

1. Custody (Amendment) Bill 2013 – First Reading approved

Mr Coleman to move:

That the Custody (Amendment) Bill be read a first time.

The President: Now, we turn to our Order Paper, the first of our new legislative session, which carries only one Item, Hon. Members: the Custody (Amendment) Bill 2013 for First Reading.

I call upon the Hon. Member, Mr Coleman

Mr Coleman: Thank you, Madam President.

Madam President, I recognise that this is the only Item on the Order Paper today and that Members have had to wait for the matter to be passed by the Keys, and I am grateful to Members. As indicated on the Order Paper, if Members are with me, following this debate, I will be inviting Members to suspend Standing Orders to permit me to take the next stages today.

Madam President, in moving the First Reading, I propose to outline the background, technical and legal issues behind the Bill and why it is being moved with such urgency today.

The background: 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 involved in the smuggling, supply and storage of controlled drugs or the production of alcohol. To deter prisoners from abusing controlled drugs and to provide a means for detecting and disciplining those who do, the prison operates a vigorous 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 therefore 'intimate samples'.

The legal power to require prisoners to submit to testing of drugs or alcohol 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.

When 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, there was a question over whether the Department has the power to test for 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.

Given the key role such testing plays in maintaining the discipline and good order of the Prison, it is a significant issue for the Department that it is unable to conduct testing the controlled drugs at this time, due to questions over its legal power. The Bill therefore clarifies the law by replacing section 19A of the Custody Act 1995 with provision 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.

Madam President, I beg to move that the First Reading of the Custody (Amendment) Bill 2013 be approved.

Mr Butt: I beg to second, Madam President, and reserve my remarks.

The President: No Hon. Member wishes to speak to the First Reading. The motion is that the Bill be read a first time. Those in favour, please say aye; against no. The ayes have it. The ayes have it.