

4.2. Custody (Amendment) Bill 2013 – Second Reading approved

The Deputy Speaker: So we can now go into the Second Reading, please. Mr Watterson.

Mr Watterson: Mr Deputy Speaker, I am grateful to Hon. Members for agreeing to suspend Standing Orders to allow this Bill to be considered in its entirety today.

I propose to give a small bit of background to the issue and then outline the technical legal issues and finally underline the urgency of addressing those issues now.

The presence and use of controlled drugs or alcohol by prisoners is harmful to the maintenance of good order and discipline in the Prison. Disciplinary issues arise due to the behaviour of detainees who abuse these substances and the associated activities of those detainees involving smuggling, supply and storage of controlled drugs or the production of alcohol.

To deter prisoners from abusing controlled drugs and to provide a means of detecting and disciplining those who do, the Prison operates a rigorous drug-testing programme. Through this testing programme, prisoners are selected on either a random or risk-assessed basis to provide samples to test for the presence of controlled drugs. The most effective way to test for controlled drugs in custody is through the taking of urine samples. In law, urine samples are defined by reference to the Police Powers and Procedures Act 1998 and are classed as intimate samples.

The legal power to require prisoners to submit to drug testing comes from section 19A of the Custody Act 1995 which was inserted into this Act by the Criminal Justice Act 2001. It actually empowers the taking of samples that are not intimate samples.

The Department undertook a review of the legal powers it has relied on to undertake tests for the presence of controlled drugs. It was determined – and this was confirmed by legal advice in late June of this year – that there was a question over whether the Department has the power to test drugs using urine samples, because they are in fact defined as intimate samples. Upon receiving this advice, the Prison ceased conducting tests for controlled drugs using urine samples to ensure there was no question as to whether it was acting within the law.

The Bill therefore clarifies the law by replacing section 19A of the Custody Act 1995, with provisions that will enable officers to take urine samples, as well as any other non-intimate samples.

The Bill also provides that if it is necessary to establish the presence of alcohol in a person, a sample of breath may be obtained.

Mr Deputy Speaker, I beg to move that the Second Reading of the Custody (Amendment) Bill 2013 be approved.

The Deputy Speaker: Mr Quirk.

Mr Quirk: I beg to second, Deputy Speaker, and reserve my remarks.

The Deputy Speaker: Any comment?

In that case, the question is that the Bill be read for a second time. All those in favour, say aye; those against, say no. The ayes have it. The ayes have it.