

CRIMINAL JUSTICE BILL**SUPPLEMENTARY DELEGATED POWERS MEMORANDUM**

The Government has tabled further amendments to the Criminal Justice Bill for Commons Report stage. These amendments introduce one new delegated power. This supplementary memorandum explains why the new powers have been taken and the justification for the procedure selected.

New clause “*Guidance*” (1): Duty to issue guidance about the exercise of nuisance rough sleeping functions

Power conferred on: Secretary of State

Power exercised by: Statutory guidance

Parliamentary procedure: None

Context and purpose

1. Clauses 59 to 69 make provision for new powers to tackle nuisance rough sleeping, replacing provision in the Vagrancy Act 1824. Amongst other things, these provisions enable an “authorised person” (namely a constable or local authority) to:
 - Issue a direction to move on to a person appearing to be aged 18 or over if satisfied on reasonable grounds that a nuisance rough sleeping condition (as defined in clause 69) has been, or is likely to be, met (clause 59).
 - Give a nuisance rough sleeping prevention notice to a person appearing to be aged 18 or over if satisfied on reasonable grounds that a nuisance rough sleeping condition has been met (clause 60).
 - Apply to a magistrates’ court for a nuisance rough sleeping prevention order in respect of a person aged 18 or over. A court may grant such an order if satisfied that a nuisance rough sleeping condition has been met, the person has failed to comply with a nuisance rough sleeping direction or has failed to comply with a nuisance rough sleeping prevention notice (clause 64).
2. A nuisance rough sleeping prevention notice or nuisance rough sleeping prevention order may require the subject of a notice or order, as the case may be, to do specified things or prohibit them from doing specified things for the purpose of preventing the person from engaging in nuisance rough sleeping. A nuisance rough sleeping order, as it is issued by a court allows for the imposition of more onerous positive requirements such as attending drug treatment. Failure to comply with the terms of a prevention notice or prevention order is a criminal offence subject to a maximum penalty of one month imprisonment, a level 4 fine or both.
3. New clause “*Guidance*” (1) places a duty on the Secretary of State to issue guidance about the exercise of nuisance rough sleeping functions (that is, functions under clauses 59 to 69) by authorised persons. Subsections (2) and (3) require that the guidance must, in particular, contain guidance about the provision, before

an authorised person exercises a nuisance rough sleeping function in respect of a person, of support services information to the person (that is, information about support services available to persons who are sleeping rough). Subsection (4) requires an authorised person to have regard to any such guidance when exercising a nuisance rough sleeping function. Subsection (5) requires any guidance, and revisions of the guidance, to be published and a copy laid before Parliament.

Justification for the power

4. Clauses 59 to 69 on the face of the Bill convey certain functions to “authorised persons” in respect of tackling nuisance rough sleeping. Guidance will assist in ensuring that authorised persons carry out their functions in relation to nuisance rough sleeping consistently across England and Wales and taking account of good practice, including the principle that rough sleepers are signposted to appropriate support. The guidance is intended to assist and not direct authorised persons by providing practical advice on how they may effectively discharge these functions. There is a vast range of statutory and non-statutory guidance issued each year and it is important that guidance can be readily updated to keep pace with events and operational good practice.

Justification for the procedure

5. The guidance issued by the Secretary of State under new clause “*Guidance*” is not subject to any parliamentary procedure. It will deal with practical advice to authorised persons in exercising their functions under clauses 59 to 69 and will have been the subject of engagement with interested parties before it is issued. The guidance will not conflict with the statutory framework in respect of the powers to tackle nuisance rough sleeping and although authorised persons must have regard to any guidance issued, there will be no statutory duty for persons to abide by the guidance – the aim is to assist practitioners not to direct them. This approach is in keeping with other statutory guidance, including in respect of powers to tackle anti-social behaviour under the Anti-social Behaviour, Crime and Policing Act 2014.

Home Office
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