

## Criminal Justice and Courts Bill

### Fact sheet: Drug testing in prisons

#### Introduction

1. The Secretary of State is clear that the misuse of drugs in prisons, in addition to the direct damage it causes to the prisoner, creates risks to the safety of prisoners because of bullying, violence, self harm, overdose and debt, and generally destabilises the prison environment, with inherent risks to those working in and visiting prisons. It also severely hampers efforts to rehabilitate prisoners, many of whom have a history of drug misuse and associated offending in the community.
2. For these reasons there are clear government commitments to tackle drug misuse in prisons expressed in the Ministry of Justice green paper<sup>1</sup> *'Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders'* and the national drug strategy<sup>2</sup>. These clauses support those commitments.

#### What is the current position?

3. In light of the risks posed by drug misuse in prisons, the National Offender Management Service (NOMS)<sup>3</sup> has in place a comprehensive range of measures to stop drugs getting into prisons and to deter prisoners from misusing them. One of them, which is the focus of this clause, is the Mandatory Drug Testing (MDT) programme which operates in prisons and young offender institutions.
4. The MDT programme has been in existence since 1996. Its purpose is to supply information on patterns of drugs misuse, deter prisoners from misusing drugs, identify those in need of referral to drug treatment, contribute to drug supply reduction, and contribute to prisoner safety, violence reduction, order and control. Prisoners can be selected for MDT on a random or a targeted basis; for example on the basis of suspicion or as part of a risk assessment. Once selected, prisoners are required to provide a sample of urine which is sent to a laboratory for testing. Irrespective of the reason for the test, prisoners are punished under the prison discipline (adjudication) system if they test positive or refuse to be tested, with those testing positive also referred to prison drug treatment services.
5. Prisons' powers to conduct MDT are set out in section 16A of the Prison Act 1952 and, crucially, enable prisoners to be tested only for "controlled drugs" as defined by the Misuse of Drugs Act 1971 ("the 1971 Act").
6. In order for the MDT programme to achieve its purpose it must test prisoners for the drugs they most commonly misuse. Historically these have been substances often misused in the community; predominantly heroin and cannabis (i.e. "controlled drugs"). However, as prisons have improved the effectiveness of their

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<sup>1</sup> "Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders": [www.justice.gov.uk/downloads/consultations/breaking-the-cycle.pdf](http://www.justice.gov.uk/downloads/consultations/breaking-the-cycle.pdf) (see pages 27 to 32)

<sup>2</sup> [www.gov.uk/government/publications/drug-strategy-2010--2](http://www.gov.uk/government/publications/drug-strategy-2010--2)

<sup>3</sup> NOMS is an executive agency of the Ministry of Justice. It commissions and provides offender services in the community and in custody in England and Wales. The role of NOMS is to reduce re-offending by delivering the punishment and orders of the courts and supporting rehabilitation by helping offenders to change their lives.

measures to restrict the supply of drugs into prisons, and as drug misuse trends in the community and in prisons have changed, there is a growing trend amongst prisoners to misuse other substances, such as prescription drugs and new psychoactive substances, many of which are not “controlled”. The extent to which MDT can achieve its purpose is therefore constrained.

### **What is the proposed change?**

7. This clause amends the Prisons Act 1952 (“the 1952 Act”) by expanding the definition of drug that a prisoner can be tested for to include a drug not controlled under the 1971 Act and which is specified by the Secretary of State in prison rules. The effect is to enable prisons to test prisoners for non-controlled drugs specified by the Secretary of State in prison rules and young offender institution rules, in addition to the existing power to test for “controlled drugs”.
8. The amendment to the commencement provision contained within the Bill allows this new clause to be commenced at different times in different areas.
9. The amendments extend to England and Wales only.