

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

NATIONAL DRUG CONTROL ACT 2013

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WHEREAS it is expedient to provide for a national drug control plan to reduce the supply and demand of drugs in Bermuda, for the prevention of drug abuse, for the treatment of drug abusers, and for the care of connected persons:

NATIONAL DRUG CONTROL ACT 2013

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the National Drug Control Act 2013.

Interpretation

2 In this Act, unless the context indicates otherwise—

“action plan” means the plan of action referred to in section 4(5);

“confidential information” means—

(a) a person's name; and

(b) any information which identifies the person so named;

“connected person” means a person who is so closely connected, whether by blood or otherwise, to another person as to be, or likely to be, adversely affected as a direct consequence of that other person being a drug abuser;

“Department” means the Department for National Drug Control;

“drug” means any substance, the periodic or continuous use or administration of which—

(a) results or may result in a person developing a psychological or physical reliance on the substance; or

(b) alters or may alter a person's mood, perception, consciousness or behaviour;

and includes alcohol, tobacco and tobacco products;

“drug abuse” means the use or administration of a drug to the apparent detriment of a person or society;

“drug prevention programme” and “programme” means an intervention programme which educates the public on rejecting drug use;

“drug treatment centre” and “centre” means a non-residential centre for the treatment or rehabilitation of drug abusers, or for the care of connected persons;

“drug treatment facility” and “facility” means a residential facility for the treatment or rehabilitation of drug abusers, or for the care of connected persons;

“general information” means information which is not confidential information;

“interested party” means a person concerned with the rehabilitation and treatment of drug abusers, the care of connected persons, or the prevention and reduction of drug abuse in Bermuda and includes—

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- (a) a facility or centre licensed under this Act;
- (b) a programme registered under this Act;
- (c) the Bermuda Police Service, H.M. Customs, the courts, and the Department of Corrections;
- (d) a quasi autonomous governmental or non-governmental organisation including, the Bermuda Hospitals Board, the Bermuda Sports Anti-Doping Authority, the Liquor Licensing Authorities, CADA, PRIDE, and Turning Point;
- (e) sports clubs and faith-based organisations;
- (f) any department of Government;

“Minister” means the Minister responsible for public safety;

“the plan” means the national drug control plan referred to in section 4;

“prescribed” means prescribed by regulations made under this Act;

“regulations” means regulations made under section 20 of this Act;

“representative” means a barrister or attorney;

“tobacco” and “tobacco products” has the meaning given in section 2 of the Tobacco Products (Public Health) Act 1987.

Department for National Drug Control

3 (1) There shall continue to exist a department of the Government known as the Department for National Drug Control.

(2) The Department shall, subject to the general direction and control of the Minister, be under the supervision of a Permanent Secretary and shall consist of a Director and other public officers, including public officers who are competent in the field of drug abuse prevention, drug dependence treatment and rehabilitation, research, policy analysis and evaluation.

(3) The Department shall assist the Minister in carrying out or giving effect to this Act, and notwithstanding the generality of the foregoing, the Department shall—

- (a) advise the Minister on policies and programmes relating to the prevention of drug abuse, the treatment and rehabilitation of drug abusers, and the care of connected persons;
- (b) oversee the implementation of the action plan, and monitor and evaluate the performance of the plan;
- (c) operate facilities, centres and programmes established by the Minister;
- (d) develop and implement drug treatment, rehabilitation and prevention programmes;

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- (e) oversee facilities and centres licensed under this Act and programmes registered under this Act;
- (f) co-ordinate initiatives and programmes relating to drug control and the reduction of drug abuse, and provide guidance on best practices;
- (g) in consultation with interested parties, establish, maintain and operate information systems, and encourage the exchange of information relating to policies, programmes and research in respect of drug abuse;
- (h) collect and collate general information from interested parties relating to drug abuse and the drug market in Bermuda, issues affecting Bermuda, and issues affecting communities in Bermuda which may be at greater risk of drug abuse, and establish and maintain a database of the general information and to publish such information;
- (i) conduct research into drug abuse in Bermuda and publish studies, reports, articles and fact sheets on drug abuse;
- (j) initiate or support local and international conferences, meetings and seminars relating to drug abuse;
- (k) educate the public, and in particular the youth, on the dangers of drug abuse;
- (l) monitor the implementation of Bermuda's obligations under various international initiatives.

(4) For the purpose of assisting the Minister in carrying out or giving effect to this Act, the Department may make a request in writing to an interested party for general information in respect of the matters specified in Schedule 1.

(5) Where a request has been made under subsection (4) the interested party shall, as soon as practicable, provide the Department with the information requested.

(6) The Minister may from time to time by order subject to the negative resolution procedure add to, delete or modify any of the matters specified in Schedule 1.

National drug control plan

4 (1) The Minister shall prepare a national drug control plan (the "plan").

(2) For the purpose of preparing the plan, the Minister shall review the situation in Bermuda with respect to drugs which are being or appear likely to be abused, and of which the abuse is having, or appears likely to have, harmful effects sufficient to constitute a problem, and to consider measures which may be taken to restrict the supply and demand for drugs.

(3) In preparing the plan the Minister shall, in consultation with interested parties, carry out a survey of Bermuda examining the matters which may be expected to affect the supply and demand of drugs in Bermuda, and matters relating to drug reduction and prevention.

(4) The plan shall provide for—

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- (a) the reduction in the supply of drugs, taking into account the national strategic plans of the Bermuda Police Service and H.M. Customs relating to drug control;
 - (b) the reduction in the demand for drugs including—
 - (i) the treatment and rehabilitation of drug abusers and the care of connected persons;
 - (ii) the prevention of drug abuse;
 - (c) the conduct of research and international co-operation for the purpose of—
 - (i) improving understanding of drug abuse and the development of the best possible responses to it;
 - (ii) providing clear indications about the merits and shortcomings of current actions and activities;
 - (iii) developing intervention policies and programmes based on scientific research evidence.
- (5) The plan shall include an action plan which sets out the activities required to implement the plan.
- (6) The Minister shall, as soon as practicable, publish the plan in such manner as he considers appropriate.
- (7) The Minister may provide grants to interested parties in respect of programmes and activities which implement the plan, and may provide financial support for local and international conferences, meetings and seminars relating to drug abuse.
- (8) The Minister shall review the plan at least once every five years.

Minister may establish facilities, centres, and programmes

- 5
- (1) The Minister may establish facilities, centres or programmes and shall cause such facilities, centres or programmes to be operated by the Department.
 - (2) A facility or centre established by the Minister shall be licensed under this Act, and a programme established by the Minister shall be registered under this Act, on such terms and conditions or restrictions as the Minister considers appropriate.
 - (3) The Minister shall issue an initial licence to the facility or centre or an initial certificate of registration to the programme and such initial licence or certificate shall expire three years from the date of issue.
 - (4) A facility, centre or programme operated by the Department shall be subject either to accreditation or peer review as the Minister considers appropriate, and the licence or registration of the facility, centre or programme may be renewed for such period as may be awarded by the accreditation body or peer review body.
 - (5) Fees may be prescribed under the Government Fees Act 1965 in respect of services provided by a facility, centre or programme operated by the Department.

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Application to licence a facility or centre

6 (1) A person who operates a facility or a centre which has not been licensed by the Minister commits an offence.

(2) A person who intends to operate a facility or a centre shall submit to the Minister—

- (a) the prescribed application for licensing a facility or centre;
- (b) the prescribed documents and information; and
- (c) such fee as may be prescribed under the Government Fees Act 1965.

Determining application to licence facility or centre

7 (1) The Minister may, in determining an application to licence a facility or centre, grant a licence, refuse to grant a licence, or grant a licence provisionally.

(2) Where a licence is granted provisionally, the Minister shall issue a provisional licence in the prescribed form for a period not exceeding six months on such terms and conditions or restrictions as the Minister considers appropriate, and the Minister shall, during the period of the provisional licence, observe the operation of the facility or centre and its programmes.

(3) A provisional licence may be extended for a further period of six months, and at the end of that period the Minister shall determine the application.

(4) The Minister shall give the applicant or his representative an opportunity to be heard before an application is determined.

(5) In determining an application, the Minister shall take into account any report made by an officer of the Department pursuant to section 14(2), the programmes to be provided by the facility or centre, any representations made by the applicant or his representative, and such other matters which are relevant.

(6) The Minister shall, as soon as practicable, notify the applicant whether his application has been granted or refused or whether a provisional licence has been issued.

Issuance of a licence to a facility or centre

8 (1) Where an application to licence a facility or centre is granted, the Minister shall issue a licence in the prescribed form.

(2) A licence issued to a facility or centre may be issued on such terms and conditions or restrictions as the Minister considers appropriate, and shall expire three years from the date of issue.

Application to register programme

9 (1) A person who operates a drug prevention programme which has not been registered by the Minister commits an offence.

(2) A person who intends to operate a programme shall submit to the Minister—

- (a) the prescribed application for registering a programme;

- (b) the prescribed documents and information;
- (c) such fee as may be prescribed under the Government Fees Act 1965.

Determining application to register programme

10 (1) The Minister may, in determining an application to register a programme, grant the registration, refuse to grant the registration, or grant a registration provisionally.

(2) Where registration is granted provisionally, the Minister shall issue a certificate of provisional registration in the prescribed form for a period not exceeding six months on such terms and conditions or restrictions as the Minister considers appropriate, and the Minister shall, during the period of the provisional registration, observe the operation of the programme, and at the end of that period determine the application.

(3) The Minister shall give the applicant or his representative an opportunity to be heard before determining the application.

(4) In determining an application, the Minister shall take into account any report made by an officer of the Department pursuant to section 14(2), any representations made by the applicant or his representative, and such other matters which are relevant.

(5) The Minister shall notify the applicant in writing, as soon as practicable, whether his application for registration has been granted or refused or whether a provisional registration has been granted.

Registration and Issuance of a certificate of registration

11 (1) The Minister shall establish and maintain a register which shall contain the prescribed particulars.

(2) Where an application for registration is granted, the Minister shall enter the particulars in the register and issue a certificate of registration in the prescribed form.

(3) A certificate of registration may be issued on such terms and conditions or restrictions as the Minister considers appropriate, and shall expire three years from the date of issue.

Facility, centre or programme to be operated according to regulations

12 The Department or a person who operates a facility, centre or programme shall operate such facility, centre or programme in accordance with regulations.

Operator of facility, centre or programme to give information

13 (1) The operator of a facility, centre or programme shall provide the Minister with such returns, accounts and reports as prescribed.

(2) When requested to do so the operator shall produce for the inspection of an officer of the Department—

- (a) such documents, books or records relating to information contained in any return, accounts or reports provided to the Minister under subsection (1);

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- (b) general information relating to persons under the care, rehabilitation or treatment of the facility, centre or programme.
- (3) The operator of a facility, centre or programme who—
 - (a) without reasonable excuse fails to comply with a request made by an officer of the Department under subsection (2);
 - (b) provides or authorizes information to be provided to an officer of the Department which he knows to be false or misleading in a material particular,

commits an offence.

Power of entry, inspection and investigation of facility, centre or programme

14 (1) An officer of the Department may, at all reasonable times, inspect a facility, centre or programme where an application for licensing or registration has been made.

(2) Where an inspection has been carried out under subsection (1), the officer shall make a written report on whether the requirements prescribed by regulations for operating such facility, centre or programme have been met or will be met, and the report may include a recommendation.

(3) Where a licence or certificate of registration has been issued, an officer of the Department shall, at all reasonable times, carry out periodic inspections of the facility, centre or programme.

(4) Where an inspection has been carried out under subsection (3), the officer shall make a written report of his findings, and the report may include a recommendation.

(5) An officer shall, if asked to do so, produce a certificate in the form set out in Schedule 2, showing his authority to enter and inspect the premises.

(6) A person who obstructs an officer in the performance of his duties under subsection (1) or (3) commits an offence.

Renewal of licence or registration

15 (1) A person who intends to renew the licence or registration of a facility, centre or programme shall submit to the Minister—

- (a) the prescribed application for renewal of a licence or registration;
- (b) the prescribed documents and information; and
- (c) such fee as may be prescribed under the Government Fees Act 1965.

(2) An application shall be made at least 30 days before the date on which the licence or registration expires.

(3) The Minister may, in determining an application, refuse to grant the application, or grant the application on such terms and conditions or restrictions as the Minister considers appropriate.

(4) The Minister shall give the applicant or his representative an opportunity to be heard before an application is determined.

(5) In determining an application, the Minister shall take into account any reports made by an officer of the Department pursuant to section 14(4) in respect of the facility, centre or programme, any representations made by the applicant or his representative, and such other matters which are relevant.

(6) The Minister shall notify the applicant in writing, as soon as practicable, whether his application for renewal has been granted or refused and shall give reasons for his decision where the application has been refused.

Suspension of licence or registration

16 (1) Subject to subsection (2), an officer of the Department may enter the premises of a facility, centre or programme at any time and carry out an investigation.

(2) An entry and inspection may be made under subsection (1)—

(a) where the officer has reasonable grounds to suspect that the facility, centre or programme is being or has been operated in contravention of any provision of this Act or any other law, regulations, or term, condition or restriction attached to the licence or registration; or

(b) where there is some just or sufficient cause in the interest of public safety or public health.

(3) Where an investigation has been carried out under subsection (1), the officer shall make a written report of his findings and the report may include a recommendation.

(4) After considering a report made by an officer under subsection (3), the Minister may issue an order to the operator—

(a) giving such directions to correct any contravention within the time specified in the order; or

(b) directing the operator to cease operating the facility, centre or programme—

(i) within the time specified in the order; and

(ii) for such period specified in the order, which shall be for a period of not more than three months,

and shall give reasons for his decision.

(5) A person who fails to comply with an order issued by the Minister under subsection (4) commits an offence.

(6) Where an order has been issued under subsection (4)(b), the Minister may cause any inspection, enquiries, or further investigations to be carried out as he considers appropriate before the expiration of the period specified in the order.

(7) A written report shall be made where an inspection, enquiry or investigation has been carried out under subsection (6).

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(8) The Minister may extend an order for a further period of not more than three months giving reasons for his decision.

(9) Where an order has been issued or extended, the Minister may notify the public in such manner as he considers appropriate.

(10) A person who obstructs an officer in the performance of his duties under subsection (1) or (6) commits an offence.

Cancellation of licence or registration

17 (1) The Minister may cancel a licence in respect of a facility or centre or a registration in respect of a programme.

(2) Before proceeding under subsection (1), the Minister shall—

(a) not earlier than 14 days before making a decision, give a written warning to the operator setting out the reasons for his proposed action and informing the operator that he or his representative may make written representations to the Minister not later than 14 days from the date of the warning; and

(b) give the operator or his representative an opportunity to be heard.

(3) In deciding whether to cancel a licence or registration, the Minister shall take into account any reports made pursuant to section 14(4), 16(3) or 16(7), whether any order made under section 16(4) has been complied with, any representations made by the operator or his representative, and such other matters which are relevant.

(4) The Minister shall, as soon as practicable, notify the operator of his decision.

Protection of information

18 (1) Where the Minister publishes any study or report or any other document pursuant to this Act, he shall not publish any confidential information.

(2) An officer of the Department or an operator or servant of a facility, centre or programme who reveals confidential information to any person, except in the performance of his duties, commits an offence.

Penalties for offences

19 (1) A person who commits an offence under section 6(1), 9(1), or 16(5) is liable on summary conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding six months or to both fine and imprisonment.

(2) A person who commits an offence under section 18(2) is liable on summary conviction to a fine not exceeding \$10,000.

(3) A person who commits an offence under section 13(3), 14(6) or 16(10) is liable on summary conviction to a fine not exceeding \$5,000.

Minister may make regulations

20 (1) The Minister may make regulations prescribing—

- (a) programmes of treatment and rehabilitation to be provided by a facility or centre;
- (b) programmes for the care of connected persons to be provided by a facility or centre;
- (c) programmes on the prevention of drug abuse to be provided by a facility, centre or programme;
- (d) the qualifications and experience required of persons who provide professional preventive and rehabilitative services or treatment at a facility, centre or programme;
- (e) the application to licence a facility or centre and to register a programme;
- (f) the documents and information to be provided with an application for a licence or registration;
- (g) the application to renew a licence or registration;
- (h) the form of a licence and the form of a certificate of registration;
- (i) the form of a provisional licence and the form of a certificate of provisional registration;
- (j) the particulars to be contained in the register of programmes;
- (k) returns, accounts and any other reports to be provided to the Minister by a facility, centre or programme, and the times in which they are to be provided;
- (l) the facilities, centres or programmes which are subject to accreditation;
- (m) an institution or body as an approved accreditation body;
- (n) an institution or body as an approved peer review body;
- (o) all other matters which are necessary for the carrying out or giving effect to this Act.

(2) Regulations may provide for a person who contravenes or fails to comply with the provisions of such regulations to be liable on summary conviction to a fine not exceeding \$1,000.

(3) The negative resolution procedure applies to regulations made under subsection (1).

Commencement

21 This Act comes into operation on such day as the Minister may appoint by notice published in the Gazette, and the Minister may appoint different days for different provisions.

SCHEDULE 1

(section 3(4))

MATTERS THE DEPARTMENT MAY REQUEST OF AN INTERESTED PARTY

- (a) statistics on the prevalence of use of alcohol, tobacco and other drugs by age;
- (b) statistics on the prevalence of use of alcohol, tobacco and other drugs by special population groups including the adult and juvenile incarcerated population, women who are pregnant, youth in juvenile facilities, the homeless, members of gangs, and problem drug users;
- (c) alcohol and drug related crime;
- (d) drug enforcement activities;
- (e) drug seizures and arrests;
- (f) alcohol and drug related prosecutions;
- (g) cash seizures and suspicious financial activities;
- (h) importation, exportation and sale of alcohol and tobacco;
- (i) liquor licences issued under the Liquor Licence Act 1974;
- (j) criminal justice statistics including statistics from the drug treatment court, drug treatment assessments and referrals, and the Department of Corrections;
- (k) statistics on drug related infectious diseases including HIV/AIDS, Hepatitis B and C, tuberculosis, sexually transmitted diseases and other bacterial and viral diseases related to drug abuse;
- (l) breathalyser results;
- (m) alcohol and drug related accidents, toxicology analysis, and causes of death;
- (n) emergency room, inpatient, and outpatient cases related to drug abuse, poisonings, and toxic effects of drugs identified by services of the Bermuda Hospitals Board.

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SCHEDULE 2

(section 14(5))

CERTIFICATE OF AUTHORIZATION

[photograph and name of officer]

AUTHORIZATION

This certificate hereby authorizes [name of officer], an officer with the Department for National Drug Control to—

- (i) enter, at all reasonable times, a facility, centre or programme where an application for licensing or registration has been received under the National Drug Control Act 2013 (section 14(1));
- (ii) make periodic inspections, at all reasonable times, of a facility, centre or programme licensed or registered under the National Drug Control Act 2013 (section 14(3));
- (iii) enter, at any time, the premises of a facility, centre or programme licensed or registered under the National Drug Control Act 2013 and carry out an investigation of the facility, centre or programme where the officer has reasonable grounds to suspect that the facility, centre or programme is being or has been operated in contravention of any provision of this Act or any other law, regulations, or any term, condition or restriction attached to the licence or registration, or in the interest of public safety or public health (section 16(1) and (2));
- (iv) request the operator of the facility, centre or programme to produce for inspection any documents, books or records relating to information contained in any return, accounts or reports provided to the Minister, or general information relating to persons under the care, rehabilitation or treatment of the facility, centre or programme (section 13(2)).

OFFENCES

A person commits an offence if he obstructs an officer in the performance of his duties (section 14(6) and section 16(10)).

An operator commits an offence if he—

- (i) without reasonable excuse, fails to comply with a request made by the officer to provide any documents, books or records (section 13(3)(a));
- (ii) provides or authorizes information to be provided to an officer which he knows to be false or misleading in a material particular (section 13(3)(b)).

EXPIRATION

This certificate of authorization expires one year from the date of issue unless

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cancelled by the Director before such date.

Date of issue:

[signature]
Director
Department for National Drug Control

NATIONAL DRUG CONTROL BILL 2013

EXPLANATORY MEMORANDUM

This Bill seeks to enact legislation providing an over-arching policy for the reduction of the supply and demand of drugs in Bermuda, the prevention of drug abuse, the treatment of drug abusers, and the care of connected persons.

Clauses 1 and 2 are self explanatory.

Clause 3 provides for the continued existence of the Department for National Drug Control, its duties and its functions; and for the Minister to amend Schedule 1 to the Act by order subject to the negative resolution procedure.

Clause 4 provides for the Minister to prepare a national drug control plan which includes a plan of action; for the publication and review of the plan; for the Minister to provide grants to interested parties which assist in implementing the plan; and to provide financial support for conferences and seminars on drug abuse.

Clause 5 provides for the Minister to establish drug treatment facilities, drug treatment centres, and drug prevention programmes; for such facilities, centres or programmes to be operated by the Department; for the issuance and renewal of a licence in respect of the facility or centre or registration in respect of the programme; and for any fees to be prescribed for services provided by such facility, centre or programme.

Clauses 6 provides for it to be an offence for a person to operate a facility or centre which has not been licensed by the Minister; and for a person to apply to licence a facility or centre.

Clause 7 provides for an applicant or his legal representative to be heard by the Minister before an application for licensing a facility or centre is determined; for matters to be considered by the Minister when determining an application; and for the Minister to issue a provisional licence.

Clause 8 provides for the issuance of a licence to a facility or centre, and for terms, conditions, restrictions and expiration of the licence.

Clause 9 provides for it to be an offence for a person to operate a programme which has not been registered by the Minister, and for a person to apply to register a programme.

Clause 10 provides for an applicant or his legal representative to be heard by the Minister before an application to register a programme is determined; for matters to be considered by the Minister when determining an application; and for the Minister to grant a provisional registration.

Clause 11 provides for the Minister to establish and maintain a register of programmes; for the issuance of a certificate of registration where registration has been granted; and for terms, conditions restrictions and expiration of the registration.

Clause 12 provides for a facility, centre or programme to be operated in accordance with regulations.

Clause 13 provides for the operator of a facility, centre or programme to provide the Minister with returns, accounts and reports; for an officer of the Department to request and inspect the documents, books or records of a facility, centre or programme as they relate to such returns accounts and reports; and for it to be an offence for an operator to fail to comply with a request by an officer or to provide false or misleading information in a material particular.

Clause 14 provides for an officer of the Department to enter a facility, centre or programme where an application for licensing or registration has been made; for periodic inspections to be made where a licence or registration has been granted; and for it to be an offence for a person to obstruct an officer in the performance of his duties.

Clause 15 provides for an application for the renewal of a licence or registration; for an operator of a facility, centre or programme to make representations to the Minister; and for the Minister to consider such representations in determining the application.

Clause 16 provides for an officer to enter a facility, centre or programme at any time where he has reasonable grounds to suspect, among other things, that the Act or any law has been contravened; for the Minister to issue an order directing the operator to correct the contravention or cease operating the facility, centre or programme; for it to be an offence for a person to fail to comply with an order or to obstruct an officer in the performance of his duties.

Clause 17 provides for the cancellation of a licence or registration; for an operator to make representation to the Minister; and for the procedure to be followed and matters to be considered by the Minister before making a decision to cancel a licence or registration.

Clause 18 provides for the protection of confidential information where publications are made pursuant to the Act; and for it to be an offence for an officer of the department or an operator or servant of a facility, centre or programme to reveal confidential information, except in the performance of his duties.

Clause 19 provides the penalties for offences committed under the Act.

Clause 20 provides for the Minister to make regulations subject to the negative resolution procedure.

Clause 21 provides for commencement of the Act by notice published in the gazette, and for different provisions of the Act to come into operation on different days.