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Date: 5th March 2024
Our Ref: JA/NHSG/ProcedureAnauthSubs/1150
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Dear Colleagues

This guidance is currently under review by the author.

Procedure For Dealing With Suspicious Substances Found In The Possession Of Patients, Visitors Or In NHS Grampian Premises – Version 2

This document has been risk assessed by the author and deemed appropriate to be used during this review period. A copy of the risk assessment can be provided on request.

If you have any queries regarding this, please do not hesitate to contact the Medicines Guidelines and Policy Group (MGPG) email at gram.mgpg@nhs.scot



Yours sincerely

A handwritten signature in blue ink, appearing to read 'Jodie Allan', written in a cursive style.

Jodie Allan
Professional Secretary of MGPG, NHSG

**Procedure For Dealing With Suspicious Substances Found In
The Possession Of Patients, Visitors Or In NHS Grampian
Premises**

Co-ordinators: Controlled Drugs Team	Consultation Group: See relevant page in the Procedure	Approver: Controlled Drugs Accountable Officer, NHS Grampian
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Signature: 		Signature: 
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Identifier: NHSG/Procedure UnauthSubs/MGPG1150	Review Date: January 2024	Date Approved: January 2021
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Uncontrolled when printed
Version 2

Executive Sign-Off

This document has been endorsed by the Director of Pharmacy and Medicines
Management

Signature: 

This document is also available in large print and other formats and languages, upon request. Please call NHS Grampian Corporate Communications on (01224) 551116 or (01224) 552245.

This document was impact assessed on February 11th 2021

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Title: Procedure For Dealing With Suspicious Substances Found In The Possession Of Patients, Visitors Or In NHS Grampian Premises

Unique Identifier: NHSG/ProcedureUnauthSubs/MGPG1150

Replaces: NHSG/ProcedureUnauthSubs/MGPG263

Lead Author/Co-ordinator: Controlled Drugs Team

Subject (as per document registration categories): Procedure

Key word(s): Procedure protocol illegal unauthorised possession suspicious patient visitors

Process Document: Policy, Protocol, Procedure or Guideline Procedure

Document application: NHS Grampian

Purpose/description: To give all NHS Grampian hospital staff guidance on how to deal with the discovery and removal suspicious substances from their area.

Group/Individual responsible for this document: Controlled Drugs Team

Policy statement: It is the responsibility of all staff to ensure that they are working to the most up to date and relevant policies, protocols procedures.

Responsibilities for ensuring registration of this document on the NHS Grampian Information/ Document Silo:

Lead Author/Co-ordinator: Controlled Drugs Team

Physical location of the original of this document: Pharmacy and Medicines Directorate

Job title of creator of this document: Controlled Drugs Team

Job/group title of those who have control over this document: Controlled Drugs Team

Responsibilities for disseminating document as per distribution list:

Lead Author/Co-ordinator: Controlled Drugs Team

Responsibilities for implementation:

Organisational: Operational Management Team and Chief Executive
Sector General Managers, Medical Leads and Nursing Leads

Departmental: Clinical Leads

Area: Line Manager

Review frequency and date of next review: This policy will be reviewed in three years or sooner if current treatment recommendations change

Responsibilities for review of this document:

Lead Author/Co-ordinator: Controlled Drugs Team

Revision History:

Revision Date	Previous Revision Date	Summary of Changes (Descriptive summary of the changes made)	Changes Marked* (Identify page numbers and section heading)
December 2020	N/A	Introduction updated to reflect legislation changes	Introduction page 2
December 2020		New section NHSG Hospital staff responsibilities (previous Section 4)	Section 2 page 3
December 2020		Revised Section 3 Procedure on discovery of a suspicious substance (previous section 2) to clarify procedure for patient and visitors for personal use, quantities too large for personal use and substances found which cannot be attributed to any person	Section 3.1 page 4 Section 3.2 page 4 Section 3.3.page 5 Section 3.4 page 5

Revision Date	Previous Revision Date	Summary of Changes (Descriptive summary of the changes made)	Changes Marked* (Identify page numbers and section heading)
December 2020		New Section 4 (previous Section 5) Procedure for handling Suspicious substances by ward/department with Onsite pharmacy, no pharmacy on site, out of regular pharmacy hours. Removal directly from ward to police	Section 4 page 5 Section 4.1 page 5 Section 4.2 page 7 Section 4.3 page 7 Section 4.4 page 7
December 2020		New Section 5 Receiving suspicious substance into pharmacy (previous Section 2.5) Delivered by pharmacist/pharmacy technician Arrival by pharmacy box	Section 5 page 8 Section 5.1 page 8 Section 5.2 page 8
December 2020		New Section 6 Collection from pharmacy by Police Scotland	Section 6 page 9
December 2020		New Appendix G definitions	Page 16

* Changes marked should detail the section(s) of the document that have been amended, i.e. page number and section heading.

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Procedure For Dealing With Suspicious Substances Found In The Possession Of Patients, Visitors Or In NHS Grampian Premises

1. Introduction

NHS Grampian does not permit the use, possession or supply of suspicious substances on its premises (including its land). This procedure has been developed to describe the actions to be taken when suspicious substances are discovered in the possession of patients, visitors or in/on NHS Grampian premises. This procedure covers suspicious substances intended for human consumption/ingestion and not chemical, biological, radiological, and nuclear ([CBRN](#)) resource materials intended to cause significant harm and disruption.

For the purposes of this document, any substance that has not been legally prescribed for that individual and is not readily identifiable by its packaging, as a legal medicine, is considered a suspicious substance. In addition a substance is considered suspicious if the person in possession cannot reasonably explain why they have it or there is doubt about its nature. Controlled Drugs (CDs) prescribed for an individual, other than the person in possession should be treated as suspicious substances, unless there is a reasonable explanation as to why they have in their possession for example, legal transportation of a patient's own CDs.

Suspicious substances come in various forms, e.g. powders, tablets, capsules, liquids. Such substances may or may not contain CDs or New Psychoactive Substances (NPS). The possession of CDs may be an offence under the Misuse of Drugs Act, 1971. NPS mimic the effects of traditional illicit drugs such as cannabis, cocaine and amphetamines. Whilst it is not illegal to possess NPS (except in a custodial environment), they are controlled by the Psychoactive Substances Act, May 2016 and pose a significant risk to health. NPS are not permitted on NHS Grampian premises.

When a member of staff takes possession of a suspicious substance, they may be placed in a vulnerable position, i.e. they will be in possession of an illegal drug or substance. The member of staff must be able to demonstrate that the suspicious substance was taken solely for the purpose of delivering it into the safe custody of a person lawfully entitled to possess or destroy it. It is important that all actions relating to the safe custody or destruction of a suspicious substance are correctly documented, witnessed and the procedures set out in this document are followed.

Unless large quantities of illegal drugs/substances are involved, the main aim is to ensure that suspicious substances are handled and destroyed in a safe legal manner. If you are unsure as to whether the quantity is 'large', contact Police Scotland for advice (Police Scotland 101).

If quantities of suspicious substances, which are not considered consistent with personal use, are found in possession of a patient or visitor, Police Scotland should be informed and fully assisted in their enquiries. It is difficult to provide definitive guidance on whether an amount of drug/substance would be deemed, by Police Scotland, to be for someone's own use or otherwise, without considering all the circumstances surrounding each event. This may include the condition the item was found in, the quantity of the whole recovery or the method of wrapping. If unsure, staff should

contact Police Scotland where an experienced officer, properly briefed in this type of situation will be able to discuss the situation. If appropriate, they could attend the ward/department and initiate enquiries. In these circumstances, the legal position is that the public interest overrides that of confidentiality. This does not entitle Police Scotland the access to confidential medical information.

The possession of suspicious substances can be illegal and could be liable to prosecution. It is recognised that a heavy handed response can compromise patient care, cause considerable disruption to ward/department routines and take a considerable amount of time and effort to resolve. All parties recognise that the delicacy of the circumstances demands a balanced and sensitive approach. Following discussions with Police Scotland, it is recommended that the decision to contact Police Scotland should be taken jointly by the duty manager of the site, in conjunction with the person in charge for the clinical area and the medical practitioner with clinical responsibility for the patient.

On discovering a suspicious substance, regardless of quantity a DATIX form should be completed.

2. NHS Grampian hospital staff responsibilities

- Staff and patient safety is key. NHS Grampian staff should not undertake any actions which would endanger themselves, other staff or patients if a suspicious substance is found in their area.
- Staff must consider their own safety first before approaching or challenging patients or visitors who may be in possession of or under the influence of suspicious substances, as they may pose a personal risk to the member of staff.
- It is the responsibility of NHS Grampian staff to inform and seek support where necessary with senior members of ward nursing and medical staff and if a suspicious substance is found on a person or taken by a patient.
- Advice and support can be provided from Police Scotland where dealer quantities are suspected or where a patient refuses to co-operate.
- It is the responsibility of NHS Grampian staff to have all documentation correct and complete before removal of a suspicious substance from their area.
- It is the responsibility of NHS Grampian staff to follow this document accurately. If they are unsure they should ask their line manager for guidance.
- When any suspicious substance has been discovered or when any of the procedures in the preceding paragraphs have been implemented, a DATIX report should be completed by the member of staff who discovered the substance. Copies of all paperwork should be attached to the DATIX in addition to any kept at ward or department level.

3. Procedure on discovery and removal of a suspicious substance

Hospital staff are advised **NOT** to exercise force in removing a suspicious substance from patients or visitors. Action taken to ensure the removal of a suspicious substance from a patient, should not be allowed to delay or affect essential treatment, care or counselling. Staff should have another staff member present during the removal of a suspicious substance from a patient or visitor. Advice and support can be obtained from Police Scotland/NHS Grampian security.

Staff should advise the patient or visitor that if the substance is for personal use only Police Scotland will not be informed.

3.1. If a PATIENT is found in possession of a suspicious substance (Flow chart 1)

- The patient should be advised that possession of the substance may be unlawful and asked to hand it over voluntarily to a member of staff and a witness. A reminder should be issued that if the substance is deemed for personal use Police Scotland will not be involved.
- When the patient has voluntarily handed over the suspicious substance they should then be asked to complete and sign a disclaimer form ([Appendix A](#)) and the completed form should be filed in the patient's notes. In areas where there are no paper patient's notes the form should be scanned and attached to the DATIX report. Staff should then follow the procedure, as described in [section 4](#), for removal of the suspicious substance.
- If the patient refuses to sign the disclaimer form this should be recorded on the disclaimer form and signed by two members of staff (one of who must be the finder and the other must be person in charge of the ward/department). This should be filed in the patient's notes or scanned into DATIX. Staff should then follow the procedure, as described in [section 4](#), for removal of the suspicious substance.
- If the patient is unconscious or otherwise unable to voluntarily hand over the suspicious substance, it should be removed and they should be asked to complete the disclaimer form when able. Staff should start to complete the forms in [Appendix A](#) and [B](#).
- If a patient refuses to hand over any suspicious substance or open a suspicious package in the presence of staff and/or dealer quantities are suspected, they should be advised an offence may be being committed and Police Scotland and senior medical staff will be called for advice and support.

3.2. If a VISITOR is found in possession of a suspicious substance (Flow chart 2)

They should be advised that possession of the substance may be unlawful and asked to hand it over voluntarily to a member of staff and a witness. A reminder should be issued that if the substance is deemed for personal use Police Scotland will not be involved.

- When the visitor has voluntarily handed over the suspicious substance, the individual should then be asked to complete and sign a disclaimer form (see [Appendix A](#)) which should be attached to the DATIX report. The visitor should then be asked to leave the premises. Staff should then follow the procedure, as described in [section 4](#), for removal of the suspicious substance.
- If the person refuses to sign the disclaimer form this should be recorded on the disclaimer form and signed by two members of staff (one of who must be the finder and the other must be in charge of the ward/department). Staff should follow the procedure, as described in [section 4](#), for removal of the suspicious substance.

- If a visitor refuses to hand over any suspicious substance, they should be asked to leave the premises. If they fail to do so, they should be advised an offence may be being committed and Police Scotland may be called. If the person still refuses, Police Scotland should be called immediately.

3.3. If a patient is found in possession of a suspicious substance and quantities are deemed too large for personal use (Flow chart 3) dealer quantities suspected

- If a patient refuses to hand over any suspicious substance or open a suspicious package in the presence of staff and /or dealer quantities are suspected, they should be advised an offence may be being committed and Police Scotland and senior medical staff will be called for advice and support. Follow [section 4.4](#)

3.4. If a suspicious substance is found on NHS Grampian premises but cannot be attributed to a specific person

Where a suspicious substance is found on NHS Grampian premises, but cannot be attributed to a specific person, the member of staff who discovered the suspicious substance should follow the relevant sections of the procedure, as described in [section 4](#) below.

4. Procedure for handling a suspicious substance in Ward/Department

- The member of staff who discovered the suspicious substance should immediately inform the nurse/midwife/ODP in charge of the ward/department. If the person in charge is the individual who found the suspicious substance, they should inform another registered nurse/midwife/ODP, who should act as their witness.
- The nurse/midwife/ODP in charge of the ward/department should wear gloves and place the suspicious substance in a container and bag, preferably double bagged, with a label identifying the source (e.g. where exactly found, patient's initials, date and a brief description of the contents). The label should be placed over the seal and signed by the nurse/midwife/ODP in charge and the member of staff who found the suspicious substance. The patient's full name, DOB or CHI should not be written on the label.
- An entry should be made in a specified section for suspicious substances in the CD Record Book. This should be signed by the nurse/midwife/ODP in charge for the ward/department and the finder.
- The container should be placed in the CD Cabinet. Suspicious substances are assumed to be illicit and treated as a controlled substance.
- The member of staff who found the suspicious substance should complete **part A** of the "Form for the removal of a suspicious substance" ([Appendix B](#)). A registered nurse/midwife/OPD in charge must sign the form as either finder or witness.
- The registered nurse/midwife/ODP in charge should inform the duty manager for the site.

4.1. Procedure during normal working hours with onsite pharmacy

- The ward pharmacist/pharmacy technician should be contacted as soon as practical to request removal of the suspicious substance
- Where it has been agreed that by duty manager for the site, the person in charge for the ward/department and the pharmacist/pharmacy technician agree that the quantity of the suspicious substance found is small and consistent with the patient's own personal use, this must be documented in **part B** of the 'Form for the removal of a substance' ([Appendix B](#)).
- The pharmacist/pharmacy technician should complete **part C** of the 'Form for the removal of a suspicious substance' ([Appendix B](#)) and follow the guidelines in [section 5](#). An entry of removal should be made in the CD record book in the suspicious substances section by the pharmacist/pharmacy technician and witnessed by ward staff involved.
- The original copy of the 'Form for the removal of a suspicious substance' ([Appendix B](#)) should be given to the pharmacist/pharmacy technician collecting the substance. Another copy of this form together with the 'Form to be completed by person in possession of a suspicious substance' ([Appendix A](#)) should be filed/scanned in the patient's notes or attached to the DATIX report.
- Where in consultation with Police Scotland, duty manager for the site, the person in charge for the ward/department or pharmacist/pharmacy technician consider the quantity of the suspicious substance found, is not small or consistent with the patient's own personal use, this must be documented in **part B** of the 'Form for the removal of a suspicious substance' ([Appendix B](#)). The duty manager for the site should inform the senior medical staff and Police Scotland and follow procedure outlined in [Section 4.4](#) where Police Scotland will remove the suspicious substance directly from the ward.

4.2. Procedure if no pharmacy on site

- If there is no pharmacy on site (e.g. in community hospitals) the ward pharmacist or technician may be informed to make them aware and for advice.
- Parts A, B and C of the 'Form for the Removal of a suspicious substance', [Appendix B](#) should be completed.
- The CD technician at ARI Pharmacy Distribution (Ext 53522) **must** be contacted by ward staff to arrange removal of the suspicious substance to ARI Pharmacy Distribution in the blue drug box.
- The suspicious substance **must** be clearly marked - "**Suspicious substance for return to CD Room, Distribution ARI.**"
- The original copy of the 'Form for the removal of a suspicious substance' ([Appendix B](#)) should be sent in blue pharmacy box with the clearly marked suspicious substance.

- Another copy of this form together with the 'Form to be completed by person in possession of a suspicious substance' ([Appendix A](#)) should be filed/scanned in the patient's notes or attached to the DATIX.
- Suspicious substances **must** not be returned in blue boxes to ARI Pharmacy Distribution except by prior arrangement.
- An entry should be made in the CD record book showing that the suspicious substance has been sent in the blue box to ARI, by the nurse/midwife/ODP in charge. This should be witnessed by another registered nurse/midwife/ODP or pharmacist/pharmacy technician if they are available.

4.3. Procedure out of hours

The suspicious substance should be kept in the ward/department CD cupboard and documented in the CD record book until pharmacy reopens. Staff should then follow advice in [section 4.1](#) or [4.2](#) as appropriate

4.4. Procedure for removal of the suspicious substance directly to the police

If it has been decided that the suspicious substance is too large to be for personal use Police Scotland (101) will have already been contacted for advice and arrangements should for collection of the suspicious substance directly from the ward/department.

This should be done as outlined below.

- The registered nurse/midwife/ODP in charge should check that **parts A to C (where applicable)** of the "Form for the removal of suspected unauthorised drug or other suspicious substance" ([Appendix B](#)) have been properly completed.
- Each case will be treated on its own merits and it is therefore not possible to indicate the precise action the police will take. **However, the patient will never be questioned or removed from the ward or department if it is considered by senior medical staff to be inappropriate on clinical grounds.**
- When Police Scotland attend, staff should co-operate with them. In the investigation of an alleged criminal offence, confidentiality is unlikely to be a sufficient defence in law against disclosure.
- Following their enquiries, Police Scotland will remove the suspicious substance directly from the ward. **Part D** of the form should be signed by Police Scotland with the registered nurse/midwife/ODP witnessing the transfer. The original copy should be given to the police. A copy of this form must be attached to the DATIX Report by the ward/department. An entry of removal must be made in the ward CD record book when Police Scotland remove the suspicious substance from the ward/department. This should be countersigned by Police Scotland.

5. Receiving a suspicious substance into the Pharmacy Department

5.1. Procedure when the substance is brought to the pharmacy by a pharmacist or pharmacy technician

- Suspicious substances should be collected from Wards/Departments as soon as practical during normal working hours.
- After collecting the suspicious substance the clinical pharmacist/pharmacy technician should return immediately to the Pharmacy department after completing the first stage of **part C** of the “Form for the removal of a suspicious substance” ([Appendix B](#)). On the Foresterhill site suspicious substances should be taken to ARI Pharmacy Distribution. On the Royal Cornhill Hospital or Dr Gray’s sites suspicious substances should be taken to the onsite dispensary.
- The suspicious substance should be placed in the CD cupboard (in dispensaries) or the CD room (in ARI Distribution) in an area reserved for the storage of suspicious substances.
- Details of the suspicious substance should be recorded in the designated book (either a CD register or bound book). The following details should be recorded the patient’s initials, date (found and transferred to pharmacy), where found and description of the substance. The entry should be countersigned by another pharmacist or pharmacy technician. (In ARI distribution it should be countersigned by the CD room technician).
- Part C of the “Form for the removal of a suspicious substance” should be countersigned and the completed form sealed in a clear plastic bag along with the sealed suspicious substance.
- The suspicious substance should be retained in pharmacy in section reserved for storage until collection by Police Scotland.

5.2. Procedure when the substance is returned to pharmacy department in the blue drug box

- Suspicious substances arriving in blue drug boxes should be taken immediately to the CD room and handed to the CD room technician.
- The pharmacy department/ARI should receive a prior telephone call advising them of the return of the suspicious substance.
- The pharmacy department/ARI distribution **must** have a system for follow up of telephone call regarding potential return of suspicious substances to ensure completion of audit trail.
- The CD room technician should record the suspicious substance in the designated book and complete Part C of the “Form for the removal of a suspicious substance” and the completed form sealed in a clear plastic bag along with the sealed suspicious substance.
- The suspicious substance should be retained in pharmacy in section reserved for storage until collection by Police Scotland.

6. Collection by Police Scotland from Pharmacy

- Police Scotland should be contacted on a regular basis by calling 101, as determined by the volume of suspicious substances to destroy or collect from the pharmacy department.
- **Part D** of the “Form for the removal of a suspicious substance” ([Appendix B](#)) should be completed and an entry in the designated book completed documenting the collection/destruction. Both the form and book should be signed by a representative of Police Scotland and a pharmacist/pharmacy technician.
- The form should be retained (for two years) in pharmacy. The only patient information on the suspicious substance should be the patient’s initials. The police should not be given the patient’s full name, DOB or CHI if the substance is believed to be for personal use.

7. Consultation Group

Lesley Giblin	Pharmacist Team Leader, Dr Gray’s Hospital
Dr Pamela Hardy	Lead Consultant Emergency Department, Dr Gray’s
Jackie Leggat	Senior Charge Nurse, Fraserburgh Minor Injury Unit
Angela MacManus	Principal Pharmacist Mental Health & Learning Disability Services
Sergeant Adam Mellis	Police Scotland
Elaine Neil	Lead Pharmacist, Aberdeenshire HSCP
Shirley Pow	Specialist Mental Health Pharmacist
Karen Proctor	Primary Care Pharmacy Technician, Aberdeenshire HSCP
Fiona Raeburn	Substance Misuse Pharmacist, NHSG
Susan Reid	Lead Pharmacy Technician Primary Care, Aberdeenshire HSCP

8. References

- a) Illegal Substance Procedure, GPCT/POL/23, December 2001
- b) Procedure for dealing with unauthorised drugs or other suspicious substances found on NHS hospital premises, ARI Draft.
- c) Misuse of Drugs Act 1971
- d) Psychoactive Substances Act 2016
- e) Health Protection Scotland Chemical, Biological, Radiological and Nuclear (CBRN) available at <https://www.hps.scot.nhs.uk/a-to-z-of-topics/chemical-biological-radiological-and-nuclear/>

Appendix A - Form To Be Completed By Person Found In Possession Of A Suspicious Substance

I _____(name), hereby confirm that I have been informed by the staff that the item(s) listed below are suspicious and I agree to hand this/these over to the management of the hospital.

Ward: _____ Hospital: _____

Description of Item and where it was found (s):

I understand that the item(s) listed will not be returned to me and hereby give consent for the item(s) to be disposed of in accordance with the NHS Grampian 'Procedure for dealing with suspicious substances found in the possession of patients, visitors or in NHS Grampian premises'

In the event of on-going concern and/or insufficient co-operation, NHS Grampian hospital staff reserve the right to involve Police Scotland.

Signature: _____

Date: _____

To be filed in patients notes or within Ward/Department or attached to DATIX

Appendix B - Removal Of Suspicious Substance

Ward/Department: _____ Location: _____

PART A – Description of suspicious substance

To be completed by member of staff finding the substance and witness (one should be Nurse/Midwife in charge).

Date: _____ Time: _____

Description of suspicious substance

Form: (e.g. tablets, powder) _____ Colour: _____ Quantity: _____

Removed From: (patient/visitor initials, details of exactly where found) _____

Finder: _____ Designation: _____ Signed: _____

Witness: _____ Designation: _____ Signed: _____

PART B – Action by Duty Manager and Nurse/Midwife in charge of ward/department

We _____ (Duty Manager) and _____ (Nurse/Midwife in charge)

and _____ (Pharmacist/Pharmacy Technician if applicable)

(1) **are in agreement*** (2) **are not in agreement*** that the suspicious substances removed from the person above are of a quantity consistent with their own personal use.

Action: (1) We have therefore authorised the removal of the suspicious substance to Pharmacy*

Action: (2) We have therefore contacted the Police* **Delete item (1) or item (2) as appropriate*

Signed: _____ Duty Manager Signed: _____ Nurse/Midwife in charge

Signed: _____ Pharmacist/Pharmacy Technician (if applicable)

Date: _____

PART C Removal to the Pharmacy of a suspicious substance (if applicable)

Sealed container received by pharmacist/pharmacy technician from ward nursing staff

Signed: _____ Pharmacist/Pharmacy Technician

Signed: _____ Nurse/Midwife in Charge Date: _____

Sealed container received into pharmacy (witnessed by a second Pharmacist/Pharmacy Technician)

Signed: _____ Pharmacist/Pharmacy Technician Date: _____

PART D Collection by the Police

Sealed container collected by-

Officer's name: _____ Signed: _____

Witness name: _____ Designation: _____ Signed: _____

Date: _____

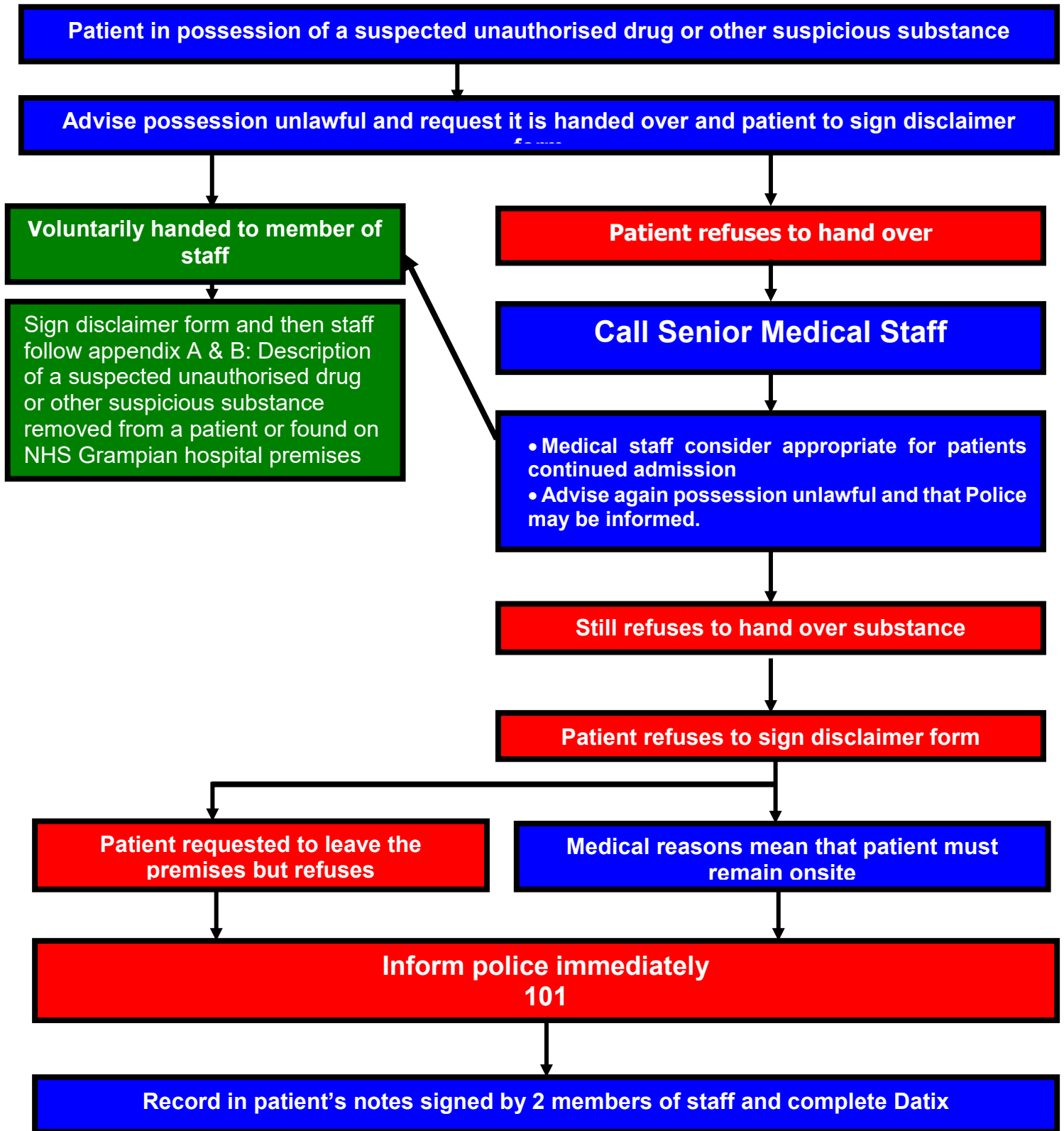
Appendix C - Notice To Patients/Visitors Removal Of Suspicious Substances

Where there is reasonable suspicion that unauthorised drugs or other suspicious substances are being brought into or sent to the hospital by whatever means, NHS Grampian staff reserve the right to request the recipient to open any packages or envelopes, etc in their presence.

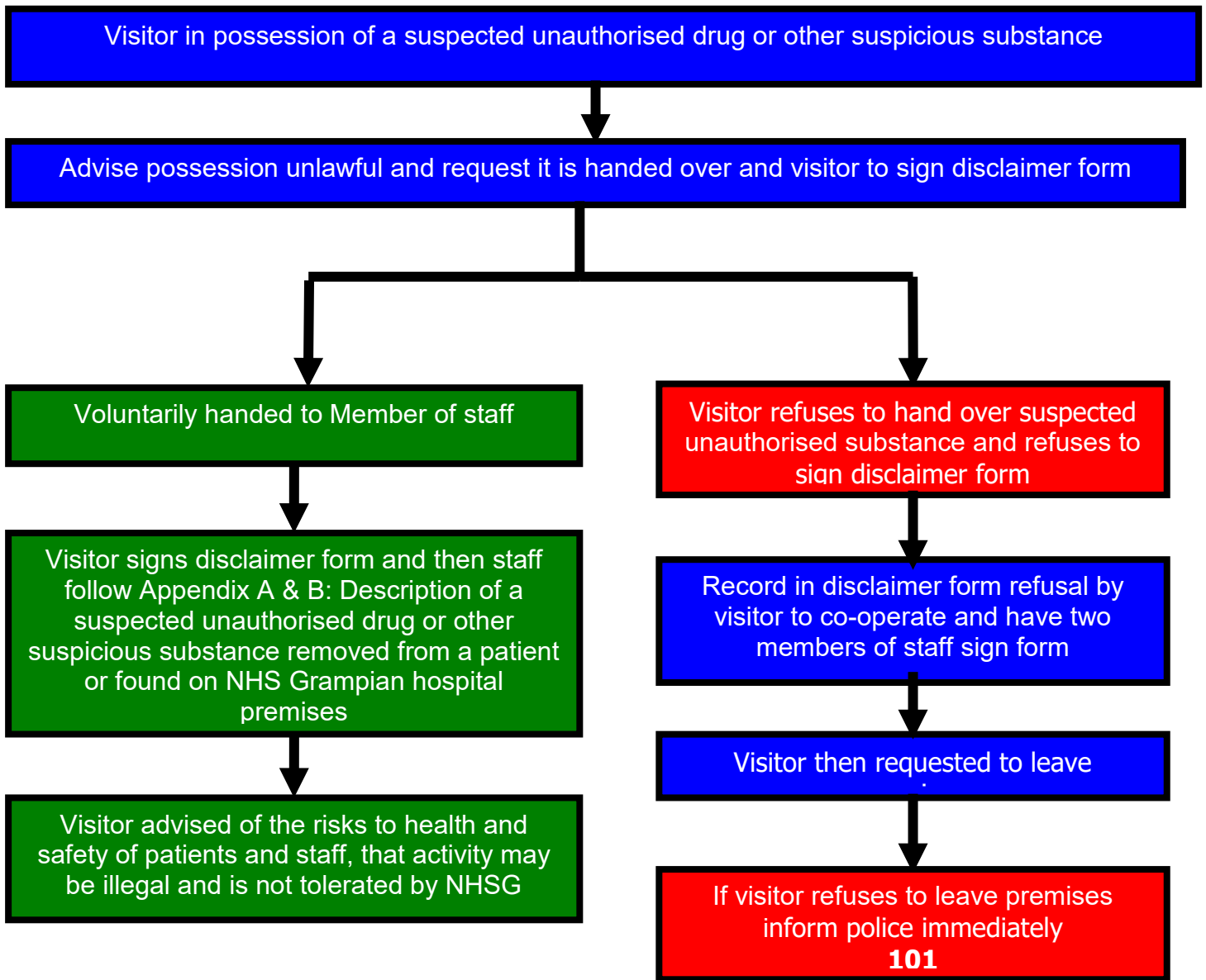
In the event of on-going concern and/or insufficient co-operation, NHS Grampian Hospital staff reserve the right to involve Police Scotland.

NHS Grampian Hospital staff also reserve the right to refuse entry, or request to leave, any person whose behaviour is deemed unacceptable for whatever reason.

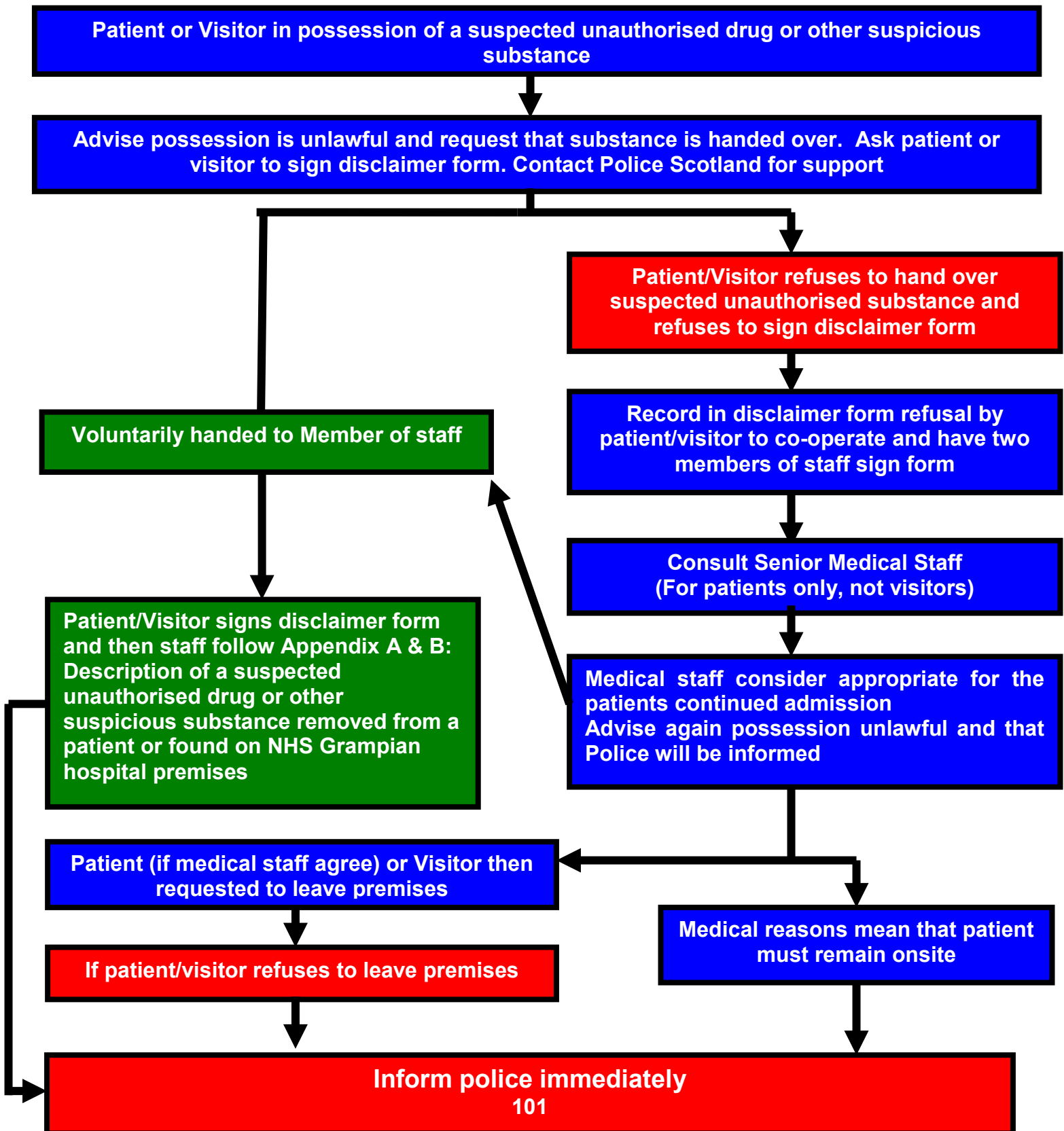
Appendix D - Flow chart 1 - What to do when a Patient is found in possession of a suspected unauthorised drug or other suspicious substance which is FOR PERSONAL USE ONLY



Appendix E - Flow chart 2 - What to do when a Visitor is found in possession of a suspected unauthorised drug or other suspicious substance which is FOR PERSONAL USE ONLY



Appendix F - Flow chart 3 - What to do when a patient or visitor is found in possession of a suspected unauthorised drug or other suspicious substance – QUANTITY DEEMED TOO LARGE FOR PERSONAL USE



Appendix G - Definitions

Controlled Drugs: Controlled Drugs (CDs) are drugs controlled under the Misuse of Drugs Act 1971. These drugs are considered 'dangerous or otherwise harmful' with the potential for diversion or misuse. CDs can have recognised medicinal uses or no recognised medicinal uses.

Illegal substances: Illegal substances are drugs controlled under the Misuse of Drugs Act (1971) where there is no legal authority on the part of an individual to possess a drug. This includes prescription medication which is not legally prescribed to the holder.

Illicit substances: Illicit refers to items or practices forbidden by law, rules, customs or another set of principles. Illicit can be used interchangeably with illegal, however illegal is forbidden only by law.

Psychoactive substances: The Psychoactive Substances Act 2016 defines psychoactive substances as "any substance which (a) is capable of producing a psychoactive effect in a person who consumes it, and (b) is not an exempted substance". Exempt substances include nicotine, alcohol and caffeine. Medicinal products defined by Human Medicines Regulation 2012 and CDs controlled by the Misuse of Drugs Act 1971 are also exempt.

It is not illegal to possess psychoactive substances but possession with intent to supply is an offence. Psychoactive substances are not permitted on NHS Grampian premises.

It may be argued that as it is not illegal to possess a psychoactive substance that a person is entitled to retain possession or have the item returned. Many of the psychoactive substances which previously fell within this quasi-legal category are now scheduled under the misuse of drugs and, as there is no capacity to identify whether the stated ingredients match the actual contents of any such agent, it must be assumed that the material is an illegal substance and so it must not be returned (as such may be considered 'supply').

Psychoactive effect: A psychoactive effect is produced through stimulation or depression of the central nervous system and may alter mental functioning or emotional state. This altered physical or emotional state may be termed 'intoxication'.

Suspicious substances: For the purposes of this policy a substance is suspicious if the person cannot reasonably explain why they have it. CDs labelled for another individual should be treated as suspicious.

Examples include unidentifiable herbs, resins, tablets, liquids, powders and psychoactive substances.

Legal definitions from the Misuse of Drugs Act 1971 and Misuse of Drugs Regulations 1985

Possession

The Misuse of Drugs Regulations 1985 define the classes of person who are authorised to supply and possess controlled drugs while acting in their professional capacities and lay down the conditions under which these activities may be carried out. In the regulations the drugs are divided into 5 schedules each specifying the requirements governing such activities as import, export, production, supply, possession, prescribing and record keeping which apply to them.

There are two exemptions within the regulations on possession of CDs.

- Exemption 1 - Where a person takes possession of a Controlled Drug for the purpose of destruction. The purpose of this exemption is to protect people who remove substances from others in order to prevent them from committing or continuing to commit an offence.
- Exemption 2 - Where the person takes possession for the purpose of handing over to a Police Officer.

When a member of staff takes possession of a suspicious substance, he/she may be placed in a vulnerable position unless it can be demonstrated that the substance was taken for the purpose of delivering it into the safe custody of a person lawfully entitled to possess it or destroy it i.e. a pharmacist or police officer. It is therefore important that all actions related to the taking into safe custody or destruction of such substances are fully and correctly documented and witnessed.

Supply: The Misuse of Drugs Act 1971 states that It is an offence if the occupier or person concerned in the management of any premises knowingly permit or suffer any of the following activities to take place on those premises:

- a) Producing or attempting to produce a controlled drug
- b) Supplying or attempting to supply a controlled drug, or offering to do so
- c) Preparing opium for smoking
- d) Smoking cannabis, cannabis resin or prepared opium.

Under no circumstances can a suspicious substance be handed back to a person as they leave NHS premises, as the person doing so could be guilty of an offence of unlawful supply of a Controlled Drug.

Premises

The word “premises” is not defined in the Misuse of Drugs Act and the courts have experienced difficulties in apply the word to actual situations. A definition of premises is contained in Section 23 of the Police and Criminal Evidence Act 1984. It includes “any place and, in particular, any vehicle, vessel, aircraft, hovercraft, tent or movable structure”.

A further useful definition of the word is to be found in Section 12 of the Criminal Law Act 1977. This states that “premises” means any building, any part of a building under separate occupation, any land ancillary to a building, the site comprising any building or buildings together with any land ancillary thereto. Clause 187 of the Draft Criminal Code Bill contains an identical definition.

Based on these definitions, it would be argued that a hospital manager, knowing that a patient is smoking cannabis inside a marquee in hospital grounds, will be guilty of an offence contrary to Section 8 (d). Unfortunately, the courts have yet to rule on this point.