registered health care professional taking the blood specimen will complete form HORT/5. This form will be retained by the officer in the case.

3.6. Urine Specimens

- 3.6.1. Urine specimens will be provided voluntarily by the detained person. The provision of a urine specimen will be supervised by a police officer or police staff of the same sex as the detained person.
- 3.6.2. To prevent cross contamination of evidential urine specimens, sterile disposable beakers are provided for the collection of these specimens. These individually packaged beakers will be used on one occasion only and then be discarded.
- 3.6.3. Staff must be alert to the possibility that a subject might attempt to contaminate a urine specimen using tap water or



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other fluid. Staff must keep subjects providing urine specimens under observation at all times.

- 3.6.4. Each beaker has a temperature strip attached. Normally, at the time of provision, urine temperature is between 32 and 38 degrees Centigrade. A contaminated specimen is likely to give a reading outside these parameters.

3.7. MGDD Forms – Submission/Production

- 3.7.1. There is a national agreement, between ACPO and the Crown Prosecution Service, regarding the production of completed MGDD forms to the court as evidence. It has been agreed, through the Chief Crown Prosecutor for this area, that this national agreement is accepted and is applied locally. The following paragraphs detail the procedures to be adopted according to the relevant plea or court:

- 3.7.2. **Magistrates Court – Guilty Plea:** Police officers must not complete a section 9 statement producing completed MGDD forms as exhibits. The MGDD forms will lie on the file with any statements. They will not be listed as unused material.

- 3.7.3. **Magistrates Court – Not Guilty Plea:** In the event of a 'Not Guilty' plea the Crown Prosecution Service will seek to obtain a formal admission under Section 10 of The Criminal Justice Act 1967 as to the contents of the form(s). This process is the responsibility of the Crown Prosecution Service, and requires no police involvement. If this is not possible the officer completing the procedure will be called to give evidence. In such a case:

- a) The MGDD forms will lie on the file together with any statements;
- b) The officer conducting the procedure will not be required to provide a statement;
- c) The MGDD forms will not be produced;
- d) The MGDD forms will not be listed as unused material;
- e) Any video recording of the Intoximeter procedure must be produced in a brief statement and listed as an exhibit.



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3.7.4. **Crown Court:** The officer completing the MGDD forms must additionally provide a full section 9 statement setting out the whole procedure verbatim (including the production or any video recording and the Intoximeter printout). The MGDD forms will not be produced as an exhibit. In such cases the MGDD forms act as that officers notes made at the time and will be listed as unused material on the MG6C.

3.8. Interviews Post Breathalyser Procedure

3.8.1. Unless it is necessary to interview a detained person in order to prove an essential element of the drink/drugs driving offence for which they have been arrested (e.g. identification of driver or 'hip flask' defence) or the person is under arrest for other offences, authorisation of a person's detention for the purposes of interview after the completion of the 'station procedure' will not be lawful. Interviews regarding peripheral offences, such as 'driving without due care', must be dealt with after the subject's release from custody.

3.9. Institution Of Proceedings – 'Excess Alcohol'

3.9.1. Where the analysis of breath specimens shows the lower reading to be in excess of 50 microgrammes of alcohol in 100 millilitres of breath the detained person will in all but very exceptional circumstances, be charged with the offence of 'excess alcohol'.

3.9.2. Where the analysis of breath specimens shows the lower reading to be between 40 and 50 microgrammes of alcohol in 100 millilitres of breath (inclusive) and the detained person has declined to have their breath specimens replaced by blood or urine specimens, under the statutory option, they will in all but very exceptional circumstances be charged with the offence of 'excess alcohol'.

3.9.3. Where the analysis of breath specimens shows the lower reading to be between 40 and 50 microgrammes of alcohol in 100 millilitres of breath (inclusive) and the detained person has elected to have their breath specimens replaced by blood or urine specimens, under the statutory option, they will be bailed to appear at a police station at a later date. In such a case the normal bail period will be about four weeks (see also Procedure 02506 – Impairment: Station Procedure).



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3.9.4. In cases where the result of the analysis shows the proportion of alcohol in the blood or urine exceeds the prescribed limit (i.e. is 81 or more milligrams of alcohol in 100 millilitres of blood or is 108 or more milligrams of alcohol in 100 millilitres of urine) the officer in the case must prepare a prosecution file. When the accused returns to answer his or her bail they must, except in exceptional circumstances, be charged with the relevant offence. At that time they must also be served personally with a copy of the analyst's certificate or Section 9 statement and, if the specimen analysed was blood, a copy of the HORT 5 (doctor's/ registered health care professional's certificate indicating that the specimen had been taken with the consent of the accused).

3.9.5. In cases where the result of the analysis indicates that the proportion of alcohol in the specimen of blood or urine does not exceed the prescribed limit (i.e. is 80 or less milligrams of alcohol in 100 millilitres of blood or is 107 or less milligrams of alcohol in 100 millilitres of urine), the officer in the case must arrange for a letter to be sent to the accused releasing them from their obligation to answer their bail (unless there are other significant matters that warrant their attendance). Additionally the officer must notify the custody centre where the person was due to surrender to their bail.

3.9.6. In the above cases where the suspect was, for a special reason, not bailed but was reported for summons pending the result of the analysis, then the officer in the case must prepare a prosecution file. The officer must also make arrangements for a copy of the analyst's certificate or report or Section 9 statement and, in the case of the specimen analysed being blood, a copy of the HORT 5 (doctor's/ registered health care professional's certificate indicating that the specimen was taken with the consent of the accused) to be served on the accused.

3.9.7. See Procedure 02506 – Impairment: Station Procedure for cases relating to impairment through drink or drugs.

3.10. Institution Of Proceedings – 'Fail To Provide'

3.10.1. In the case of a detained person who fails to provide a specimen of breath when required to do so, where the Intoximeter Operator has no reason to believe that there are medical reasons for that failure, that person will (unless there are special reasons not to do so), be charged with that offence.



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- 3.10.2. Where the Intoximeter Operator considers that there are grounds for believing that there may be medical reasons for a failure to provide a breath specimen he/she will require the detained person to provide a specimen of blood or urine. See 3.4 above regarding the choice of specimen.

3.11. Institution Of Proceedings – Transport And Works Act 1992

- 3.11.1. No proceedings under the Transport and Works Act 1992 may be commenced without the consent of the Director of Public Prosecutions (DPP).

4. Roles And Responsibilities

- 4.1. The responsibilities of individual officers and police staff are detailed in 3.1 to 3.11 above.
- 4.2. Overall responsibility for this procedure rests with the Assistant Chief Constable, Territorial Operations.

5. Administration

- 5.1. The principal administrative requirements of this procedure are explained in sections 3.1 to 3.11 above.

6. Monitoring / Evaluation

- 6.1. The Force Intoximeter Liaison Officer, on behalf of the CJD Central Custody Team, is responsible for monitoring and evaluating the effectiveness of this procedure across the Constabulary

7. Review

- 7.1. The CJD Central Custody Team on behalf of the Assistant Chief Constable, Territorial Operations is responsible for annually reviewing this procedure.



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8. Related Policies, Procedures And Information Sources

8.1. This procedure relates to Policy 02500 – Drink/Drugs Driving

8.2. This Procedure Is Linked To The Following Procedures:

8.2.1. Procedure 02501 - Breath Test Devices

8.2.2. Procedure 02502 – Preliminary Breath Test

8.2.3. Procedure 02503 – Preliminary Impairment Test

8.2.4. Procedure 02505 – Audio Visual Recording of Breath Test Procedure

8.2.5. Procedure 02506 – Impairment: Station Procedure

8.2.6. Procedure 02507 – Hospital Procedure: Conscious Suspects

8.2.7. Procedure 02508 – Hospital Procedure: Unconscious Suspects

8.2.8. Procedure 02509 – Submission of Road Traffic Act Specimens for Analysis

8.2.9. Procedure 02510 – Drink/Drug Driving - Back Calculations

8.2.10. Procedure 02511 – Hip Flask Defence

8.2.11. Procedure 02512 - Drink/Drug Driving - Technical Assistance for Court

8.2.12. Procedure 02513 – Drink/Drugs: Railways

8.2.13. Procedure 02514 – Drink/Drugs: Maritime

8.2.14. Procedure 02515 – Drink /Drugs: Aviation

8.2.15. AD203 Equality Impact Assessment

Origin: CJD Central Custody Team