

APPROVED PREMISES (SUBSTANCE TESTING) ACT 2022

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Approved Premises (Substance Testing) Act 2022 which received Royal Assent on 28 April 2022 (c. 27).

- These Explanatory Notes have been prepared by the Ministry of Justice, in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

- 1 The purpose of the Act is to provide a clear statutory framework for Approved Premises in England and Wales to test for the use of illicit substances by residents. Approved Premises provide temporary accommodation for bailees and the highest risk offenders in the community subject to supervision or rehabilitation. The Act provides staff in Her Majesty's Prison and Probation Service (HMPPS) and other agencies with information to understand the full extent and nature of substance misuse within Approved Premises, while allowing Offender Managers to take targeted and appropriate action to support residents to engage with treatment and prevent their reoffending.
- 2 The Act makes provision for testing residents in Approved Premises for controlled drugs, psychoactive substances and prescription only medicines. The Act also contains an express power to test, on an anonymised basis, samples provided by those residents in order to better understand the prevalence of substances in Approved Premises.

Policy background

- 3 Approved Premises exist to ensure that bailees and offenders with the highest risk and most complex needs receive additional residential supervision in the community and additional rehabilitative support following release from custody. As part of ensuring Approved Premises are drug-free and safe, residents are presently (prior to the implementation of this Act) drug tested if requested by staff. Such drug testing is provided for in the "house rules" of the Approved Premises which each resident is required to accept as a condition of their residence. Those house rules are made in accordance with Regulation 6 of the Offender Management Act 2007 (Approved Premises) Regulations 2014 (the 2014 Regulations).

Framework for testing illicit substances

- 4 While that provides a basis for drug testing, it does not set out a comprehensive statutory framework for the testing of illicit substances, the scope of substances which may be tested or the types of samples that may be taken. The Act provides the statutory framework to allow Approved Premises and HMPPS to:
 - respond effectively and flexibly to changing patterns of drug misuse;
 - improve identification of residents misusing substances to enable robust and appropriate referrals into treatment together with the development of appropriate targeted care planning;
 - better identify elevating or decreasing risk of serious harm to the public based on a resident's drug misuse; and
 - support the development of a comprehensive drug strategy and build a body of evidence on drug misuse within the resident cohort.

Changes to patterns of drug misuse

- 5 Patterns of drug misuse in both custody and the community are changing. These changes reflect new products on the drug market including increased prevalence of psychoactive substances, as well as increased levels of prescription drugs being misused to create sometimes lethal levels of toxicity. Drug testing technology has developed significantly in

recent years and is now becoming more widely available and affordable. It is now possible to test simultaneously for a wide range of drugs. The changes to drug testing in this Act build upon the power of new technology to enable an approach for identifying and responding to drug misuse trends within the custodial and community environment, thereby facilitating continuity of support and intervention.

- 6 Equipping Approved Premises with clear powers to test residents for a wider range of drugs, including prescription medicines, improves the ability to identify the misuse of substances. For those for whom escalating drug-misuse is directly linked to their offending and risk of harm to the public, improved identification of a range of substances enables Approved Premises to take appropriate action. This allows for the identification of those who need support to access appropriate community treatment services and facilitate the provision of more effective continuity in care at an individual level.

Psychoactive substances and prescription medicines

- 7 In recent years, psychoactive substances have become much more prevalent within the illicit economy in Approved Premises. Alongside psychoactive substances, prescription medicines are also abused by some residents and can play a similar role in the illicit economy. Some residents may also 'bully' other residents for those prescription medicines they have been genuinely prescribed for medical reasons.

Legal background

- 8 Section 13 of the Offender Management Act 2007 (the 2007 Act) makes provision for the Secretary of State to approve premises, to be known as "Approved Premises", in which accommodation is provided for persons granted bail in criminal proceedings (within the meaning of the Bail Act 1976) and for, or in connection with, the supervision or rehabilitation of persons convicted of offences (for instance, those on licence or under community or suspended sentences). The Secretary of State may make regulations for the regulation, management and inspection of Approved Premises.
- 9 In exercise of that power the Secretary of State has made the 2014 Regulations. Regulation 6(1)(c) provides that a provider of Approved Premises must prepare house rules for those Approved Premises, governing the conduct of residents, which must comply with any requirements of the Secretary of State as to the content of such rules.
- 10 Section 2 of the Misuse of Drugs Act 1971 defines "controlled drug" as any substance or product specified in Part I, II or III of Schedule 2 to that Act or in a temporary class drug order as a drug subject to temporary control, in accordance with the provisions of that Act.
- 11 Section 2 of the Psychoactive Substances Act 2016 defines "psychoactive substance" as any substance which is capable of producing a psychoactive effect in a person who consumes it and is not an exempted substance under section 3 of that Act.
- 12 Regulation 2(1) in the Human Medicines Regulations 2012 defines "medicinal product" and Regulation 5(3) of those Regulations defines "prescription only medicine".

Territorial extent and application

- 13 The provisions of the Act extend to England and Wales only. Commentary on provisions of Act

Section 1: Substance testing of residents in Approved Premises

- 14 Section 1 makes provision for substance testing and prevalence testing through amendments to the Offender Management Act 2007.
- 15 Section 1(3) inserts a new section 13A into the 2007 Act.
- 16 Subsection (1) of that new section provides the manager of an Approved Premises may give an authorisation that sets out when the express power to drug test residents may be exercised and that such authorisation is in force. Subsection (2) contains that express power, providing that in accordance with any authorisation given, a member of Approved Premises staff may require a resident provide a sample of urine for the purpose of ascertaining whether the resident has in their body a “controlled drug”, “prescription only medicine” or “psychoactive substance”. Subsection (3) provides that instead or in addition to a sample of urine, a sample of another description may be required, provided that is not an “intimate sample”, such as saliva.
- 17 Subsection (4) makes provision for anonymised prevalence testing by the Secretary of State of samples provided pursuant to subsection (2) or (3) or voluntarily, which can be used to test for “controlled drugs”, “medicinal products” and “psychoactive substances”.
- 18 Subsections (5) and (6) provide that in giving an authorisation or exercising the drug testing power, Approved Premises managers and members of staff (respectively) must have regard to any guidance issued by the Secretary of State on such matters.
- 19 Subsection (7) defines terms used within that section 13A. Those include “controlled drug”, defined by reference to the Misuse of Drugs Act 1971, “intimate sample” by reference to Part 5 of the Police and Criminal Evidence Act 1984, “medicinal product” and “prescription only medicine” by reference to the Human Medicines Regulations 2012 and “psychoactive substance” by reference to the Psychoactive Substances Act 2016.
- 20 Subsection (8) makes provision in case there is any future change in the Human Medicines Regulations 2012 or other subordinate legislation relating to human medicines. In those circumstances, the subsection confers a regulation making power for the Secretary of State to make such consequential changes as are necessary to section 13A of the 2007 Act. Subsection (9) clarifies that “subordinate legislation” has the same meaning as in the Interpretation Act 1978.
- 21 Section 1(4) makes provision, through amendment to section 36 (orders and regulations) of the 2007 Act, for any regulations made under the new section 13A(8) to be subject to the affirmative resolution procedure in Parliament.

Section 2: Final Provisions

- 22 This Section confirms the short title of the Act and makes provision for its coming into force. Section 2(1) provides that the Act extends to England and Wales only.

Commencement

- 23 Section 2(2) makes clear that the provisions in the Act will be brought into force by means of regulations made by the Secretary of State.

Related documents

24 There are no related documents relevant to the Act.

Annex A – Hansard References

25 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

| Stage | Date | Hansard Reference |
|--------------------------------|------------------|--|
| <i>House of Commons</i> | | |
| Introduction | 21 June 2021 | No debate |
| Second Reading | 29 October 2021 | Vol. 702 Col.579 |
| Money Resolution | 29 November 2021 | No debate |
| Committee | 15 December 2021 | Morning sitting. Col.1 |
| Third Reading | 21 January 2022 | Vol. 707 Col. 651 |
| <i>House of Lords</i> | | |
| Introduction | 24 January 2022 | No debate |
| Second Reading | 25 March 2022 | Vol. 820 Col. 1250 |
| Order of Commitment discharged | 6 April 2022 | Vol. 820 |
| Third Reading | 26 April 2022 | Vol. 821 Col. 133 |
| Royal Assent | 28 April 2022 | Vol.821 Col. 383 |

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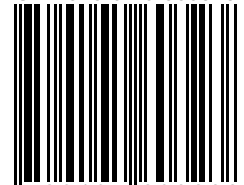
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