

PRISONS (DRUG TESTING) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Prisons (Drug Testing) Bill as introduced in the House of Commons on 19 June 2013. They have been provided by the Ministry of Justice, with the consent of Margot James, the Member in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. Under the existing mandatory drug testing (“MDT”) programme prisoners can only be tested for drugs that are controlled under the Misuse of Drugs Act 1971 (“the 1971 Act”). The Bill expands the existing MDT programme so that prisoners can be tested for drugs that are not controlled under the 1971 Act (“non-controlled drugs”). This is achieved by amending the Prison Act 1952 (“the 1952 Act”) to create a power for the Secretary of State to specify by statutory instrument in prison rules and young offender institution (“YOI”) rules drugs which are not controlled by the 1971 Act and which a prisoner may be tested for as part of the existing MDT regime. For example, the Secretary of State may specify certain prescription drugs which may be misused by prisoners.
4. Drugs in prisons and YOIs, in addition to the direct damage they cause to a prisoner, create risks to the safety of prisoners because of bullying, violence, self harm, overdose and debt. More generally drugs destabilise the prison environment, with inherent risks to those working in and visiting prisons. They also severely hamper efforts to rehabilitate prisoners, many of whom have a history of drug misuse and associated offending in the community. In that context there are clear government commitments to reduce the availability and use of drugs in prisons. This is set out in the Breaking the Cycle Green Paper¹ and the cross government drug strategy².

¹

<http://webarchive.nationalarchives.gov.uk/20120119200607/http://www.justice.gov.uk/consultations/docs/breaking-the-cycle.pdf> (see pages 27 to 32)

² www.gov.uk/government/publications/drug-strategy-2010--2

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5. A key element to tackle drug misuse in prisons by the National Offender Management Service³ (“NOMS”) is the MDT programme. The purpose⁴ of the MDT programme is to supply information on patterns of drugs misuse, deter prisoners from misusing drugs, identify those in need of referral to drug treatment, contribute to drug supply reduction, and contribute to prisoner safety, violence reduction, order and control.

6. The operational detail for the MDT programme is set out in Prison Service Order 3601⁵ (“PSO 3601”). This document represents a statement of prison service policy and is mandatory for prison governors and directors (in contracted out prisons) to follow.

7. In order for the MDT programme to achieve its purpose it must test prisoners for the drugs they most commonly misuse. Historically these have been substances often misused in the community; predominantly heroin and cannabis. However, as prisons have improved the effectiveness of their measures to restrict the supply of drugs into prisons, and as drug misuse trends in the community and in prisons have changed, there is a growing trend amongst prisoners to misuse other substances, such as prescription drugs and new psychoactive substances, many of which are not controlled under the 1971 Act.

8. NOMS is aware of a steep rise in the misuse of certain prescription drugs such as Tramadol, Gabapentin and Pregabalin by prisoners for whom they have not been prescribed. HM Inspectorate of Prisons for England and Wales has also commented on the problem. Its Annual Report⁶ for 2011-2012 explained that it had previously highlighted the diversion of prescription drugs in high security and vulnerable prison populations and now *“this trend is spreading to mainstream populations and it has become a major concern.”*⁷

9. The provisions of the Bill are designed to remedy this problem by enabling the Secretary of State to specify in prison rules and YOI rules non-controlled drugs which can then be tested for under the existing MDT programme.

³ NOMS is an executive agency of the Ministry of Justice. It commissions and provides offender services in the community and in custody in England and Wales. The role of NOMS is to reduce re-offending by delivering the punishment and orders of the courts and supporting rehabilitation by helping offenders to change their lives.

⁴ See page 3 of the Service Specification for Mandatory Drug Testing: www.justice.gov.uk/downloads/about/noms/directory-of-services/mandatory-drug-testing.zip

⁵ <http://justice.gov.uk/offenders/psos>

⁶ <http://www.justice.gov.uk/publications/corporate-reports/hmi-prisons>

⁷ See pages 6 and 36 of the 2011-12 Annual Report: <http://www.justice.gov.uk/publications/corporate-reports/hmi-prisons>

TERRITORIAL EXTENT AND APPLICATION

10. The Bill extends to England and Wales. Its provisions do not relate to matters within the legislative competence of the National Assembly for Wales and do not affect the functions of Welsh Ministers.

COMMENTARY ON CLAUSES

Clause 1: Drugs for which prisoners etc may be tested

11. Clause 1 expands the definition of drug that a prisoner can be tested for to include a drug that is not controlled under the 1971 Act and which is specified by the Secretary of State in prison rules.

12. Section 16A⁸ of the 1952 Act provides that, if an authorisation is in force in a prison, a prison officer may, in accordance with prison rules require a prisoner to provide a sample of urine for the purpose of ascertaining whether the prisoner has any drug in his body. Authorisation means an authorisation by the governor of the prison.

13. Section 16A(3) defines “drug” as meaning any controlled drug for the purposes of the 1971 Act. Section 2 of, and Schedule 2 to, the 1971 Act defines “controlled drug” as any substance or product specified in Part 1, 2 or 3 of that Schedule or that is subject to temporary control. The reference to Class A, B or C drugs are those drugs specified in Parts 1 to 3 of Schedule 2.

14. *Subsection (2)* amends section 16A by expanding the definition of drug to include a “specified drug”, which is defined as any substance or product specified in prison rules for the purposes of section 16A.

15. *Subsection (3)* inserts a new subsection (3A) into section 47 of the 1952 Act. Section 47 gives the Secretary of State the power to make rules for the regulation and management of prisons, remand centres, YOIs and secure training centres. Subsection (3A) provides that rules made under section 47 may specify any substance or product (which is not a controlled drug for the purposes of the 1971 Act) in relation to which a person may be required to give a sample for the purposes of section 16A. The effect of subsection (3A) is that the Secretary of State can specify in prison rules and YOI rules a drug that is not controlled under the 1971 Act and which should be subject to testing under section 16A of the 1952 Act.

COMMENCEMENT

16. The substantive provisions of the Bill in clause 1 will be brought into force in England and Wales by means of commencement order made by the Secretary of State.

⁸ Section 16A of the 1952 Act also applies to YOIs by virtue of section 43(5) of the 1952 Act.

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FINANCIAL EFFECTS OF THE BILL

17. The Bill itself will impose no financial obligations on the public sector. The Bill will make it possible for the Secretary of State to broaden the range of drugs that prisoners can be tested for.

18. There is no requirement in the Bill to widen the range of drugs tested for as part of the existing MDT programme. Rather it gives the power to the Secretary of State to specify a particular non-controlled drug that should be tested for as part of the existing MDT programme should the Secretary of State wish to do so.

EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER

19. The provisions of the Bill are not expected to have an impact on public sector manpower. The Bill will impose no obligations on NOMS to test prisoners for any additional drugs.

SUMMARY IMPACT ASSESSMENTS

20. As the proposed policy is unlikely to lead to costs or savings for business, public or civil society organisation, regulators or consumers, a full impact assessment has not been completed.

21. An initial screening has been undertaken by the Ministry of Justice which confirmed that a full Equality Impact Assessment is not necessary. The provisions in the Bill will impact equally upon all prisoners misusing any specified drug.

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