EXPLANATORY MEMORANDUM TO

THE PRISON AND YOUNG OFFENDER INSTITUTION (AMENDMENT) (No. 2) RULES 2016

2016 No. 945

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 statutory instrument amends the Prison Rules 1999 and the Young Offender Institution Rules 2000 (the YOI Rules 2000) in order to add to the current list of specified non-controlled substances that prisoners can be tested for under existing statutory arrangements for mandatory drug testing in prisons and young offender institutions. Any product or substance which contains certain chemical compounds listed in the instrument is classed as a specified drug for these purposes.

2.2 Amendments are also made by these Rules to the definition of "specified drug" to clarify that a specified drug is a product or substance that contains one or more of the chemical compounds listed in the definitions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument corrects an error previously reported by the Joint Committee on Statutory Instruments. The error that is being corrected relates to the Prison and Young Offender Institution (Amendment) Rules 2016 (S.I. 2016/583) and was reported in the Fourth Report of Session 2016-17 (published on 1st July 2016).

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Section 16A of the Prison Act 1952 gives a prison officer the power to require a prisoner 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.

4.2 The definition of drug for the purposes of section 16A of the 1952 Act includes a drug which is a controlled drug under the Misuse of Drugs Act 1971 or a specified drug. Section 16A(3) of the 1952 Act states that a specified drug means any substance or product specified in Prison Rules for the purposes of this section.

4.3 Rules (S.I. 2016/583) came into force on 7 June 2016 to provide an initial list of those non-controlled substances to be classed as a specified drug for the purposes of mandatory drug testing in rule 2(1) of the Prison Rules 1999 and rule 2(1) of the YOI

Rules 2000. This instrument adds to the definition of "specified drug" to include an additional seven substances on the list of chemical compounds for which prisoners may be tested. On receipt of a positive result, a prisoner may be subject to an adjudication for offences against discipline under Rule 51 of the Prison Rules 1999 and Rule 55 of the YOI Rules 2000.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales only.

5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 The purpose of this instrument is to extend the list of specified non-controlled drugs. The Prison and Young Offender Institution (Amendment) Rules 2016 (S.I. 2016/583), specified a number of non-controlled substances that prisoners can be tested for under existing statutory arrangements for mandatory drug testing in prisons and young offender institutions. The instrument also extended the existing offences against discipline so that they cover prisoners who test positive for the listed specified drugs. These offences will apply to the additional chemical compounds specified by this instrument.

7.2 The misuse of non-controlled substances by prisoners (including, but not restricted to, psychoactive substances) is becoming increasingly prevalent in prisons. This is a view based on the discovery of substances both inside prisons and prison perimeters, and on drug-rehabilitation work undertaken with prisoners.

7.3 Control and order in prisons is fundamental in ensuring safety and the maintenance of prison regimes, including rehabilitation. The use of certain drugs that are presently not controlled under the Misuse of Drugs Act 1971 can threaten this. The use of these drugs is associated with mental health problems and disturbed behaviour among prisoners. This includes violence against staff and other prisoners, either due to the effects of the drugs themselves or because of the actions of prisoners in relation to their supply.

7.4 The provisions are intended to allow for prisoners to be tested for additional substances that are known to be currently misused in prisons or are known to be an emerging threat. They provide a deterrent to prisoners who consider taking such substances, sending a clear message that we are continuing to add to the substances we can test for and that they have a greater risk of being caught and punished accordingly.

7.5 There is a wider package of measures being implemented in prisons aimed at dealing with the use of harmful substances within prisons, including joint work with health partners to support prisoners with addiction problems and provide information about abuse of psychoactive substances to staff, prisoners and their families.

Consolidation

7.6 It is likely that further associated legislation will be necessary as new substances become available and new tests for substances emerge.

8. Consultation outcome

8.1 A number of key stakeholders were consulted with prior to the commencement of S.I. 2016/583 which introduced the amendments to the Prison Rules 1999 and YOI Rules 2000 to enable the testing of prisoners for specified drugs. This includes NOMS National Executive Management Committee; NOMS Director of Public Sector Prisons; NOMS Deputy Directors of Custody; and selected prison governors. Further consultation on the additional substances to be added to the list has taken place with the laboratory commissioned by NOMS to undertake drug-testing of prisoner samples. A pilot of the testing for drugs controlled under the Misuse of Drugs Act 1971 that are psychoactive substances commenced in 34 prisons at the beginning of February 2016, and was extended on 13 June 2016 to include the non-controlled substances specified in S.I. 2016/583. No concerns have been raised by any group.

9. Guidance

9.1 The amended Rules will be published and made available on the Ministry of Justice Website.

9.2 Guidance on the new provisions will be issued to all prison establishments prior to implementation and the relevant Prison Service Order (PSI 3601, Mandatory Drug Testing") will be updated as soon as possible afterwards.

10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be minimal.

10.2 The impact on the public sector is expected to be minimal.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses. It will apply to laboratories commissioned by NOMS to undertake drug-testing of prisoner samples.

12. Monitoring & review

12.1 The list of specified substances included in the amended Prison Rules 1999 and YOI Rules 2000 will be kept under review.

12.2 The impact of the introduction of testing prisoners for specified drugs will be reviewed by NOMS Security Group a year following implementation of the initial statutory instrument that commenced the new definition. This will involve consideration of the impact they have on the number of drug tests and subsequent adjudications that take place and their results/outcomes.

13. Contact

13.1 Emma Prince at the National Offender Management Service Telephone: 0300 047 6202 or email: emma.prince@noms.gsi.gov.uk can answer any queries regarding the instrument.