

**EXPLANATORY MEMORANDUM TO**  
**THE PRISON AND YOUNG OFFENDER INSTITUTION (AMENDMENT) RULES**  
**2021**

**2021 No. 1279**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument amends the Prison Rules 1999 (“Prison Rules”) and the Young Offender Institution Rules 2000 (“YOI Rules”) to add broader definitions of psychoactive substance, (as defined in the Psychoactive Substances Act 2016), and pharmacy and prescription only medicine, (as defined in the Human Medicines Regulations 2012), to the types of substances that if a prisoner is found to have tested positive for will constitute an offence against discipline. This instrument is brought into force alongside the Prisons (Substance Testing) Act 2021 (“the 2021 Act”) which introduces these same definitions to the types of substances that can be tested for in prisons and Young Offender Institutions (“YOIs”). This instrument and the 2021 Act will also improve the ability of Her Majesty's Prison Service (HMPPS) to identify and address drug misuse in prisons and young offender institutions.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.  
4.2 The territorial application of this instrument is England and Wales.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to a negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 The Prisons (Substance Testing) Act 2021 amends section 16A of the Prison Act 1952 to expand the definition of “drug” to mean any controlled drug, pharmacy medicine, prescription only medicine, psychoactive substance, or specified substance. It also provides the Secretary of State with the ability to test prisoners’ samples for the prevalence of these substances on an anonymised basis.
- 6.2 Currently, Section 16A of the 1952 Act gives a prison officer the power to require a prisoner or inmate to provide a sample of urine (or a sample of any other description specified in the authorisation not being an intimate sample) for the purpose of

ascertaining whether the prisoner has any drug in their body. The term ‘drug’ refers to a ‘controlled drug’ or ‘specified drug’. ‘Controlled drug’ means any drug which is a controlled drug for the purposes of the Misuse of Drugs Act 1971 and ‘specified drug’ means any product or substance containing one or more of the chemical compounds listed in Schedule 2 to both the Prison and YOI Rules. The list of ‘specified drugs’ is updated using secondary legislation.

- 6.3 The Prison and Young Offenders Institution (Amendment) Rules 2021 is being made alongside the commencement of the 2021 Act to ensure that the new substances being tested for also constitute an offence against discipline under the Prison and YOI Rules.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The 2021 Act was a Private Members’ Bill (PMB) that received Royal Assent on 29 April 2021. The commencement of this Act will allow HMPPS to test prisoners for any psychoactive substance and pharmacy and prescription medicines that are not otherwise controlled by the Misuse of Drugs Act 1971.
- 7.2 Mandatory Drug Testing (MDT) has been carried out within prisons since 1996. Prisoners can be required to provide a supervised urine test sample in the following circumstances: when selected for random Mandatory Drug Testing (rMDT), upon reception into a prison, where there is a reasonable suspicion that they have used drugs or as part of a frequent testing programme to assess compliance manage risk.
- 7.3 All prisons must complete random rMDT on between 5-10% of their population each month, depending on operational capacity. Prisoners are selected for testing using a randomly generated list. HMPPS undertakes regular reviews of the (rMDT) panel and adds substances based on their assessment of the data (prevalence reports, finds etc.).
- 7.4 Currently, unless a drug is a controlled substance under the Misuse of Drugs Act 1971, it cannot be added to the panel and tested for in prisons until it has been added to the list of “specified drugs” via secondary legislation. This creates a legislative burden for HMPPS which hinders their ability to maintain up-to-date drug testing panels.
- 7.5 HMPPS can already adjudicate when a prisoner tests positive for some substances. This statutory instrument will provide HMPPS with the ability to adjudicate when prisoners test positive for substances introduced by the 2021 Act. Together with the 2021 Act, it aims to reduce drug misuse in prisons by identifying new and emerging trends across the estate in quicker time with up-to-date drug testing panels, which in turn provides HMPPS with the ability to take the appropriate rehabilitative or disciplinary measures.
- 7.6 This is a routine change to the rules without political or legal significance.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 There are no current plans to consolidate The Prison Rules 1999 or The Young Offender Institution Rules 2000.

## **10. Consultation outcome**

- 10.1 No consultation has taken place on The Prison and Young Offenders Institution (Amendment) Rules 2021, as this is a minor procedural amendment.

## **11. Guidance**

- 11.1 Guidance on drug testing and adjudications will be reviewed prior to the commencement of testing any new substances under rMDT.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector. The instrument could give rise to some additional laboratory costs as the addition of new substances to the testing panel under the current Drug Testing Service contract will incur costs. The instrument could also give rise to a larger number of positive results, which could increase costs for providing therapeutic support such as substance misuse course or increased adjudication costs. However, HMPPS has the option to prioritise testing for the most prevalent or damaging substances, which will enable them to control spend, and so the overall financial impact would be modest.
- 12.3 An Impact Assessment has not been prepared for this instrument because it does not give rise to a significant financial impact.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 The monitoring of this legislation will be undertaken using data from rMDT, which is used as a published proxy-measure of drug use within prisons in the HMPPS Annual Digest statistical release. The HMPPS Annual Digest provides information on the number of incidents where drugs are found in prisons in England and Wales by drug type and class, including prescription drugs and psychoactive substances, which the 2021 Act impacts. Fluctuations in positivity rates are in part reflective of the addition of new drugs to the testing panel. In addition, the number of adjudications or referral rates into treatment will be used to assess HMPPS's response to drug misuse..
- 14.2 HMPPS will use the data from this monitoring and review to inform drug misuse and treatment interventions. HMPPS will also consider the overall impact on reported rMDT results and monitor outcomes for prisoners with protected characteristics.

## **15. Contact**

- 15.1 Emma Coots, Head of Prison Security Policy, at the Ministry of Justice Telephone: 07966 428092 or email: [Emma.Coots@justice.gov.uk](mailto:Emma.Coots@justice.gov.uk) can be contacted with any queries regarding the instrument.

- 15.2 Hansa Ladva, Deputy Head of Operational Policy, [Hansa.Ladva@justice.gov.uk](mailto:Hansa.Ladva@justice.gov.uk), at the Ministry of Justice can be contacted with any queries regarding adjudications contained within the instrument.
- 15.3 Rachel Radice, Her Majesty's Prison and Probation Service, [rachel.radice1@justice.gov.uk](mailto:rachel.radice1@justice.gov.uk), can be contacted with any queries regarding impacts to the mandatory drug testing framework contained within the instrument.
- 15.4 Rachel Pascual, Deputy Director for Safety, Security and Operational Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.5 Victoria Atkins, Parliamentary Under-Secretary for State for Justice at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.