



CUSTODY (AMENDMENT) BILL 2013

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Hon Juan Watterson BA (Hons) ACA, MHK.

INTRODUCTION

- 1.** These explanatory notes relate to the Custody (Amendment) Bill 2013. They have been prepared by the Department of Home Affairs in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
- 2.** The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

SUMMARY AND BACKGROUND

- 3.** The aim of the Custody (Amendment) Bill 2013 is to bring legal clarity to the power of an officer of an institution to require a detained person to be tested for controlled drugs or alcohol.
- 4.** No person is permitted to take controlled drugs or alcohol into an institution or to have or use within an institution controlled drugs that have not been prescribed for that particular individual's use.
- 5.** Persons detained in an institution are normally tested randomly, and on a risk assessed basis, in order to identify whether or not they have used controlled drugs. These tests serve to deter persons from taking controlled drugs in the first instance. In the second instance they identify those persons who have taken controlled drugs thereby enabling the commissioning of appropriate services to treat persons abusing controlled drugs and address prison disciplinary issues.
- 6.** Recent detailed scrutiny of the law has revealed that it does not provide for the current most effective method of testing for controlled drugs, nor for the simplest method of ascertaining whether or not a person has been drinking alcohol.
- 7.** The Bill comprises 2 clauses with clause 2 substituting section 19A to clarify the law.

EUROPEAN CONVENTION ON HUMAN RIGHTS (hereafter referred to as the "Convention")

- 8.** Section 16 of the Human Rights Act 2001 requires the member moving the Bill to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). In the opinion of the member moving the Bill, the provisions of the Custody (Amendment) Bill 2013 are compatible with the Convention rights.

FINANCIAL EFFECTS OF THE BILL

9. In the view of the mover of the Bill, it is not expected to have any human or financial resource implications.
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NOTES ON CLAUSES

Part 1 – Introductory provisions

10. **Clause 1** gives the short title of the Act.
11. **Clause 2** substitutes the existing power to test for controlled drugs or alcohol in section 19A of the Custody Act 1995. The substituted provision uses more direct language by referring directly to a “non-intimate sample” instead of to “one or more samples, not being intimate samples,”, as now. Two further methods of testing for controlled drugs or alcohol are added and these are “a sample of urine” and “a sample of breath”.