

Delegated Powers Memorandum

Approved Premises (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 Rob Butler MP, the member in charge of the Bill, to assist with the Committee's scrutiny of the Approved Premises (Substance Testing) Bill ("the Bill"). The Bill was introduced in the House of Commons on 22 June 2021. 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 provides the basis for a drug and prevalence testing framework within an Approved Premises ("AP"). APs are premises approved in accordance with section 13 of the Offender Management Act 2007 ("the 2007 Act") for accommodation 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 (on licence or under community or suspended sentences). The Bill makes provision for testing residents in an AP for controlled drugs under the Misuse of Drugs Act 1971, psychoactive substances and any prescription only medicine. The Bill also contains an express power for the Secretary of State to test the samples of residents on an anonymised basis, in order better to understand the prevalence of a range of substances in APs.

Delegated Powers

3. The Bill contains one delegated power enabling the Secretary of State to use regulations to amend the provisions on substance testing introduced by this Bill to the 2007 Act in consequence of the amendment or revocation of the Human Medicine Regulations 2012 or the making, amendment or revocation of 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(3) of the Bill inserts a new section 13A into the 2007 Act to provide a legislative framework for the substance testing of residents in an AP, together with anonymised prevalence testing.
5. The effect of the new section 13A is that it will be possible to test those resident in an AP for ‘controlled drugs’, ‘psychoactive substances’ and ‘prescription only medicines’. Additionally, provision is made for anonymised prevalence testing of ‘controlled drugs’, ‘psychoactive substances’ and ‘medicinal products’. Subsection (7) of the new section provides that the definitions for the terms “prescription only medicines” and “medicinal products” are derived from the Human Medicines Regulations 2012, the legislation and policy for which is owned by the Department for Health and Social Care.
6. New section 13A(8) sets out a new delegated power which enables the Secretary of State to use regulations to make such amendments to the new section 13A as the Secretary of State considers appropriate in consequence of the amendment or revocation of the Human Medicines Regulations 2012, or the making, amendment or revocation of 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; or
 - other subordinate legislation which relates to human medicines is made, amended or revoked,

the new section 13A of the 2007 Act can be amended in line, so that the terminology used in the 2007 Act continues to accurately reflect the broader legal framework relating to human medicines.

8. The power is limited. New section 13A of the 2007 Act could only be amended to the extent that the Secretary of State considers appropriate in consequence of an amendment to the Human

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Medicines Regulations 2012 or other subordinate legislation on the same topic. The only references to the Human Medicines Regulations 2012 to be inserted in the 2007 Act are to define “medicinal product” and “prescription only medicine”. Therefore, there is no provision for an open-ended power to make broader substantive changes to the drug testing power in new section 13A.

Justification for the procedure

9. Clause 1(4) amends section 36 of the 2007 Act (orders and regulations) to provide that any regulations made under the new delegated power will be 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.
10. Use of the affirmative procedure is appropriate to allow both Houses to scrutinise and agree, amend or disagree with any proposed changes.

Clause 2(2) Commencement

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary Procedure: None

Context and Purpose

11. 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

22 October 2021