EXPLANATORY MEMORANDUM TO

THE PRISON AND YOUNG OFFENDER INSTITUTION (AMENDMENT) RULES 2016 YEAR

2016 No. 583

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before the House of Commons 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 in order to specify 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. Any product or substance which contains certain chemical compounds listed in the instrument is classed as a specified drug for these purposes.

2.2 This instrument also amends the Prison Rules 1999 and the Young Offender Institution Rules 2000 to extend the existing offences against discipline relating to controlled drugs so that they also apply to specified drugs.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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. This statutory instrument will provide a definition of what substance or product will be classed as a specified drug.

4.3 This instrument also amends Rule 51 of the Prison Rules and Rule 55 of the YOI Rules. Currently, these rules include offences against discipline where the prisoner is found with a substance in his urine demonstrating that a controlled drug has been administered to him, or receives any controlled drug during a visit. This instrument amends Rules 51 and 55 respectively so that these offences against discipline are extended to cover specified drugs, subject to the existing defences set out in the rules.

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 range of drugs that prisoners can be tested for in prisons and young offender institutions under the existing Mandatory Drug Testing (MDT) programme. Currently, prisoners can only be tested for substances controlled under the Misuse of Drugs Act 1971. This instrument will insert into the Prison Rules and YOI Rules a list of non-controlled substances that prisoners can also be tested for. It will also extend the existing offences against discipline so they cover prisoners who test positive for these specified substances.

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 can threaten this. Their use 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 a number of the substances that are known to be commonly misused and to provide a deterrent to prisoners who consider taking such substances, sending a clear message that they have a greater risk of being caught and punished accordingly.

7.5 The proposed measure is associated with 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 emerge.

8. Consultation outcome

8.1 Consultation has taken place with a number of key stakeholders including, NOMS National Executive Management Committee; NOMS Director of Public Sector Prisons; NOMS Deputy Directors of Custody; and selected prison governors. A pilot of the testing of specified controlled psychoactive substances has been operating in 34

establishments over the course of two months. No concerns have been raised by any group and the amendments are welcomed.

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 Instruction 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 These rules will amend the Prison Rules 1999 and YOI Rules 2000 and will be kept under review.

12.2 The impact of the introduction of the new provisions will be reviewed by NOMS Security Group a year following implementation. 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.