

# **Prisons (Substance Testing) Bill**

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Ministry of Justice with the consent of Baroness Pidding, the member in charge of the Bill, have been ordered to be published as HL Bill 181 – EN.



# Prisons (Substance Testing) Bill

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## CONTENTS

- 1 Testing prisoners for psychoactive substances and other substances
- 2 Consequential amendments
- 3 Final provisions



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**B I L L**

TO

Make provision about substance testing in prisons and similar institutions.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**1 Testing prisoners for psychoactive substances and other substances**

- (1) Section 16A of the Prison Act 1952 (testing prisoners for drugs) is amended in accordance with this section.
- (2) In the title, after “drugs” insert “, psychoactive substances and other substances”. 5
- (3) In subsection (1), for “he has any drug in his body” substitute “the prisoner has in their body any—
  - (a) controlled drug,
  - (b) pharmacy medicine,
  - (c) prescription only medicine, 10
  - (d) psychoactive substance, or
  - (e) specified substance”.
- (4) After subsection (2) insert—
 

“(2A) The Secretary of State may use any prisoners’ samples to test, on an anonymised basis, for the prevalence of the following substances in prisons—

  - (a) controlled drugs,
  - (b) medicinal products,
  - (c) psychoactive substances, or
  - (d) specified substances.” 15
- (5) In subsection (3)—
  - (a) in the definition of “drug”—
    - (i) for ““drug” means” substitute ““controlled drug” means”;
    - (ii) omit “or specified drug”;20

- (b) after the definition of “intimate sample” insert –
- ““medicinal product” has the meaning given in regulation 2 of the Human Medicines Regulations 2012;
  - “pharmacy medicine” has the meaning given in regulation 8 of the Human Medicines Regulations 2012; 5
  - “prescription only medicine” has the meaning given in regulation 8 of the Human Medicines Regulations 2012;”;
- (c) after the definition of “prison rules” insert –
- ““prisoners’ samples” means any sample – 10
  - (a) provided under subsection (1) or (2), or
  - (b) provided by prisoners voluntarily;
  - “psychoactive substance” has the same meaning as in the Psychoactive Substances Act 2016;”;
- (d) in the definition of “specified drug”, for ““specified drug” means” substitute ““specified substance” means”. 15

## 2 Consequential amendments

- (1) In section 47 of the Prison Act 1952 (prison rules), in subsection (3A) –
- (a) omit “(which is not a controlled drug for the purposes of the Misuse of Drugs Act 1971)”;
  - (b) after “this Act” insert “; but a substance or product may not be specified if it is – 20
  - (a) a controlled drug,
  - (b) a pharmacy medicine,
  - (c) a prescription only medicine, or 25
  - (d) a psychoactive substance
- within the meaning of section 16A”.
- (2) In the Prison Act 1952 –
- (a) in section 16A (testing prisoners for drugs), after subsection (3) insert –
  - “(4) The Secretary of State may, by regulations, make such amendments of this section or section 47 as the Secretary of State considers appropriate in consequence of – 30
  - (a) the amendment or revocation of the Human Medicine Regulations 2012, or
  - (b) the making, amendment or revocation of any other subordinate legislation (whenever made) which relates to human medicines. 35
  - (5) In subsection (4) “subordinate legislation” has the same meaning as in the Interpretation Act 1978.”;
- (b) in section 52 (exercise of power to make regulations etc), after subsection (2B) insert – 40
- “(2C) A statutory instrument containing regulations under section 16A(4) shall not be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.”
- (3) In the Prison Rules 1999 – 45

- (a) in rule 2 (interpretation), in paragraph (1), omit the definition of “specified drug”;
  - (b) in rule 50 (compulsory testing for controlled drugs or specified drugs) –
    - (i) in the title, omit “or specified drugs”; 5
    - (ii) in paragraph (1), omit “or specified drug”;
  - (c) in rule 51 (offences against discipline), in paragraphs (9) and (24) omit “or specified drug”;
  - (d) in rule 52 (defences to rule 51(9)), in sub-paragraphs (a), (b) and (c), omit “or specified drug”; 10
  - (e) omit Schedule 2.
- (4) In the Young Offender Institution Rules 2000 –
- (a) in rule 2 (interpretation), in paragraph (1), omit the definition of “specified drug”;
  - (b) in rule 53 (compulsory testing for controlled drugs or specified drugs) – 15
    - (i) in the title, omit “or specified drugs”;
    - (ii) in paragraph (1), omit “or specified drug”;
  - (c) in rule 55 (offences against discipline), in paragraphs (10) and (27) omit “or specified drug”; 20
  - (d) in rule 56 (defences to rule 55(10)), in sub-paragraphs (a), (b) and (c), omit “or specified drug”;
  - (e) omit Schedule 2.
- (5) The following instruments are revoked –
- (a) the Prison and Young Offender Institution (Amendment) Rules 2016 (S.I. 2016/583); 25
  - (b) the Prison and Young Offender Institution (Amendment) (No. 2) Rules 2016 (S.I. 2016/945).
- (6) In the Prison and Young Offender Institution (Amendment) (No. 2) Rules 2018 (S.I. 2018/960) – 30
- (a) omit Rule 2(5) (insertion of Schedule 2 into the Prison Rules 1999);
  - (b) omit Rule 3(5) (insertion of Schedule 2 into the Young Offender Institution Rules 2000);
  - (c) omit the Schedule (which sets out the new Schedule 2 inserted in accordance with Rules 2(5) and 3(5)). 35
- (7) In the Prison and Young Offender Institution (Coronavirus, etc) (Amendment) (No. 3) Rules 2020 (S.I. 2020/1077) –
- (a) omit rule 2(3), and
  - (b) omit rule 3(3).
- 3 Final provisions** 40
- (1) This Act may be cited as the Prisons (Substance Testing) Act 2021.
  - (2) This Act comes into force on such day as the Secretary of State may appoint by regulations made by statutory instrument.
  - (3) This Act extends to England and Wales only.

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# B I L L

To make provision about substance testing in prisons and similar institutions.

*Brought from the Commons on 12th March 2021*

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