

Delegated Powers Memorandum
Offenders (Day of Release from Detention) 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 Simon Fell MP, the member in charge of the Bill, to assist with the Committee's scrutiny of the Offenders (Day of Release from Detention) Bill ("the Bill"). The Bill was introduced in the House of Commons on 15 June and published on 25 November. 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 Offenders (Day of Release from Detention) Bill provides the Secretary of State with a discretionary power to bring forward the release date of an offender where that release date otherwise falls on a Friday or the day preceding a public/bank holiday. Section 23(3) of the Criminal Justice Act 1961 already mandates that offenders who would otherwise be released on a weekend or public/bank holiday must be released on the closest preceding day that is neither a weekend nor a bank/public holiday (i.e. anyone who would otherwise be released on a Saturday, Sunday or Bank Holiday Monday is released on the preceding Friday, anyone who would otherwise be released over Easter weekend is released on the preceding Thursday, et cetera). This Bill retains that discretion, but further provides that for detained offenders whose day of release would fall on a working day immediately before a non-working day (i.e. a Friday or the day before a bank/public holiday), whether because that is their scheduled day of release, or due to Section 23(3), the Secretary of State would have a discretion to release them on either of the two last eligible working days before the day on which the offender would otherwise be discharged. A working day is 'eligible' if it is not immediately followed by a non-working day. For example:
 - a. If an offender was due to be released on a Friday, this is a working day immediately before a non-working day so the discretion arises. The last eligible working day before the Friday is the Thursday, and the last eligible working day before the Thursday is the Wednesday. Therefore, the discretion arises, and

the Secretary of State may direct that the offender must be discharged on either the Wednesday or the Thursday.

- b. If an offender was due to be released on Christmas Eve (and that was a Tuesday), this is a working day immediately before a non-working day, so the discretion arises. The last eligible working day before the Tuesday is the Monday, and the last eligible working day before the Monday is the Thursday, because Sunday and Saturday are non-working days, and Friday is not an eligible working day, because it is immediately followed by a non-working day. Therefore, the Secretary of State may direct that the prisoner must be discharged on either the Monday or the preceding Thursday.
3. The Bill also amends Section 23 to provide that the existing subsection (3) and the new subsections (3C) and (3D) will apply to persons detained in these institutions, as well as to those detained in institutions already referred to in subsection (4). This corrects the historic omission of secure children's homes from subsection (4) (and therefore from the effect of subsection (3)), updates Section 23 to take account of the recent statutory creation of secure 16-19 academies, and therefore ensures that the same provisions as to the day of discharge apply consistently to all offenders across institutions.

Delegated Powers

4. The Bill contains one delegated power enabling the Secretary of State to make provision for commencement by way of regulations.

Clause by Clause analysis:

Clause 3 Commencement

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary Procedure: None

Context and Purpose

5. 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: 2 December 2022