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Dear Colleague

Anti-Doping from 2009 on: transition to a new Code, a new NADO, and a new National Anti-Doping Panel

The purpose of this letter is to explain the arrangements for transition in 2009 to the new revised World Anti-Doping Code (the '**2009 Code**'), the new, stand-alone National Anti-Doping Organisation, separate from UK Sport (the '**new NADO**'), and the new National Anti-Doping Panel (the '**NADP**').

A copy of the new UK Anti-Doping Rules (the '**UK Rules**'), reflecting this transition, is enclosed. A brief overview of some of the main changes in the UK Rules from the current Model Anti-Doping Rules is also set out below.

1. Overview: the new National Anti-Doping Programme

As you will be aware, the UK Government has ratified the UNESCO International Convention Against Doping in Sport, thereby making a formal commitment to fighting doping in sport based on the principles set out in the World Anti-Doping Code. The UK's National Anti-Doping Organisation (currently the Drug-Free Sport Directorate of UK Sport ['**DFS**']) is charged with ensuring that the Government's commitment is honoured. It achieves this through a Code-compliant National Anti-Doping Policy to which each National Governing Body ('**NGB**') signs up through a tripartite agreement with DFS and its Home Country Sports Council (the '**Anti-Doping Agreement**'). Compliance with the Anti-Doping Agreement is a condition of NGB eligibility for public funding and other publicly-funded benefits, including participation in the National Anti-Doping Programme.

As we move into 2009, the Government is reviewing the National Anti-Doping Policy to ensure that it reflects the principles of the 2009 Code as well as best practice in anti-doping generally. This has been anticipated in the Anti-Doping Agreement, which provides for amendments from time to time to reflect changes in the National Anti-Doping Policy. For 2009, this means:

- **Code-compliant rules:** Every NGB in the UK desiring public funding and/or wishing to participate in the National Anti-Doping Programme will be required to incorporate the UK Anti-Doping Rules into its rulebook, thereby implementing the principles of the 2009 Code at a national level within its sport. Any proposed amendments to reflect the specificities of a particular sport will need to be approved in advance by DFS.
- **Code-compliant test distribution planning:** DFS (or, once it is up and running, the new NADO) will undertake the test distribution planning exercise required of all National Anti-Doping Organisations under WADA's revised International Standard for Testing. It will continue to consult with

NGBs as part of that process, to determine the most appropriate allocation of its testing resources across the sports under its jurisdiction (and across the various disciplines within those sports).

- **Code-compliant results management:** Until the new NADO is up and running, with results management capability, it will remain the responsibility of the NGB to manage the results testing and other evidence of anti-doping rule violations, in order to determine if there is a case to answer and (if so) to present that case to a tribunal. Once the new NADO is up and running, it will assume exclusive responsibility for investigating potential anti-doping rule violations under the UK Anti-Doping Rules and determining whether there is a case to answer. It will also take over presenting cases to the hearing panel for adjudication, unless the NGB wishes to retain that function, in which case that will need to be discussed and agreed in advance with the new NADO. The 2009 Anti-Doping Rules have been drafted so that they can cover all of these responsibilities: by introducing the concept of a 'Results Management Authority' ('**RMA**'), and explaining that the RMA may be the NGB, or the NADO, or a combination of the two of them, this means that the UK Rules will work both immediately and once the transition to the NADO is possible, without having to make any amendments to the rules.
- **Code-compliant case adjudication:** The National Anti-Doping Panel, manned by legal and other experts and funded entirely by UK Sport, is now fully functional and ready to accept first instance cases and appeals arising under the UK Anti-Doping Rules. If an NGB wishes to continue to use its own tribunals to hear anti-doping cases, this will need to be discussed with DFS, and then specific provision will need to be made in the resolution adopting the UK Rules, making clear that cases will be referred to the NGB's own tribunal, following the NGB's own procedure.

2. The UK Anti-Doping Rules

A copy of the UK Anti-Doping Rules is enclosed. A significant preliminary point to note is that, unlike the Model Rules, the UK Anti-Doping Rules are not a template document, to be taken and amended by the NGB into a set of bespoke rules for its own rulebook. Instead, the UK Anti-Doping Rules have been drafted as a stand-alone, self-sufficient set of rules that can be adopted and incorporated by reference into an NGB's rulebook. If any amendments and/or supplemental provisions are required, in order to reflect the specific characteristics of a particular sport, they can be set out in the resolution or other mechanism by which the UK Anti-Doping Rules are adopted into the NGB's rulebook. Draft wording for such a resolution is set out in the Appendix to this letter, to illustrate how this process is intended to work, although each NGB will of course want to take advice on the appropriate mechanism for it, given its particular constitutional arrangements.

An NGB will of course also be a member of the International Federation for its sport (the '**IF**'), and will need to comply with the IF's requirements in relation to anti-doping. Assuming that the IF is Code-compliant, then that should not pose any problems, since the 2009 Code removes most of the areas where alternative approaches are permitted, and therefore narrows significantly the possibility of different requirements at the international and national level. However, the National Anti-Doping Policy will continue to recognise that an NGB must comply with the requirements of its IF in respect of anti-doping, even if those

requirements conflict with the UK Anti-Doping Rules. If the IF absolutely mandates that its approach must be followed, even though it is different from the requirements of the Policy, then provided the alternative approach required by the IF is Code-compliant, an NGB will not be declared in breach of the Policy for complying with the IF's requirements. See Article 1.1.3 of the 2009 Anti-Doping Rules.

Special provisions will also be required for those sports where a British or UK body takes responsibility for anti-doping rather than the NGBs.

3. Commentary on Specific Provisions of the UK Anti-Doping Rules

The following is a non-exhaustive commentary on the main changes that have been made in the UK Rules, as compared to the Model Rules:

Article 1 (Scope and Application):

- Article 1.4 implements new Article 5.6 of the 2009 Code by requiring an Athlete who retires while in the National Registered Testing Pool or any Domestic Pool to give six months' notice of any intent to return to the sport, and to make him/herself available for testing during that notice period.
- Article 1.6 implements the transitional provisions of Article 25 of the 2009 Code. It contains specific treatment for any whereabouts filing failures and missed tests declared under an NGB's current anti-doping rules that have not expired as of 1 January 2009. In short, such 'strikes' will remain 'on the books' until they would have expired under the current rules, and will be combined with filing failures and missed tests declared under the UK Rules in the same way as they would have been combined with other whereabouts violations under the current rules. Article 1.6 of the UK Rules is drafted on the basis that the NGB's current rules are consistent with the Model Rules (and so, for example, assumes that filing failures and missed tests were treated separately). If in fact an NGB took a different approach, then it may need to include amendments to Article 1.6 when it adopts the UK Rules.

Article 2 (Anti-Doping Rule Violations):

- Article 2.4: The 2009 Code now mandates a uniform approach to whereabouts violations. An Athlete who is put into the National Registered Testing Pool will be required to file whereabouts information on ADAMS, and to be available at those whereabouts for testing, in the manner mandated by the new 2009 International Standard for Testing. Any combination of three filing failures and/or missed tests in any 18 month period, declared by any Anti-Doping Organisation with the relevant jurisdiction over the Athlete, will amount to an anti-doping rule violation under Article 2.4, the sanction for which will be a period of ineligibility of between 12 and 24 months (see below).

Article 3 (the Prohibited List):

- Article 3.3 reflects the expanded category of 'Specified Substances' under the 2009 Code. This is a very important change, because it means that where the prohibited substance found in the 'A' sample is not a steroid,

hormone or one of the stimulants or hormone antagonists specified in the Prohibited List, then as long as the athlete can convince the tribunal of how the substance came to be in his/her system, and that he/she had no intention to enhance performance, then the tribunal will have broad discretion as to the sanction to be imposed, from as little as a warning to a period of ineligibility of 24 months. (See Article 10.4).

- If the substance found in the 'A' sample is not a 'Specified Substance', i.e., if it is a steroid, hormone, or one of the other substances ring-fenced in the Prohibited List, then the mandatory sanction of two years will continue to apply (see Article 10.2), and in addition there will be a mandatory provisional suspension pending determination of the charges (see Article 7.7 and comments below).

Article 4 (Therapeutic Use Exemptions, or 'TUEs'):

- Article 4.2.2 explicitly states that a TUE granted by another ADO (eg the IF) will be recognised at the national level, while Article 4.2.3 warns athletes that the reverse may not apply, i.e., in relation to international-level competition the IF may choose not to recognise TUEs granted at the national level. This comes from the new 2009 Code.
- Much of the detail that was included in the Model Rules in relation to TUE application procedures has been moved to the UK Anti-Doping Procedures Guide (a revised version of which will be circulated in due course).
- The revised International Standard for TUEs removes the abbreviated TUE concept. A standard TUE is now required for asthma medications (inhaled Beta-2 agonists and inhaled glucocorticosteroids). A TUE is no longer required for other glucocorticosteroids.

Article 5 (Testing):

- Article 5.4 reflects the new whereabouts requirements of Article 2.4 of the 2009 Code and Section 11 of the 2009 International Standard for Testing. Only Athletes who are included in the National Registered Testing Pool will be subject to these whereabouts requirements. The NADO will determine which athletes from which sports should be included in the National Registered Testing Pool in accordance with the requirements of Section 4 and clause 11.2 of the 2009 International Standard for Testing.
- Article 5.6 provides for testing of Minors. To avoid certain difficulties that have been encountered in practice, the UK Rules treat all under-18s as Minors and require parental consent to testing of Minors to be provided as a condition of participation in the sport. It will be a requirement of the revised National Anti-Doping Policy that the NGB ensures that parental consent for testing has been provided for any Minor participating in events to which the UK Rules apply.

Article 6 (Analysis of Samples):

- Article 6.3.1 expressly recognises the right under the 2009 Code to use analytical results to build up profiles on Athletes for use in determining whether doping is occurring ('athlete passports').

Article 7 (Results Management):

- The rules provide that the NGB will continue to be responsible (with the support of DFS) for results management (i.e., assessing evidence to determine if there is a case to answer, and presenting that case to the tribunal), until the new NADO is ready to take on that function. Once the new NADO is ready to take on that function, it will do so, save that it will be possible to agree terms on which the NGB may retain the function of presenting cases to the tribunal. (However, the NADO will take exclusive responsibility for assessing evidence to determine whether there is a case to answer, without exception).
- Whether the body exercising the results management function is the NGB or the NADO, in either case before any charge is brought, the matter must be reviewed by a Review Board to provide separate confirmation of the judgment of the NGB/NADO that there is a case to answer.
- Article 7.3 deals with the 2009 Code concept of an 'Atypical Finding' requiring further investigation. In fact, this is nothing new, just a clearer way of presenting what is already being done with analytical results that could indicate substances that are naturally present in the athlete's body.
- As in the Model Rules, the UK Rules identify various circumstances where an athlete's acts or omissions in relation to anti-doping matters will be dealt with not as an anti-doping rule violation but rather as misconduct under the NGB's disciplinary rules. An example is Article 7.4.2 of the UK Rules (failure to cooperate with an investigation). NGBs will be required to demonstrate that their disciplinary rules allow for effective action to be taken in such cases.
- Article 7.7 reflects the 2009 Code treatment of provisional suspensions. Where an A sample returns an adverse analytical finding for a steroid or a hormone or other substances not classified as Specified Substances (see above, Article 3), then a provisional suspension must be imposed, subject to the athlete's right to apply to the NADP for relief, based on exceptional circumstances. In other cases, a provisional suspension may be imposed, subject to the same right of challenge on the part of the athlete.

Article 8 (Disciplinary Proceedings):

- Article 8 of the UK Rules is much shorter than its equivalent in the Model Rules, because now matters are simply referred to the NADP, and the procedure to be followed in first instance cases and appeals will now be set out in the NADP rules rather than the UK Rules.
- The exception to this is the mandatory procedural rules from the Code, which are set out at Article 8.3. Article 8.3.7 (athlete bound by facts found by other tribunals) and Article 8.3.8 (adverse inference can be drawn from refusal to answer questions) are both new provisions introduced by the 2009 Code.

Article 9 (Disqualification of Individual Results):

- Article 9.2 from the Model Rules has been moved to Article 10.1 in the UK Rules. Article 9.3 from the Model Rules has been moved to Article 10.8 of the UK Rules. This is to match up to the numbering in the Code.

Article 10 (Ineligibility Sanctions for Individuals):

- Article 10.3.2: as noted above, the 2009 Code specifies that the sanction for a whereabouts violation will be between 12 and 24 months, depending on the degree of the Athlete's fault.
- Article 10.4 reflects the new, much broader discretion on sanctions given to tribunals under the 2009 Code in the case of Specified Substances, once the preconditions set out in that article are met.
- Article 10.5.4 reflects the introduction in the 2009 Code of further discretion to mitigate a sanction where the Athlete voluntarily admits the violation.
- Article 10.6 reflects the new 2009 Code provision giving the tribunal discretion to increase the sanction to up to four years if there are aggravating circumstances (such as use of multiple substances, or being part of a greater common anti-doping scheme).
- Article 10.7 introduces the far greater flexibility under the 2009 Code with respect to the sanctioning of second violations.
- Article 10.9 reflects the 2009 Code's introduction of greater flexibility to back-date the commencement of the period of ineligibility imposed by the tribunal.
- Article 10.10.5 reflects the new 2009 Code provision addressing the sanctions applicable to an athlete who participates in his/her sport in defiance of an anti-doping ban.
- Article 10.11.4 introduces a discretion to allow an athlete to pay back forfeited prize money in instalments, including after the period of ineligibility has been served.

Article 11 (Consequences for Teams):

- The 2009 Code requires that a team be subject to disciplinary action under the NGB's standard disciplinary rules if two or more members commit anti-doping rule violations in connection with the same event. This is reflected in new Article 11.2.2 of the UK Rules.

Article 13 (Appeals):

- Article 13.4 confirms the 2009 Code position that the NADO has the same rights of appeal as an IF, which was already the position under the Model Rules. It also confirms the NGB's rights of appeal.
- Article 13.5 confirms WADA's special position in respect of appeals, as set out in the 2009 Code.

- Again a lot of detail about appellate procedure from the Model Rules has been removed, because that detail can now be found in the NADP procedural rules.

Article 14 (Confidentiality and Reporting):

- Article 14.1.3 reflects the new 2009 Code provision expressly limiting the right of the NGB/NADO to comment publicly on pending cases.

4. Time-table

With the 2009 Code coming into effect on 1 January 2009, every NGB will need to have incorporated the UK Anti-Doping Rules into its rulebook prior to 1 January 2009, so that they come into effect as of that date. We realise this does not leave a lot of time, particularly because any proposed amendments, clarifications or supplemental provisions that an NGB may wish to add must be approved in advance by Drug Free Sport.

Please let me emphasise this: an NGB wishing to be Policy-compliant must submit a draft of the terms of its proposed adoption of the UK Anti-Doping Rules into its rulebook (including any proposed amendments or supplemental provisions) for DFS's review and approval at least three weeks before such terms are due to go to the NGB's Council/Executive Committee/other adopting body (as applicable) for implementation.

Apart from that, the time-table moving forward is as follows:

- | | |
|----------|--|
| 29/07/08 | Estimated date for circulation of revised Procedures Guide, setting out procedures that support the UK Rules. |
| 01/09/08 | Any NGB wishing to retain responsibility for its tribunals to retain jurisdiction over anti-doping cases should notify DFS by no later than this date. |
| 01/10/08 | Any NGB that wishes to apply (based on IF requirements or other compelling reason) for an extension of the 1 January 2009 deadline for the adoption of the UK Rules must make such application in writing to DFS by no later than this date. |
| 03/11/08 | Last date for agreement between DFS and NGB on terms of any extension of deadline for implementation of UK Rules, including long-stop date after which any non-implementation shall amount to non-compliance with the National Anti-Doping Policy. |
| 01/01/09 | Date on which 2009 UK Anti-Doping Rules must come into force in NGB's sport (save only if extension has been agreed by 03/11/08). |

5. Conclusion

I hope that the above material is clear and helpful, and gives you a useful overview of the changes made in the 2009 Code, as well as the manner in which the transition to the new Code, the new NADO and the NADP will be managed in the United Kingdom.

I appreciate, however, that there is a lot to take in. Therefore, if you have any questions about any of the above, please do not hesitate to Nicole Sapstead, Compliance Manager (tel: 020 7211 5184 or email: nicole.sapstead@uksport.gov.uk)

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Parkinson', with a stylized flourish at the end.

Andy Parkinson
Head of Operations, Drug-Free Sport, UK Sport

Appendix

Draft wording for adoption of 2009 Anti-Doping Rules into NGB rulebook

The suggested wording given below is in the form of a resolution to be passed by the appropriate council, committee or other forum within the National Governing Body. The council, committee or other forum passing the resolution must be the entity within the National Governing Body that is empowered to make the rules of sport of that National Governing Body and to establish the rights and obligations governing athletes and athlete support personnel under the jurisdiction of that National Governing Body.

Suggested wording:

"The [name of council, committee or rule-making entity] of the [name of National Governing Body] hereby resolves that the anti-doping rules of [name of National Governing Body] comprised in [number or title of existing anti-doping rules] shall, as and from the 1st of January 2009, stand repealed and shall be replaced by the following rule:

"The anti-doping rules of [name of National Governing Body] are the UK Anti-Doping Rules published by the Drug-Free Sport Directorate of UK Sport (or its successor), as amended from time to time. Such rules shall take effect and be construed as rules of [name of National Governing Body]."

OR, IF AMENDMENTS OR SUPPLEMENTAL PROVISIONS ARE REQUIRED:

"The anti-doping rules of [name of National Governing Body] are the UK Anti-Doping Rules published by the Drug-Free Sport Directorate of UK Sport (or its successor), as amended from time to time. Such rules shall take effect and be construed as rules of [name of National Governing Body], with the following [amendments and/or] supplemental provisions:

1. ...
2.".

Publication of Rule:

When the National Governing Body has passed its resolution, the new rule as set out above should be published in the appropriate place in its rulebook, and the 2009 UK Anti-Doping Rules should be reproduced in the rulebook directly thereafter.



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