

Delegated Powers Memorandum

Prisons (Substance Testing) Bill

Prepared by the Ministry of Justice

Introduction

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee by the Ministry of Justice with the agreement of Bim Afolami MP, the member in charge of the Bill, to assist with the Committee's scrutiny of the Prisons (Substance Testing) Bill ("the Bill"). The Bill was introduced in the House of Commons on 17 April 2018. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

Purpose and effect of the Bill

2. The Bill expands the existing power to conduct prisoner drug testing within prisons via mandatory urine samples, so that prisoners can be tested for a broader and more comprehensive range of substances, including: all psychoactive substances, prescription only medicines and pharmacy medicines. This will obviate the need to produce further statutory instruments where different strands of substances enter the illegal market in prisons.

Delegated Powers

3. The Bill contains one delegated power enabling the Secretary of State to use regulations to amend the provisions on prisoner drug testing in the Prison Act 1952 in consequence of the amendment or revocation of the Human Medicine Regulations 2012 or other subordinate legislation relating to human medicines.

Clause by Clause analysis:

Clause 2(2) – Consequential amendments

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary procedure: Affirmative

Context and Purpose

4. Clause 1 of the Bill amends the existing prisoner drug testing power in section 16A of the Prison Act 1952 so that prisoners can be tested for a broader and more comprehensive range of substances. The status quo position is that prisoners can be tested for controlled drugs under the Misuse of Drugs Act 1971 and any “specified drugs”, meaning particular substances that have been specified in the Prison Rules 1999 via statutory instrument.
5. The effect of clause 1 is that it will be possible to test prisoners for all psychoactive substances (as defined in the Psychoactive Substances Act 2016), all prescription only medicines and all pharmacy medicines. Clause 1(5) outlines that the definitions which will be used in section 16A(3) of the Prison Act 1952 for the terms “prescription only medicines” and “pharmacy medicines” are derived from the Human Medicines Regulations 2012, which is owned by the Department for Health and Social Care.
6. Clause 2 makes a series of consequential amendments to the Prison Act 1952 and the Prison Rules 1999. Clause 2(2) sets out a new delegated power in section 16A of the Prison Act 1952. This enables the Secretary of State to use regulations to make amendments to section 16A (testing prisoners for drugs, psychoactive substances and other substances) and section 47 (prison rules) of the Prison Act 1952 in consequence of the amendment or revocation of the Human Medicines Regulations 2012, or any other subordinate legislation relating to human medicines.

Justification for taking the power

7. The purpose of this new delegated power is to ensure that, in the event that the Human Medicines Regulations 2012 are amended or revoked in a way that alters the meaning or effect of the terms “medicinal product, “prescription only medicine,” or “pharmacy medicine”, sections 16A and 47 of the Prison Act 1952 can be amended in line, so that the terminology used in the Prison Act 1952 continues to accurately reflect the broader legal framework relating to human medicines.
8. The power is limited. The Prison Act 1952 could only be amended in consequence of an amendment to the Human Medicines Regulations that features a change in terminology, for

consistency/accuracy. Therefore, there is no provision for an open-ended power to make broader substantive changes to the drug testing power in section 16A for other, unconnected, policy reasons.

9. There are already other powers in the Prison Act 1952 to amend the Act via affirmative order. For example, the power to amend List A which sets out items of contraband that it is illegal to convey into prison.

Justification for the procedure

10. Clause 2(2)(b), which would become new section 52(2C) of the Prison Act 1952, provides that any regulations made under the procedure in clause 2(2)(a) will be made subject to the affirmative resolution procedure. It is long-established practice that powers to amend primary legislation using secondary legislation should be made using the affirmative procedure to provide the appropriate level of Parliamentary scrutiny.
11. Use of the affirmative procedure is appropriate to allow both Houses to scrutinise and agree, amend or disagree with any proposed changes.

Clause 3(2) Commencement

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary Procedure: None

Context and Purpose

12. It is standard procedure to make provision for commencement by way of regulations unless commencement provision is made for a clause on the face of the Bill. It is also standard that no parliamentary procedure attaches to the regulation. Parliament has approved the provisions and the power enables the Secretary of State to bring them into force at convenient time if required.

Ministry of Justice

Date 28 June 2018