

**EXPLANATORY MEMORANDUM TO THE  
PRISON (AMENDMENT) RULES 2005**

**2005 No.869**

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
  
2. **Description**
  - 2.1. The above Rules are made in exercise of the power conferred by section 47 of the Prison Act 1952. Principal changes are as follows.
  - 2.2. They provide the procedure which is to apply where a prison officer requires a prisoner to provide a breath test to establish if the prisoner has consumed alcohol.
  - 2.3. They make it an offence to test positive for a substance which shows that a controlled drug has been administered, whether in prison or on temporary release.
  - 2.4. They make changes to the offences which apply to prisoners who have consumed alcohol.
  - 2.5. They also enable a prisoner on whom an adjudicator has awarded a punishment to apply to a Senior District Judge (Chief Magistrate) for a review of the punishment imposed.
  - 2.6. They strengthen the controls on people and vehicles entering or leaving a prison.
  
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1. None.
  
4. **Legislative Background**
  - 4.1. Section 47 of the Prison Act 1952 empowers the Home Secretary to make rules for the regulation and management of prisons.
  - 4.2. Where a relevant authorisation is in place for a particular prison, section 16B of the Prison Act 1952 empowers a prison officer to require a prisoner to take a breath test to establish if he has consumed alcohol. If the authorisation so provides, they can also take a urine test or require other non-intimate samples. These Rules provide the

procedure which is to govern the use of this power. They also make various changes to the offences which apply where prisoners are found to have consumed alcohol.

- 4.3. The power to test prisoners for controlled drugs is contained in section 16A of the Prison Act 1952. When a prisoner tests positive for a controlled drug an offence will be committed even if the drug was administered while on temporary release.
- 4.4. Where a prison governor determines that a disciplinary charge is so serious that additional days should be awarded if the prisoner is found guilty, rule 53A requires the governor to refer the charge to an adjudicator. These Rules remove the role of the Secretary of State in reviewing adjudications by an adjudicator and give this reviewing function to a District Judge (Magistrates' Court) or Deputy District Judge (Magistrates' Courts). The reviewer will be able to impose a less severe punishment if they consider it is manifestly unreasonable.

## 5. **Extent**

- 5.1. This instrument applies to England and Wales.

## 6. **European Convention on Human Rights**

- 6.1. The Parliamentary Under Secretary of State with responsibility for prisons has made the following statement under section 19 (1) (a) of the Human Rights Act 1998:

In my view the provisions of the Prison (Amendment) Rules 2005 are compatible with the Convention rights.

## 7. **Policy background**

- 7.1. The changes relating to independent adjudicators complete a process begun in 2002 as a consequence of the European Court of Human Rights decision in Ezeh and Connors.
- 7.2. The power to breath test prisoners for alcohol dates from the insertion of section 16B in the Prison Act in 1997, but until recently the infrastructure to support a testing regime was not available. Alcohol testing will be at the Governor's discretion on suspicion. There are no plans to introduce random testing.
- 7.3. Technological advances will improve standards of security on entry and exit through the greater use of photography and individual biometric readings.
- 7.4. The amendment to Rule 51(9) closes a loophole in the previous wording of the drug offences, which has allowed some prisoners to avoid disciplinary punishment if it is not possible to show whether the

drug had been taken in prison or during a period of temporary release.

- 7.5. Consultation on these amendments has taken place internally within the Prison Service, with the Department for Constitutional Affairs and the Senior District Judge, and with prison service unions, as appropriate.
- 7.6. The changes are unlikely to attract significant public or media interest.

## 8. **Impact**

- 8.1. A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2. The new powers to photograph, fingerprint or measure people and vehicles entering or leaving a prison will apply to the general public, whether they are visiting or attending in an official capacity, but they are already subject to being stopped and searched. The impact of the other amendments is limited to prison management and prisoners.
- 8.3. Where new procedures are introduced, the cost will be met from existing resources.

## 9. **Contact**

- 9.1. The following officials in the Home Office (Prison Service) can answer queries about this instrument.

### Independent adjudications

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### Alcohol testing

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### Drug testing

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### Security improvements

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