

Medicines and Poisons (Poisons and Prohibited Substances) Regulation 2021

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, the Honourable Yvette D'Ath MP, Minister for Health and Ambulance Services and Leader of the House provide this human rights certificate with respect to the *Medicines and Poisons (Poisons and Prohibited Substances) Regulation 2021* (Poisons Regulation) made under the following Acts:

- *Agricultural Chemicals Distribution Control Act 1966*
- *Biosecurity Act 2014*
- *Chemical Usage (Agricultural and Veterinary) Control Act 1988*
- *Drugs Misuse Act 1986*
- *Medicines and Poisons Act 2019*.

In my opinion, the *Medicines and Poisons (Poisons and Prohibited Substances) Regulation 2021*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The *Medicines and Poisons Act 2019* was assented to on 26 September 2019 and introduces a new regulatory framework for medicines and poisons in Queensland. The Poisons Regulation is part of the new regulatory framework. The purpose of the Poisons Regulation is to provide details on how persons are authorised to deal with poisons and prohibited substances to prevent harm to public health from exposure to poisons and prohibited substances. It does this by providing details relating to:

- who is authorised to deal with poisons and prohibited substances;
- requirements for persons carrying out regulated activities with poisons and prohibited substances;
- substance management plans.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The overall purpose of the Poisons Regulation is to regulate the manufacture, supply or possession of a poison. Poisons can be very dangerous to the health and safety of people working in industry, people in the vicinity and the community more broadly. By regulating the manufacture, supply and possession of poisons, the State fulfils its positive obligation under section 16 of the Human Rights Act to take steps to protect human life.¹ That objective can be

¹ *Taşkin v Turkey* [2004] X Eur Court HR 179.

seen generally in the types of regulated poisons and the standards set for persons holding licences under Chapter 2, Part 2 of the Regulation.

The protection of the right to life can be seen more specifically, for example, in:

- prescribing departmental standards in relation to carrying out certain activities with a regulated substance (clause 12 and schedule 3);
- the requirement to keep a high-risk poison register and reconcile it at least monthly and report any lost, stolen or destroyed register (clauses 26 to 32);
- regulating the storage, transportation and disposal of high-risk poisons (clauses 33 and 34);
- the obligation to notify the chief executive of any incidents of certain poisons not being accounted for or the release of poison if the release causes, or is likely to cause, someone to require medical treatment (clause 43);
- the obligation for labels and containers to comply with the Poisons Standard made under the *Therapeutic Goods Act 1989* (Cwlth) or approved alternatives (clause 54);
- the obligation to review a substance management plan for a regulated place as soon as practicable after a review incident happens in relation to the place and at least every 5 years (clause 68); and
- various requirements to refrain from doing certain things if there is likely to be a health risk, or the person reasonably believes there is a health risk that is not negligible (clauses 59, 62 and 77).

There are also other provisions of the Poisons Regulation which promote other human rights. For example, clause 70 requires a person selling an S6 poison by retail to ensure that it is stored or sold in child-resistant packaging, and not within reach of children under 4 years of age. Alongside protecting the right to life, clause 70 promotes the right of children to protection in their best interests under section 26(2) of the Human Rights Act.

However, in pursuit of its aim to protect human life (and other aims), the Poisons Regulation does limit or engage other human rights.

Prescribing poisons

By prescribing certain substances as poisons (Chapter 1, Part 2), the Poisons Regulation engages the right to property in those substances under section 24 of the Human Rights Act. The right to property in section 24(2) will be limited where property is deprived arbitrarily.

‘Property’ extends at least to chattels such as the poisons prescribed in the Poisons Regulation.

‘Deprivation’ also likely extends beyond a formal deprivation to de facto expropriation, which is where substantial restrictions are placed on a person’s use or enjoyment of their property. However, a reduction in the value of commodity is not enough. The interference needs to be so great that it effectively amounts to depriving a person of their property.

Prescribing certain substances as poisons does not interfere with the right to own those things to such an extent that property is deprived. As there is no deprivation of property, clauses 6 to 10 of the Poisons Regulation engage, but do not limit the right to property in section 24(2) of the Human Rights Act.

Prescribing who is authorised to deal with poisons and prohibited substances and requirements for carrying out regulated activities

The Poisons Regulation engages a number of rights under the Human Rights Act associated with work and carrying on a profession or occupation, namely the rights to equality and non-discrimination (section 15(3)), property (section 24) and privacy (section 25(a)).

Right to equality and non-discrimination

The Poisons Regulation prescribes classes of persons who are authorised to carry out a regulated activity with a regulated substance and sets limitations on the activity, including limitations to professional practice or performing functions (clause 11 and schedule 2). In doing so, the Regulation applies to people differently depending on their occupation (such as commercial pilots, rural landholders, pharmacists, employees at community pharmacies and veterinarians). This engages, but does not limit, the human right in section 15(3) of the Human Rights Act. Under section 15(3), every person has a right to equal protection of the law without discrimination.

Discrimination is defined to include direct and indirect discrimination on the basis of the attributes protected in section 7 of the *Anti-Discrimination Act 1991*. Employment status or occupation is not one of those attributes. However, as the definition is inclusive, discrimination under the Human Rights Act may extend to other analogous grounds of discrimination. That is the approach that is taken to the right to equality and non-discrimination in the *Canadian Charter of Rights and Freedoms*, which also has an inclusive meaning of discrimination.

The Canadian Supreme Court has held that professional status, occupational status, or employment by a particular organisation is not an analogous ground of discrimination.² I consider that the same approach applies in Queensland. A person who is not an approved person within the meaning of the Regulation generally does not suffer from disadvantage or stereotyping, and the distinction drawn by the Poisons Regulation does not have the effect of devaluing or marginalising them within our society.

The differential treatment of people according to their occupation does not involve discrimination under section 15(3) of the Human Rights Act.

Right to property

The right to property in section 24 of the Human Rights Act may be engaged by impacts on a person's employment. The equivalent right in the *European Convention on Human Rights* has been held to cover:

- the right to practise a profession;³
- a right to seek a particular kind of employment;⁴ and
- a licence to carry out an economic activity.⁵

² *Delisle v Canada (Deputy Attorney General)* [1999] 2 SCR 989; *Baier v Alberta* [2007] 2 SCR 673; *Health Services and Support-Facilities Subsector Collective Bargaining Association v British Columbia* [2007] 2 SCR 391.

³ *Van Marle v The Netherlands* (1986) 8 EHRR 483, [41]-[42]; *Karni v Sweden* (1988) 55 DR 157, 165; *R (Abrahaem) v General Medical Council* [2004] EWHC 279, [5].

⁴ *Legal and General Assistance Ltd v Kirk* [2002] IRLR 124, [41].

⁵ *Tre Traktörer Aktieföretag v Sweden* (1989) 13 EHRR 309, [53]; *Crompton v Department of Transport North Western Traffic Area* [2003] RTR 517, [19]; *R (Quark Fishing Ltd) v Secretary of State for Foreign Commonwealth Affairs* [2003] EWHC 1743 (Admin), [35]-[37].

However, the Poisons Regulation does not prevent a person from practising their profession, nor from seeking any particular kind of employment. The status of being an ‘approved person’ under the Regulation is not transferrable, so it is not itself property. Chapter 1, part 3 and schedule 2 of the Poisons Regulation sets out limitations on authorisations of approved persons. Chapter 2 of the Poisons Regulation sets standard conditions for substance authorities. However, the Regulation does not provide for the suspension or cancellation of these authorities in the event of non-compliance. The process for suspending or cancelling a substance authority or an approved person’s authorisation is set out in chapter 4, part 3 of the Medicines and Poisons Act. Even if the conditions and limitations in the Poisons Regulation have the practical effect of depriving some people of a right to their occupation, that limit on section 24 of the Human Rights Act is very minor.

The right not to be deprived of property in section 24(2) is a right not to be ‘arbitrarily’ deprived of property. As the human rights meaning of arbitrary is, among other things, disproportionate, it is convenient to address whether the deprivation is arbitrary below when considering whether it is proportionate under section 13 of the Human Rights Act.

Right to privacy

Aspects of the right to work may also be comprehended by the right to privacy in section 25(a) of the Human Rights Act.⁶ The right to privacy ‘protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world’.⁷ In Europe, that has been found to include a right to establish and develop ‘relationships of a professional or business nature’.⁸ ‘It is, after all, in the course of their working lives that the majority of people have a significant opportunity of developing relationships with the outside world’.⁹ On this basis, work restrictions have been held to involve an interference with privacy.

Even if the conditions and limitations in the Poisons Regulation have the practical effect of interfering with a person’s work as an aspect of their privacy (for example, because they do not satisfy the competency requirements), any limit on the right to privacy in section 25(a) of the Human Rights Act would be very minor.

The right in section 25(a) is a right not have one’s privacy interfered with ‘unlawfully’ or ‘arbitrarily’. In a human rights context, ‘arbitrary’ means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to a legitimate aim sought.¹⁰ Because questions of lawfulness and proportionality arise when considering justification of limits on human rights under section 13, it is convenient to consider these questions below.¹¹

Contact details and other personal information

A number of provisions require a person’s name, address and other personal information to be recorded, for example, in the high-risk poison register or purchase orders (clauses 27, 28, 48, 55 and 57).

⁶ *ZZ v Secretary, Department of Justice* [2013] VSC 267, [82]-[95].

⁷ *Pretty v United Kingdom* (2002) 35 EHRR 1, 36 [61].

⁸ *C v Belgium* (2001) 32 EHRR 2, 33-4 [25].

⁹ *Volkov v Ukraine* [2013] ECHR 32, [165].

¹⁰ Explanatory note, Human Rights Bill 2018 (Qld) 22; *PJB v Melbourne Health* (2011) 39 VR 373, 395 [85].

¹¹ Following the approach in *Minogue v Thompson* [2021] VSC 56, [86], [140].

By requiring contact details and other personal information to be included, these provisions of the Poisons Regulation engage the right to privacy in section 25(a) of the *Human Rights Act*.

The right to privacy is clearly engaged whenever a person's name and other personal information is required to be disclosed.¹² Disclosing a person's residential address can have a significant impact on privacy (for example, where a person has moved in an attempt to escape domestic violence).¹³ In this respect, clause 48(1)(f) of the Poisons Regulation requires the 'physical address' of the buyer to be included in a purchase order.

As noted above, section 25(a) of the Human Rights Act has internal limitations of lawfulness and arbitrariness. It is convenient to consider whether the interference is lawful or arbitrary below when considering whether the interference with privacy is justified.

The requirement to provide this information also limits the freedom of expression in section 21 of the Human Rights Act. The 'freedom of expression necessarily entails the right to say nothing or the right not to say certain things'.¹⁴

Age requirements

Employees and agents of rural landholders are only prescribed as approved persons under clause 11 and schedule 2, clause 17, if they are 'adult[s]'. This treats people differently on the basis of whether the person is above the age of 18. Age is a protected attribute under section 7(f) of the *Anti-Discrimination Act*. Accordingly, these provisions of the Poisons Regulation impose a very minor limit on the right to equality and non-discrimination in section 15(3) of the Human Rights Act.

Requirements to display information

By requiring certain information to be displayed in a certain way, including in English (in clauses 54, 69, 72 to 76 and 80), the Poisons Regulation engages the right not to discriminate on the basis of language (section 15(3)), right to freedom of expression (section 21), and possibly cultural rights (section 27 of the Human Rights Act).

Requiring information to be displayed in English may indirectly discriminate against people required to display or read the information if their first language is not English. Although language is not a protected attribute in section 7 of the *Anti-Discrimination Act*, language may be an incident of race and national origin under section 7(g).¹⁵ Minorities may also have a right to communicate in their own language, including in official communications, under sections 27 and 28(2)(b) of the Human Rights Act, but most likely only in particular areas where 'their numbers warrant'¹⁶ or 'there is sufficient demand'.¹⁷ In Queensland, there are likely to be very few, if any, areas where official communications in a language other than English is warranted.

¹² *DPP (Vic) v Kaba* (2014) 44 VR 526, 564 [134].

¹³ *SF v Department of Education* [2021] QCAT 10, [42]-[53].

¹⁴ *Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080.

¹⁵ *DPP v Natale* [2018] VSC 339, [71], [89]-[90].

¹⁶ Human Rights Committee, *Concluding Observations: Poland*, UN Doc CCPR/CO/82/POL, [20].

¹⁷ Human Rights Committee, *Concluding Observations: Austria*, UN Doc CCPR/C/AUT/CO/4, [21].

The freedom of expression in section 21 of the Human Rights Act is a freedom to communicate ‘every form of idea and opinion capable of transmission to others’.¹⁸ Regulating how a person is to communicate ideas represents a minor limit on this right. The limit does not go to the content of the ideas or discriminate against particular viewpoints.

Unlawful advertising

With limited exceptions, clauses 78 and 79 of the Poisons Regulation make it an offence to advertise, or cause someone else to advertise, a prohibited substance or hazardous poison.

This limits freedom of expression in section 21 of the Human Rights Act, which likely protects commercial advertising.¹⁹

Fees

The requirement that there be fees paid for certain applications made under the Poisons Regulation (in clauses 84 and 85, and schedule 6), engages the right to property in section 24 of the Human Rights Act.

Money is a form of property for the purposes of section 24 of the Human Rights Act.²⁰ The levying of money in the form of taxes and other contributions will likely amount to a de facto deprivation of the property.²¹ However, a fee that is voluntarily paid in exchange for something of value likely does not involve a deprivation of property. The fees – for example, for making an initial application for a licence, such as a manufacturing or wholesale licence for a hazardous poison (schedule 6, clause 1), or making an initial application for an S7 retail licence (schedule 6, clause 2) – are less like a tax and more like a fee for service which is voluntarily paid.

The fees do not deprive people of property and therefore, the right in section 24(2) of the Human Rights Act is not limited. Even if the fees are a form of levying a tax or contribution, the deprivation of property would be readily justified by reference to the purpose of revenue raising in the public interest.²²

To summarise:

- the Poisons Regulation imposes minor impacts on the right to property and the right to privacy by impacting on a person’s work and occupation;
- clauses 27, 28, 48, 55 and 57 impose minor impacts on the right to privacy and the freedom of expression by requiring disclosure of contact details and other personal information;
- schedule 2, clause 17 discriminates on the basis of age and therefore limits the right to equality and non-discrimination;

¹⁸ Human Rights Committee, *General Comment No 34: Article 19: Freedoms of opinion and expression*, 102nd sess, UN Doc CCPR/C/GC/34 (12 September 2011) 3 [11].

¹⁹ *R v Guignard* [2002] 1 SCR 472, 483-4 [21]-[23].

²⁰ *Acts Interpretation Act 1954*, sch 1 (definition of ‘property’).

²¹ *Burden v United Kingdom* (European Court of Human Rights, Grand Chamber, Application no 13378/05, 29 April 2008) [59].

²² *Gasus Dörier-und Fördertechnik GmbH v Netherlands* (1995) 20 EHRR 403, [60].

- clauses 54, 69, 72 to 76 and 80 impose very minor limits on the rights to non-discrimination, freedom of expression and cultural rights by requiring certain information to be displayed in a certain way, including in English; and
- clauses 78 and 79 limit the right to freedom of expression by prohibiting certain advertisements.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Impacts on work and carrying out an occupation

The Poisons Regulation (especially clause 11 and schedule 2) may impose minor impacts on the right to property and the right to privacy by interfering with a person's work and occupation.

(a) the nature of the right

The right to property is valuable in itself as a component of human dignity, but it also has strategic value. Property – including property in the legitimate expectation or goodwill of one's profession or occupation – is 'crucial to the economic development necessary to ensure that human beings can supply themselves with food and otherwise support themselves.'²³

The purpose of the right to privacy is 'to protect and enhance the liberty of the person – the existence, autonomy, security and well-being of every individual in their own private sphere.'²⁴ One of the values underlying the right to privacy is personal development, which includes the development of relationships with the outside world through one's work.²⁵

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the standards and limitations for approved persons and substance authorities is to ensure the safety of people working with poisons as well as the broader community. That purpose is ultimately to protect the right to life and is clearly consistent with the values of our society.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

By setting standards, conditions and limitations, the Poisons Regulation helps to achieve their safety purpose.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

The standards and conditions are necessary to achieve their safety purpose. Any alternative which had a lesser impact on work and the carrying on of an occupation would carry a greater risk to safety.

²³ Rhoda E Howard-Hassmann, 'Reconsidering the Right to Own Property' (2013) 12(1) *Journal of Human Rights* 180, 181.

²⁴ *Director of Housing v Sudi* (2010) 33 VAR 139, 145 [29] (Bell J).

²⁵ *Pretty v United Kingdom* (2002) 35 EHRR 1, 36 [61]; *C v Belgium* (2001) 32 EHRR 2, 33-4 [25].

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The impact on human rights from the provisions of the Poisons Regulation is minor. While a person's work and occupation can be critical to their sense of self and their ability to live a dignified life, the standards and conditions set by the Poisons Regulation regulate rather than prevent a person from those benefits.

The need to ensure safe use of poisons is important for the people using them and the community as a whole. Taking into account the State's obligation to protect the right to life, the safety purpose outweighs any impact on the rights to property and privacy as an aspect of the impact on a person's work and occupation.

As the impacts on the rights to property and privacy are not disproportionate, they are not arbitrary. Accordingly, those rights are engaged but not limited. Alternatively, even if those rights are limited, those limits are reasonable and demonstrably justified.

Contact details and other personal information

Clauses 27, 28, 48, 55 and 57 of the Poisons Regulation impose minor impacts on the right to privacy in section 25(a) of the Human Rights Act by requiring disclosure of contact details and other personal information.

(a) the nature of the right

The values underlying the right to privacy are set out above in relation to impacts on work and occupation. In relation to private information such as a person's name and address, the right to privacy can generally be understood as 'the right of the individual to determine for himself [or herself] when, how, and to what extent he [or she] will release personal information about himself [or herself]'.²⁶

Freedom of expression has intrinsic value to individual self-fulfilment as well as instrumental importance for society as a whole. Those values are no different when it comes to the freedom not to impart information. 'Silence is in itself a form of expression which in some circumstances can express something more clearly than words could do.'²⁷

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Contact information and other personal information is collected to keep an accurate record of dealings with high-risk poisons, as well as purchase and supply of regulated poisons. The personal information is ultimately collected to facilitate the overall scheme which is directed to protect public health. Those purposes are consistent with the values of our society.

²⁶ *R v Duarte* [1990] 1 SCR 30, 46.

²⁷ *Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080.

- (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Collecting contact information and other personal information will help to facilitate the scheme, including by allowing contact with people who deal with high-risk poisons or who buy or supply regulated poisons.

- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose

Contact details (for an individual) is defined in schedule 7 of the Poisons Regulation as the name, phone number and address of the individual. Other provisions which require personal information only specify the information which is strictly required.

Except for where a physical address is required, ‘address’ does not mean necessarily ‘residential address’. This means that a person who wishes to maintain their privacy (for example, because they are fleeing a domestic violence situation), will be able to provide a post office box as their address for their contact details.²⁸

Consideration was given to whether any personal information which is required to be given could be omitted without undermining the effectiveness of the scheme. However, requirements to provide any less personal information would undermine the purpose of ensuring legitimate buyers, tracking supply and preventing diversion.

There are also safeguards to protect privacy. Clause 81 of the Poisons Regulation also sets out requirements for keeping information in compliance with a requirement under the *Medicines and Poisons Act*. Existing privacy safeguards under relevant privacy laws will apply to personal information held by agencies.

- (e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

While disclosure of personal information in the form of a name, telephone number and address impinges on a person’s privacy and freedom not to disclose information, it is at the lower end of intrusions into privacy. The personal information which is required to be disclosed is confined to the information which is strictly required to ensure the effective operation of the scheme.

On the other hand, the collection of that personal information is crucial to allow contact with people who deal with high-risk poisons or who buy or supply regulated poisons, and to ensure accountability for compliance with standards under the Poisons Regulation. Allowing the effective operation of a scheme designed to protect human life outweighs the minor impact on privacy.

As the impacts on privacy are not disproportionate, they are not arbitrary. Accordingly, the right to privacy is engaged but not limited. Alternatively, any limits on the right to privacy are reasonable and demonstrably justified. For the same reasons, the limit on freedom of expression is also reasonable and demonstrably justified.

²⁸ As in *SF v Department of Education* [2021] QCAT 10, [42]-[53].

Age requirements

Employees and agents of rural landholders are only prescribed in schedule 2, clause 17 if they are adults. Schedule 2, clause 17 of the Poisons Regulation therefore treats people differently on the basis of age and therefore limits the right to equality and non-discrimination under section 15(3) of the Human Rights Act.

While the Regulation treats people differently on the basis of their age, it has important reasons for doing so. The safety objective is best achieved by ensuring that the relevant person is sufficiently mature to grasp the health risks. Age is an appropriate proxy for maturity in these circumstances. Age-based distinctions of this kind ‘are a common and necessary way of ordering our society’.²⁹ Ultimately, the safety objective outweighs the impact on the right to equality and non-discrimination of people who are under 18 years of age.

The limits imposed on the right to equality and non-discrimination by sch 2, clause 17 are reasonable and demonstrably justified.

Requirements to display information

Clauses 54, 69, 72 to 76 and 80 of the Poisons Regulation impose very minor limits on the rights to non-discrimination (section 15(3)), freedom of expression (section 21) and cultural rights (sections 27 and 28(2)(b) of the Human Rights Act) by requiring certain information to be displayed in a certain way, including in English.

(a) the nature of the right

The value underlying equality is the dignity that all human beings have by virtue of being human. When we discriminate for no rational reason – for example, against people who speak a different language – we fail to see people as fellow human beings.³⁰

Freedom of expression has intrinsic importance for individual fulfillment and is indispensable for society as a whole as the foundation of democracy and the rule of law.³¹

The right of minorities to ‘use their language’ in section 27 and of Indigenous peoples to ‘enjoy, maintain, control, protect, develop and use their language’ in section 28(2)(b) of the Human Rights Act recognises the intrinsic link between language and identity. When a person’s identity is affirmed they are ‘recognised for who they are’.³²

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of requiring certain information to be displayed in a certain way is to provide crucial warnings and safety information in the way that is most likely to ensure it is understood. That ultimately serves to protect safety which is a purpose consistent with the values of our society.

²⁹ *Gosselin v Quebec (Attorney General)* [2002] 4 SCR 429, 467 [31].

³⁰ *Re Lifestyle Communities Ltd [No 3]* [2009] VCAT 1869; (2009) 31 VAR 286, 311 [109].

³¹ *McDonald v Legal Services Commissioner [No 2]* [2017] VSC 89, [22].

³² *PBU v Mental Health Tribunal* (2018) 56 VR 141, 203 [199].

- (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Stipulating how information is to be displayed or provided helps to achieve that purpose.

- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose

Allowing people greater freedom to express the information in another way would put people at risk because they may not receive the information in a way that is understood.

Clause 80(3) allows for information to be recorded in a language other than English in order to ensure another person can understand the information, provided the information is also recorded in English.

Accordingly, the limits on freedom of expression and the language in which it is expressed is no greater than necessary to achieve the safety purpose.

- (e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

Freedom of expression and language rights are important, but the Poisons Regulation merely regulates expression. It does not prevent ideas from being expressed, including the language in which the ideas are expressed (provided it is also expressed in English). Ensuring warnings and safety messages are received in a way that people can understand is also important. As lives may be put at risk without regulating how the information is provided, the importance of ensuring safety outweighs the minor impact on freedom of expression and language rights.

The limits imposed on the right to non-discrimination, freedom of expression and cultural rights are reasonable and demonstrably justified.

Unlawful advertising

By prohibiting advertising of a prohibited substance or hazardous poison, clauses 78 and 79 of the Poisons Regulation limit freedom of expression in section 21 of the Human Rights Act.

- (a) the nature of the right

The value underlying freedom of expression is set out above in the context of the requirements to display information in a certain way. In relation to commercial expression more specifically, ‘The need for such expression derives from the very nature of our economic system, which is based on the existence of a free market. The orderly operation of that market depends on businesses and consumers having access to abundant and diverse information.’³³

- (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

³³ *R v Guignard* [2002] 1 SCR 472, 483 [21].

The reason the advertising of prohibited substances and hazardous poisons is prohibited is that they are only able to be accessed by certain authorised persons or for a workplace use. The general prohibition on advertising reinforces that the regulated poisons are not available to the general public. However, the exceptions allow advertising in professional and technical journals and price lists for authorised persons. This reinforces that access is only permissible for certain groups.

- (f) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Prohibiting advertisements for prohibited substances and hazardous poison helps to achieve that purpose by restricting advertising to settings which reinforce the approved uses of those substances and poisons.

- (g) whether there are any less restrictive and reasonably available ways to achieve the purpose

Under clauses 78(2) and 79(2) of the Poisons Regulation, there are exceptions to the prohibition on advertising, where the advertisement is in a professional or trade journal, comes in the form of a price list or promotional material intended for circulation only to persons authorised to use the substances such as wholesalers or industry users. These exceptions mean that the limit on free expression are tailored and go no further than necessary to achieve their purpose of reinforcing that prohibited substances and hazardous poison are not available to the general public.

- (h) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

A society based on the free market requires freedom of expression, including in the context of advertising. However, freedom of expression is not absolute. In this case, the need to ensure that dangerous poisons are not available to the general public outweighs the incursion into freedom of expression, especially when the exceptions which allow advertising in trade journals and price lists are taken into account.

The limits imposed on the right to freedom of expression by clauses 78 and 79 of the Poisons Regulation are reasonable and demonstrably justified.

Conclusion

I consider that the *Medicines and Poisons (Poisons and Prohibited Substances) Regulation 2021* is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with human rights, but those limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

YVETTE D'ATH MP
MINISTER FOR HEALTH and AMBULANCE SERVICES
and LEADER OF THE HOUSE