

Delegated Powers Memorandum

A. Introduction

1. Clause 1 of the Bill creates an offence of administering botulinum toxin and cosmetic fillers by way of injection to persons under the age of 18. It provides a defence where the defendant—
 - (a) is a fully registered medical practitioner within the meaning of the Medical Act 1983 who holds a licence to practise under that Act registered with the General Medical Council (referred to below as a “doctor”);
 - (b) is a registered nurse, dentist or pharmacist (or equivalent in Northern Ireland) who is acting in accordance with the directions of a GMC-registered doctor; or
 - (c) took reasonable steps to establish age and that the defendant reasonably believed the person was aged 18 or over.
2. Clause 2 creates a related offence. A business owner is guilty of an offence if in the course of their business—
 - a. a person other than an approved person (as mentioned in clause 1: a doctor; or a nurse, dentist, pharmacist or Northern Ireland equivalent acting in accordance with a doctor’s directions) administers botulinum toxin or a cosmetic filler to a person aged under 18; or
 - b. arrangements are made in England by or on behalf of the business owner for a person other than an approved person to administer those products in England to a person aged under 18.

Clause 2 provides a defence where the defendant took all reasonable precautions and exercised all due diligence to avoid committing it.

3. Clause 3 relates to clause 2. Where an offence under clause 2 by a body corporate is committed with the consent or connivance of, or to be attributable to any neglect of a director, manager, secretary or similar office of the body corporate then that individual also commits the offence and is liable to be prosecuted accordingly. This also applies to anyone purporting to be such an officer.
4. Clause 4 gives the function of enforcing the provisions of Clause 2 to the local weights and measures authority and applies the provisions of Schedule 5 to the Consumer Rights Act 2015 in that connection.
5. Clause 5 makes provision for consequential provision.
6. Clause 6 makes provision for extent, commencement and short title.

B. Delegated Power

- *Clause 5*

- *Power to be exercised by the Secretary of State*
 - *By regulations made by statutory instrument*
 - *Subject to the negative procedure*
7. Clause 5 contains a power to make consequential amendments in regulations by statutory instrument subject to the negative procedure.
8. Regulation 214 of the Human Medicines Regulations 2012 (SI 2012/1916) will need to be amended. Regulation 214(2) makes provision for the administration of prescription only medicines by, or in accordance with the directions of, certain health professionals. An amendment is necessary to ensure the activities that regulation 214(2) restricts are consistent with that being prohibited by the Bill.
9. It is usual to provide for consequential amendments to be made in secondary legislation. Any consequential amendment will be uncontroversial. The amendments may only be made to secondary legislation: there is no Henry VIII power to amend primary legislation.
10. Any amendment will be at a level of detail which is such as to be unnecessary to take up Parliamentary time; especially coupled with the absence of any controversy.
- *Clause 6(3)*
 - *Power to be exercised by the Secretary of State*
 - *By regulations made by statutory instrument*
 - *No Parliamentary procedure*
11. Clause 6(3) is a power to make commence clauses 1 to 3 in a statutory instrument which is not subject to Parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at a convenient time.

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