

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

PSYCHOACTIVE SUBSTANCES BILL [*LORDS*]

Second Sitting

Tuesday 27 October 2015

(Afternoon)

CONTENTS

SCHEDULE 1 agreed to, with amendments.
CLAUSES 4 to 9 agreed to, with amendments.
Motion to transfer agreed to.
Clause 10 disagreed to.
Adjourned till Thursday 29 October at half-past Eleven o'clock.

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IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

Chairs: SIR DAVID AMESS, † MR GEORGE HOWARTH

† Brine, Steve (*Winchester*) (Con)
 † Brown, Lyn (*West Ham*) (Lab)
 † Burrowes, Mr David (*Enfield, Southgate*) (Con)
 † Cleverly, James (*Braintree*) (Con)
 † Day, Martyn (*Linlithgow and East Falkirk*) (SNP)
 † Doyle-Price, Jackie (*Thurrock*) (Con)
 † Gwynne, Andrew (*Denton and Reddish*) (Lab)
 † Harris, Carolyn (*Swansea East*) (Lab)
 † Morris, Grahame M. (*Easington*) (Lab)
 † Penning, Mike (*Minister for Policing, Crime and Criminal Justice*)

† Pow, Rebecca (*Taunton Deane*) (Con)
 † Stephenson, Andrew (*Pendle*) (Con)
 † Sturdy, Julian (*York Outer*) (Con)
 † Thompson, Owen (*Midlothian*) (SNP)
 † White, Chris (*Warwick and Leamington*) (Con)
 Woodcock, John (*Barrow and Furness*) (Lab/Co-op)

Ben Williams, *Committee Clerk*

† **attended the Committee**

Public Bill Committee

Tuesday 27 October 2015

(Afternoon)

[MR GEORGE HOWARTH *in the Chair*]

Psychoactive Substances Bill

Schedule 1

EXEMPTED SUBSTANCES

Amendment proposed (this day): 3, in schedule 1, page 38, line 7, leave out from “products” to end of line 12 and insert—

“Medicinal product” has the same meaning as in the Human Medicines Regulations 2012 (S.I. 2012/1916) (see regulation 2 of those Regulations).”

This amendment replaces the definition of “medicinal product” in paragraph 2 of Schedule 1. The revised definition adopts that in regulation 2 of the Human Medicines Regulations 2012, which includes, but is wider than, medicinal products for which a marketing authorisation or an Article 126a authorisation is in force.—(Mike Penning.)

2 pm

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing Government amendment 4.

Lyn Brown (West Ham) (Lab): These amendments would replace the passages defining authorised, investigational, homeopathic and traditional herbal medicines in the list of exempted substances with the definition of medicinal products found in regulation 2 of the Human Medicines Regulations 2012. I understand that the Government feel it redundant to explicitly exempt those types of medicine because they are covered by the new definition. The explanatory statement says that these medicines will fall within the revised definition. How certain is the Minister that that is the case? One reason the Bill has had wide support is that the Government have been explicit that herbal remedies will not be controlled. We must be sure that the redrafting has not moved the goalposts. I understand there is particular concern about the Government’s lack of expertise in eastern medicines that may be deemed psychoactive.

My other concern is that the 2012 regulations appear to offer a very broad definition of a medicinal product. They state that a product is medicinal if it is “presented as having properties of preventing or treating disease” or administered with a view to “restoring, correcting or modifying a physiological function”.

I am not an expert on legal drafting, but both those phrases appear to suggest that whether a product is medicinal is subjective; it depends on how the drugs are presented or viewed, rather than what they actually do. I would like further details from the Minister on that point. We do not want a product to be classified as medicinal and exempted from the Bill just because someone claims it has medical or medicinal properties.

The Minister for Policing, Crime and Criminal Justice (Mike Penning): I understand exactly where the shadow Minister is coming from. I have seen some of the representations, particularly on Chinese and Asian herbal remedies, and I do not think there is a real concern. The key to this is trying to get everybody to see the new way we are looking at these products within the blanket ban. Everyone seems to want a list of products, but we tried that, and we had to amend it 500 times. Frankly, it does not work. We are very confident about this, and I assure the Committee that we are satisfied the revised definition firms the legislation up. The definition includes investigational medical products, homeopathic medicinal products and traditional herbal medicines. That is quite specific. I will look at it again between now and Report, but I am very happy that the drafting experts, who we all rely on, have firmed this up. I queried it myself, but I am happy today.

Andrew Gwynne (Denton and Reddish) (Lab): If it came to light in the review of the Bill’s measures that homeopathic medicines with certain psychoactive qualities were being abused and misused outwith the Bill’s functions, would the Minister look, maybe on Report, to change the regulations to ensure that those medicines are covered by the blanket ban?

Mike Penning: The Home Secretary’s powers within the Bill, should it become an Act, will enable us to ensure that sort of thing happens. I assure the hon. Gentleman that a close eye will be kept on all types of medicine. If what he mentioned was felt to be happening between now and Report, which I doubt, or as we go forward, there are powers within the Bill to make sure that those medicines are covered. I hope that alleviates his concerns.

Amendment 3 agreed to.

Amendment made: 4, page 38, in schedule 1, line 13, leave out paragraphs 3 to 5—(Mike Penning.)

This amendment is consequential on amendment 3. It removes the entries in paragraphs 3 to 5 of Schedule 1 in respect of investigational medicinal products, homeopathic medicinal products and traditional herbal medicinal products, as these products fall within the revised definition of medicinal product inserted by that amendment.

Owen Thompson (Midlothian) (SNP): I beg to move amendment 56, in schedule 1, page 39, line 23, at end insert—

“Miscellaneous

11 —alkyl nitrates”

This amendment seeks to implement a recommendation by the Home Affairs Select Committee that “poppers” should not be banned.

I will try to be succinct. We felt it was important to table this probing amendment following the evidence gathered by the Home Affairs Committee and published in its report last Friday. I am not looking to press the amendment to a vote, but it is something that should be taken into consideration as we move towards Report.

The Home Affairs Committee received evidence from the National AIDS Trust and the Gay Men’s Health Collective that seemed to suggest that there was no medical evidence to suggest that poppers are in any way harmful. I am not an expert so I am open to contrary arguments. In this, as in so many areas of the Bill, the amendment is trying to avoid the unintended consequences of action or inaction that might be taken.

We felt that the inclusion of this miscellaneous exemption under schedule 1 would help to prevent any such unintended consequences, such as driving these substances underground and the increasing reliance on class A and class B drugs and other things that could be far more harmful to individuals who currently use poppers. We would be keen to see further discussion on the inclusion of this very specific exemption under alkyl nitrates; however we would not be looking to press it to a vote at this stage but would look to take it forward on Report.

Lyn Brown: The amendment would specifically exempt poppers from the controls contained within the Bill. I am aware that the Home Affairs Committee, as the hon. Member for Midlothian stated, received plenty of evidence on the issue. It concluded that poppers ought to be excluded from the scope of the ban in the Bill. Organisations including the National AIDS Trust and the Gay Men's Health Collective argued that harm from poppers was low due to the effective regulation of the compounds amyl nitrate and butyl nitrate. Not exempting poppers from the list of psychoactive substances would take the use of alkyl nitrates outside of any regulation.

Andrew Gwynne: My hon. Friend is right to talk about the health of gay men in particular. Is she as concerned as I am that one of the unintended consequences of banning poppers could be the use of harder drugs and the risk from that not only in potential mental health problems of those that are using them but also sexual health because of the heightened risk of unprotected sex and sexually transmitted infections?

Lyn Brown: I thank my hon. Friend for making that point. One of the arguments against poppers is also that it could adversely impact on the sexual health of those imbibing. That argument can be used both ways. My hon. Friend is absolutely right; the Home Affairs Committee is quite clear that if we do not exempt poppers that could lead to increased health harms.

Dr Owen Bowden-Jones, a consultant psychiatrist and lead clinician for the Club Drug Clinic at the North West London NHS Foundation Trust, stated:

“As far as I can speak as a clinician, I do not think I have ever seen anybody come through”—

our clinic

“with harms related to poppers”.

Professor Iversen of the ACMD also stated that the ACMD had not seen

“sufficient scientific evidence”

that would prove harm in the case of poppers

“to justify a recommendation under the Misuse of Drugs Act.”

He was also not aware of any growth in the use of poppers.

I had supper last night with my hon. Friend the Member for Rhondda (Chris Bryant), who told me that the long medical history of the former Member and Labour Foreign Secretary Ernie Bevin meant he took poppers around the Cabinet table quite regularly. Apparently, that was because his doctor told him he had no sound organ left in his 18-stone body apart from his feet, and the poppers kept him going.

The Chair: Order. As my son would say, that possibly falls under the category of “too much information”.

Lyn Brown: I take your advice, Mr Howarth.

Given the evidence published by the Home Affairs Committee on Friday, I am sympathetic to the SNP's amendment, and I wonder what the Minister makes of the evidence. If the ACMD, through Professor Iversen's evidence, is suggesting that poppers have a low risk of harm, it would be within the scope of the Bill to place poppers on the exemption list.

I repeat: it is quite clear that I am not an expert on drug taking or drugs. I hear there has been a change in the formula used for poppers, and that a trickle of new evidence suggests the new formulation causes damage to the centre of the retina. Although reports of visual loss are very rare, this underlines the fact that we need an established mechanism for approving exemptions, whereby representations can be made to the ACMD if it is believed that an exemption should be granted. Experts, not me, need to assess the evidence and decide whether the case for exemption has merit. Poppers ought to be subject to the same evidence-based process as any other drug. This debate and the discussion around poppers underlines the need for the sort of established mechanism that I called for in our debate on clause 3.

Mr David Burrowes (Enfield, Southgate) (Con): It is a pleasure to have the opportunity to contribute to this debate on an extremely significant and welcome Bill. I plead guilty to being a member of the Home Affairs Committee, which made these recommendations. I have had a number of conversations about issues around poppers, although I have never been a particular expert or had the benefit of having dinner with the hon. Member for Rhondda to discuss the issue of poppers in any great detail. I have, however, met with a representative from the Clonezone chain of sex shops, who made the case for having poppers properly regulated and in the open, as well as *Boyz* magazine, which has expressed concerns. Will the Minister indicate what evidence he has received from the gay community on this issue?

I will not repeat the evidence that the Home Affairs Committee heard, as the points have been well made. The issue is recognising the present harm level. I do not want to interfere in this morning's debate, as I was not there, but the definition in the Bill is a blanket ban. One has to weigh up the impact of an exemption of alkyl nitrates on the blanket nature of the ban and the precedent that would set.

The case that was made to the Home Affairs Committee and that has been made to me is that we are now in a position where poppers are properly regulated and controlled, not least by the gay community itself. Previous concerns about harm and abuse in relation to poppers were relevant when poppers were compounds, and there were some tragic incidents involving other drugs being combined with poppers. The gay community makes the case that as far as its activities are concerned, poppers are best in the open and not banned.

The wider issue, which has not been mentioned before, is proportionality and where the focus of the Bill is. I think we all agree that those who consume poppers for personal use—we will come on to importing and exporting in a subsequent debate—are not the main target of the Bill. At the very least, we need to look at the focus of enforcement regarding the psychoactive substances that are on the market, and we all agree that it should be on

[*Mr David Burrowes*]

the bad people who shift their evil trade around. Even if the Bill is enacted in its present form, I suggest that those who consume poppers in their private domain will not be a particular target of enforcement activities.

2.15 pm

Lyn Brown: Does the hon. Gentleman agree with me—I think he does, because he has said that people who consume poppers are not the target of the legislation—that we are looking at targeting drugs that do a lot of harm? I am anxious that we will spend resources going into clubs and arresting people who have poppers on them, which will look good on the stats but will not take off the streets the drugs and the people that we want to target through the legislation?

Mr Burrowes: We will have the benefit of a 30-month review, where we will be able to look at the impact of the legislation. We need to ensure that it gets on to the statute book so that it can arm the police to get out there and find the people whom we really want to focus on. I cannot believe that those with poppers will be the main focus. We can ask that question in 30 months' time to, I hope, reassure ourselves. This debate will help with that, and perhaps the Minister will give us some reassurance as well.

How will this be dealt with practically and properly? I hasten to say that those who consume poppers have not so much to fear; it is the people who shift the new psychoactive substances around in bulk who are causing menace. I look forward to the Minister's response, in which I hope he will outline the evidence that the Home Office has received about the harm caused by poppers, because he has expressed real concern to the Committee about such harm.

Mike Penning: May I touch quickly on the comment made by the shadow Minister in her intervention on my hon. Friend? Possession in a club would not be an offence; indeed, possession is not an offence under any part of the legislation, unless in a secure facility. It is important to send that message out.

The Bill is in no way intended to pick on or cause problems for any individual group in society, but we are looking at a blanket ban identical, or as near as damn it, to what was done in the Republic of Ireland, where poppers were also banned. I looked carefully at the evidence to the Select Committee, particularly the comments of Dr Owen Bowden-Jones, who said—I believe that the shadow Minister touched on this—that there are harms associated with poppers.

I think that the situation is the reverse of what my hon. Friend has said. There are new types of products and poppers coming into the market in this particular nitrite area, which is starting to cause problems. We can look at, for instance, death certificates on which alkyl nitrites have been named, and we see that from 1993 until the latest data were released, there were more than 20 deaths. How people take poppers—a trade name that we all seem to have adopted—is interesting. We have had instances of people with burns who have drunk or ingested them, and there is evidence around damage and deaths. That is a debatable thing, because there are lots of experts out there, but the principle of

what we are trying to do is not to have exceptions. As my hon. Friend has rightly said, what we can do is to review the situation in 30 months. At this stage, we are looking at a blanket ban without exceptions. I am only quoting from the pieces of paper in front of me, and I know that there was much more detailed evidence given to the Select Committee.

Andrew Gwynne: Surely the Minister would accept the words of the Home Affairs Committee report, which are quite clear; it says that poppers were

“not seen to be capable of having harmful effects sufficient to constitute a societal problem’ and therefore we recommend they should not be banned.”

That could not be clearer.

Mike Penning: I accept the point. I know exactly what it says. I beg to differ with the report and the work that was done by colleagues because of the principle of the blanket ban. If we have exemptions, what other types will be brought forward by others at other times? The principle of the blanket ban would be affected if we accepted the amendment, so I ask the hon. Member for Midlothian not to move it, or to withdraw it. Other Members may of course pursue that.

I have one final point to make. I am conscious that presumably—although we will wait for the business managers—we are not going to have a huge amount of time on Report. If we leave too much to Report, I am conscious that we might not have the time to debate the issues that we have already agreed to in the length of time available.

Lyn Brown: The Minister says that possession is not an offence. We are going to come to clauses later where I want to probe that. One of the issues around clubbing is that one person out of a group of six may well find themselves getting the poppers for the group and then doling them out to the group when they get to a club. In those circumstances, because there would be an “intent to supply”, the possession of poppers would be an offence. However, again, that is about using resources on something that has not been shown to have a harmful effect or to cause harm.

The Minister said that he wants to review, and in the review we can look at whether poppers have been particularly targeted. Can he confirm that when we get the review it will have a breakdown of which psychoactive substances action has been taken on? The issue is again that of resources. To show that action has been taken on psychoactive substances by any particular police force, it would be quite easy to take action on those who are using poppers. I want the action taken on those who are selling really harmful substances, not on the type of substances where the Select Committee's report suggests there is no evidence of harm. Can the Minister confirm that in that review we will be able to see the types of substances that police forces have concentrated on when they have been taking action?

The Minister also talks about a blanket ban. We have a blanket ban but we also have an exemptions list. We have an exemptions list that includes incense, and coffee—I am grateful for that as I am not sure how I would have managed to get up this morning without it. When we are talking about a blanket ban, we want that to be on harmful substances—substances that cause harm, not substances that do not harm. Would the Minister consider

publishing the evidence he has that poppers have entered a realm where they may well be causing harm? That would be helpful.

I think this will be revisited at Report; if not by either of the Front Benches, my guess is that there will be others who will have been moved by the letters and emails that they will be getting over the next week or so, who have perhaps been part of the Home Affairs Committee and are aware of the Committee's recommendation that this is placed on the exemption list. Could I ask the Minister to genuinely reconsider on this issue? It is not that we are soft on drugs. We are hard on drugs and we want to be hard on the harmful drugs that could cause massive harm to many within our communities. Will the Minister take that on board?

Mike Penning: I assure the shadow Minister that in the evidence I send back to the Select Committee on that report, I most certainly will indicate the concerns that we have around harm to do with poppers.

The blanket ban is not targeted, because it is a blanket ban. It is obviously for trading standards, the police and the Crown Prosecution Service to make the decisions. When we come to the review, data will be available to ensure that we understand how the new Act is being implemented.

Andrew Gwynne: I have two points. First, I wonder whether the timescale for the Minister's responding to the Home Affairs Committee will coincide with further debates we may have on the issue on Report. It would be convenient to have the Minister's response in time for such debate.

My second point is about unintended consequences. Does the Minister not accept that if people cannot buy poppers in shops, in a legal format, there is a risk that they will go underground and purchase them from drug dealers, which might be a gateway into harder drugs, because the dealers will want to push more than just poppers?

Mike Penning: I will answer some of those points if I can at this stage. Yes, I will respond to the Select Committee before Report. I am not part of the business management system, but it does not look like we will have reached that stage by next week, so we will have some time. The Committee knows that I have been wanting to expedite the process.

On the second point, the evidence from Ireland, where poppers are banned, shows that that is not the case, and I am sure that the gay community is the same in Ireland as it is here. Interestingly enough, I raised the matter with the Irish Minister when I was with him in the Republic, and he said that it had not been an issue for them or caused major problems. In fact, he was surprised that I raised the matter.

Mr Burrowes: Will the Minister give way on that point?

Mike Penning: May I just finish responding to a couple of the other points? My brain will not work well enough to remember them all.

We will, of course, look at the issue of harm. Interestingly, we are all quoting different people. I have quotes from some professors. In addition to Ireland, other countries,

including America, Canada and France, are also attempting to put some kind of ban in place. I am conscious that we do not want to be seen to be picking on any individual group in any shape or form. I fully understand that. But if we are trying to protect the public it is difficult to start to have physical exemptions in the way that has been described.

Mr Burrowes: Will the Minister tell us what level of concern has been expressed to him by the gay community?

Mike Penning: I was just coming on to that. When the Bill was going through the Lords I expected that the matter would be debated and extensively lobbied, but it was not. I understand that it was not raised at all. I also expected my door to be bursting open following requests for meetings from the different lobby groups, but I have not received any delegations. I am slightly surprised. One of the Justice Ministers raised the matter when a group was seeing them on a separate issue. I am well aware that colleagues were lobbied when they were named as members of the Committee. However, if the matter was of such concern, I would have expected representations, but I have not had any, and I am not the shyest person if people want to see me.

That is not a criticism. It is just that the question was asked and the answer is that I have not had any representations.

Lyn Brown: I know that this is not scientific, but my Facebook pages had not included anything about the matter until the end of last week. Perhaps the Minister's door has not yet been knocked on, but my guess is that it might be knocked on, fairly loudly, by those groups as the issue becomes more apparent and the community becomes more aware of it.

Mike Penning: Possibly, not least because of what I have just said.

Lyn Brown: Indeed.

2.30 pm

Mike Penning: I have made a rod for my own back but, as I said, my door is always open.

The news that we were going to have a blanket ban is not new; everybody has known about the ban. Several other organisations, including the Churches, were worried about this issue. It has been debated extensively within the Lords. I accept that there is now a campaign on this issue, which seems to have started quite vigorously, but during the progress of the Bill in the other place and throughout the investigations that I have carried out, it was not raised with me.

Lyn Brown: May I just say to the right hon. Gentleman that I think one of the reasons that the issue was not raised with him is that there has been an assumption that the legal highs that we are banning are the bad stuff—the materials that actually cause harm? Therefore, there has perhaps been an assumption that poppers, which do not cause harm or at least have not been considered to cause harm, would not fall within the scope of the Bill.

Mike Penning: The knowledge about poppers being part of the debate has been out there in the ether; it was actually partly discussed in Scotland, when the Scots carried out their review. It was certainly discussed when the Irish passed their legislation. It has been known, clearly, all the way through.

What I am saying, however, is that in what I am trying to do—I accept that this is a concern for individuals—this issue could be really difficult for this Bill. Of course, the substances that we are banning are not all the really horrible ones, and I am really genuinely worried that I would open up an opportunity for others to ask for exemptions in areas where we do not really want to have them.

I repeat what I said privately to the hon. Member for Midlothian, namely that I hope that people will understand that this process is about my trying to get a piece of legislation on the statute book that does the job we are asking it to do and that is not challenged in the wrong way.

Owen Thompson: I hear what the Minister is saying. However, it is one thing to say that there is reassurance for individuals who may take poppers, but how do they actually get them if we do not have an exemption for poppers? If we cover poppers in the ban that we are proposing in the Bill, they will become illegal and then those who would not be criminalised by using them cannot actually get them through any legal means. *[Interruption.]* I hear the Minister saying regularly that there is a blanket ban, but it is a blanket ban with the exception of controlled drugs, with the exception of medical products, with the exception of alcohol, with the exception of nicotine and tobacco, with the exception of caffeine, with the exception of food—

Andrew Gwynne: I appreciate that it is not proper form to respond to a Minister's comment through a Member who is intervening on him, but if I were to do so I would point out that the Minister said from a sedentary position that that is not the experience in Ireland. Does the hon. Gentleman suspect that what might actually be happening in the Republic of Ireland is that people are going to Northern Ireland to purchase poppers legally, which they can then use themselves in the Republic of Ireland, and that might be why this has not been much of an issue south of the border?

Owen Thompson: I would suggest that there are probably a number of ways in which any individual could acquire substances; indeed, that is part of what we will come on to next.

Mike Penning: Perhaps there is a sensible way forward, not least because the Select Committee report is fairly recent and many colleagues in the House have not had an opportunity to read it. Of course, if we do not vote on this measure now, it can then be brought back for the House, rather than this Committee, to decide. I have concerns as a Minister, not in a personal capacity. However, perhaps it would be sensible if we took some time and took some stock to consider the other evidence, and then the House can decide on Report.

Owen Thompson: I would certainly welcome that approach. We have talked a lot about how we are building the Bill around the Irish experience, but I do

not see any reason why we cannot look to that experience and make it better. I think that that is ultimately what we are all trying to do. I do not seek to press the amendment to a vote at this stage; I merely want us to make the arguments and discuss it, as we are doing. I will take the matter forward to Report, when we can discuss it in more detail. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Schedule 1, as amended, agreed to.

Clause 4

PRODUCING A PSYCHOACTIVE SUBSTANCE

Amendment made: 5, in clause 4, page 2, line 32, leave out from “subject to” to end of line 33 and insert “section (Exceptions to offences) (exceptions to offences).” —(*Mike Penning.*)

This amendment is consequential on amendment 11 and NC3.

Clause 4, as amended, ordered to stand part of the Bill.

Clause 5

SUPPLYING, OR OFFERING TO SUPPLY, A PSYCHOACTIVE SUBSTANCE

Lyn Brown: I beg to move amendment 46, in clause 5, page 2, line 36, at end insert “for personal gain”

This would restrict the offence of supplying psychoactive substances to those who do it for personal gain, as opposed to those who supply them for other purposes.

The Chair: With this it will be convenient to discuss the following:

Amendment 52, in clause 5, page 3, line 15, at end insert—

“(5) It is not an offence under this section for a person (“A”) to supply a psychoactive substance to person (“B”), where A and B are known to each other and such supply is part of an agreement to obtain psychoactive substances for either As, Bs or both's own consumption, and the supply does not profit person A.”

This amendment seeks to explore how to avoid one person being criminalised when as part of a group, he is responsible for obtaining psychoactive substances e.g. via the internet; when in reality each person in the group is purchasing for their own consumption.

Amendment 49, in clause 7, page 4, line 17, at end insert—

“(d) the person intends to do this for personal gain”

This amendment would mean possession with intent to supply would only be an offence if the person was supplying the product for gain.

Lyn Brown: One of the original recommendations of the ACMD was that the Home Office should redraft clause 5 to exclude social supply, and that is what our amendments are designed to do. I note that the NPS expert group, which recommended a blanket ban, also stated that social supply could be excluded from that ban. The reason for this—we were heading in this direction in the last debate—is that I am told that it is not unusual for a number of young people to club together, and for one person to buy the substances and distribute them among their friends. The crime survey for England and Wales 2014-15 found that around a third—34%—of those using NPS got them from a friend. The reality of drug experimentation, particularly with young people, is that it is social behaviour in a group. It is common for one individual to acquire the substances to be taken by the group. I am of the view

that the difference between a young adult purchasing drugs on behalf of a group for an experimental night out, and a professional drug dealer peddling potentially dangerous drugs for profit, is enormous.

Mr Burrowes: I hear the point that the hon. Lady is making, but how does she make that distinction? No one has the label: “I am a professional drug dealer” on their head. I have represented a number of drug dealers, and they may well be quite young and look very innocent, but they can be guilty of supply, whether social or commercial. Either way, they are plying their evil trade.

Lyn Brown: I accept that. I am not a learned person, and I have never defended a drug pusher, so I am quite new to this. My guess is that the way we would do this is to look at quantities—to consider the amount of drugs that somebody had on them and the group of people that they were clubbing with. If I had five poppers with me and I was clubbing with another four friends, I think that that would suggest that there was social supply going on, rather than a drug dealer making a huge profit.

Mr Burrowes: Is not the point that it is about enforcement and the police being able to take a view about what they find, so that they can decide whether the evidence amounts to supply and whether they want to take prosecution further? When they are dealing with the scenario you are describing of a bunch of friends passing round laughing gas, they would have to take a view on how far they would take it. We need to have that discretion in enforcement rather than putting it in the Bill, which could have unintended consequences.

Lyn Brown: I accept what the hon. Gentleman is saying. I think he was in the cannabis debate we had in Westminster Hall two weeks ago—[*Interruption.*] He was not; I am sorry. In that debate, I raised the issue of equity: somebody might be done for cannabis possession in West Ham but not in West Norwood, because police forces up and down the country take very different views about enforcement in their patch. It is about the way in which they enforce these matters. For me, the law is the law. I want equity across the country in the way in which things are dealt with; I do not see why there should not be equity across the country. I hope that helps the hon. Gentleman.

The clause as drafted makes no distinction between social suppliers and large-scale commercial suppliers. The ACMD is worried that that is disproportionate, and I probably agree. I know there is an argument that social supply is an important part of the supply chain of those drugs, and therefore it ought to be included within the reach of the Bill. Although Home Office research shows that a third of NPS were obtained through a friend or colleague, other surveys of young adults who are clubbers, such as the Global Drug Survey, have different findings that show a much higher level of internet buying of psychoactive substances.

Social suppliers are at the very end of the supply chain. I hope that this legislation, which I know we are going to pass, will enable us to disrupt and break up the immoral organisations that sell drugs to social suppliers: the head shops, the internet sites and, ultimately, the drug producers. We can reduce the social supply without criminalising young people who may not even be aware that they are breaking the law. A criminal record is one

of the most harmful and life-limiting penalties we can levy on a young adult. A conviction for drug possession is not well regarded by educational institutions or potential employers. A conviction for drug supply has potentially far worse consequences, as it is rightly regarded as a much more serious offence.

Without a well-funded, comprehensive education and communication programme, there will be plenty of confusion about the legal status of NPS. It will take years to completely remove the dangerous marketing misnomer of “legal highs” from ordinary language. There is bound to be confusion about drugs that are legal to possess but not to supply, import or export, if only because they are new and unfamiliar to our legal framework. The same ignorance cannot be claimed for the drug pushers, professional drug dealers and producers who are the people we really ought to be going after.

Our amendment would add “for personal gain” to the end of the clause. That is similar to the way financial gain is considered an important factor in the sentencing guidelines for drugs controlled by the Misuse of Drugs Act 1971. Those guidelines suggest that those who make substantial gains ought to be considered, for the purpose of sentencing, to have played a leading role in supply. With that careful wording, prosecutors would still be able to prosecute individuals for selling to people they happen to know for the sake of personal profit. Small-scale, local criminals could still be punished for bringing harm to their communities, but genuine social suppliers, who are ultimately the users of the drugs, rather than the people pushing them, would be excluded.

We tabled amendment 49 to clause 7 to have the same intended legal effect as our amendment to clause 5. The same principles that govern the prohibition of supply, which is set out in clause 5, should also apply to possession with intent to supply, which is set out in clause 7. I note that the Scottish National party tabled a similar amendment, which also has the intended effect of excluding social supply from the scope of the Bill. I am quite happy to work with the SNP and the Government to work out which formulation would most effectively exclude social supply without creating easily exploitable loopholes. I firmly believe that we should be working on this problem together.

Steve Brine (Winchester) (Con): I am listening carefully to what the hon. Lady says. Is the “for personal gain” that she suggests should be inserted into clause 5 consistent with the wording that would appear in, say, the 1971 Act? Has she taken advice to that effect? I appreciate that she might not have the answer at her fingertips.

2.45 pm

Lyn Brown: I certainly have not taken advice on that and I do not have that information at my fingertips.

Mike Penning: May I help the shadow Minister?

Lyn Brown: I am always happy to be helped.

Mike Penning: The provision in the Bill mirrors the position of substances that are subject to a temporary class drug order. The Bill replicates a piece of legislation that we have been using for some considerable time. The amendment would move us away from that.

Lyn Brown: But there are other things that are moving us away from that, too. The Bill does not talk about criminalising possession, so its focus is clearly on the dangerous, nasty stuff sold in glitzy, pretty packets in head shops, which are targeted at teenagers and young adults in our communities. We might not be mirroring the 1971 Act, but we are genuinely attempting to tackle the real problem of the nasty stuff on our doorsteps. We want to get to the suppliers and get this stuff out of our communities, but we should not criminalise young people who may be completely unaware that the “legal highs” that they have been taking are in fact illegal.

Andrew Gwynne: I am grateful to my hon. Friend for giving way. She makes an important point about personal gain, because there could be a scenario in which prosecutors would still be able to make a clear distinction for somebody who is clearly profiting from the sale of a currently legal high, even if they happen to know the person to whom they are selling on a social basis. That is an important distinction that prosecutors ought to be able to make.

Lyn Brown: I completely agree with my hon. Friend.

If the Minister cannot accept our amendments, I ask him at least to provide strong assurances that sentencing guidelines will be drawn up in a way that makes a distinction between social suppliers and suppliers for financial profit.

Steve Brine: This is where I am on this: I understand exactly what the hon. Lady says, but one could intentionally supply a substance to another person socially and it could still be for personal gain, because they could still make a few quid out of it. Therefore, a prosecutor might struggle with that distinction. I am interested to hear the shadow Minister’s view on sentencing guidelines.

Lyn Brown: I think the hon. Gentleman is absolutely right. We need to be clear in this Committee about who we want to target most. If we can make that clear, we might stand a chance of the legislation producing more than just five prosecutions and making a real impact on the “legal highs” that are out there. We should be going after those who are flooding our communities with invidious substances and tackling the real cause of the problems on our streets.

Mr Burrowes: On personal gain, do we not also want to proportionately tackle people who supply laughing gas to friends at school? They may not be the big people who earn lots of money, but they may gain by being able to get themselves an extra bit of laughing gas or by feeding a habit. They are all part of this supply chain. I would not want my children to be exposed to suppliers, whether professional drug dealers or just people who shift out this bad stuff in schools.

Lyn Brown: I accept that. Had I been lucky enough to be a mother, I would be saying exactly the same thing. Nevertheless, the kids in school who are supplying the laughing gas are getting it from somewhere, often from someone who is also giving them other stuff that they want to have pushed in the playground and in the streets. I am glad to see that the Bill will tackle offences in schools that affect children. We have also heard that

there will be a good and effective education programme that will help children to say no to whatever substances are being pushed. I am genuinely pleased to hear that.

Carolyn Harris (Swansea East) (Lab): Does my hon. Friend agree that we must also look at extending such measures to the vicinity of children’s homes where there are vulnerable young people, especially given the tendency for grooming to become the next stage in taking these hideous substances?

Lyn Brown: I understand that we will come to that later in the Bill with an amendment tabled by the hon. Member for Enfield, Southgate, who has been testing my thoughts on the legislation. I look forward to hearing from him on that.

As I have stated, a similar notion to the one I have been expounding already exists in the guidelines for sentencing under the 1971 Act. I would like to be assured that the Minister will work with the Director of Public Prosecutions to ensure that prosecutions are brought only when there is a clear public interest, which I would suggest there is not in the case of many social suppliers. I would find some reassurance in knowing that the Government will do what they can to ensure that the Bill is intelligently enforced.

Andrew Gwynne: It is a pleasure to follow my hon. Friend the Member for West Ham, with whom I agree that amendments 46 and 52 are so similar as to be almost indistinguishable. I very much hope that the Minister will consider adopting them.

I welcome this moment of harmony between Labour Members and our colleagues north of the border. Both amendments make a pertinent point: although it is right that the supply of existing drugs is considered an offence even if the supplier is not supplying them for personal gain, we should be very wary of criminalising those who are simply part of, say, a small group of individuals who have conspired to obtain psychoactive substances. That point was well made by my hon. Friend the Member for West Ham.

We are still in the early stages of controlling psychoactive substances. We should start from a presumption of ignorance for those not seeking to profit from the flow of such substances. My hon. Friend is absolutely right—I am sure that she does not speak from personal experience; she keeps protesting, so we will take her at her word—that the reality of drug experimentation, I am led to believe, is one of shared experiences. There is a qualitative difference between a group of young people procuring substances for shared use and a profiteer on the high street. The way in which clause 5 is currently drafted makes no distinction between those people and large-scale commercial suppliers; I have to say that that is just wrong. It is true that sometimes friends can be part of a supply chain, but they are right at the end of it. We should not, at this stage at least, impose a criminal record on a young person who gives some of these substances to their friends.

The Labour party is fully supportive of the principle of criminalising those who seek to make money from this pernicious trade. When someone is in the business of selling dangerous substances, we can assume they will be following developments regarding the illegality

of their work, so I am firmly behind clause 5 in a general sense. Nevertheless, I urge the Minister to consider very carefully the fact that the amendment is intended to adopt a principle included in the 1971 Act: one of “personal gain”. Prosecutors could then still make a distinction regarding somebody who quite clearly profits from this trade, even if, as I said in an intervention, they happen to know the customer in a social capacity.

I note the reasoning behind subsection (3), and I approve of it. It must be made clear that the substance not being of a psychoactive nature is not a defence in itself if the supplier intimated that the substance would have such an effect, notwithstanding the fact that he or she would have no doubt trading standards on their case.

I urge the Minister to think carefully about this. The point made by my hon. Friend and, indeed, echoed by the SNP amendment is that we need to tread very carefully, so that we do not end up criminalising young people for the sake of it. We want to tackle the real issue, which is the supply of the psychoactive substances we want to ban.

Owen Thompson: I very much agree with the comments from Labour Members. It is not the intention behind any measures in the Bill to target these small groups of people. The Bill is very much aimed at those who put these substances in the marketplace and on high streets on a larger scale. That is the reasoning behind our amendment. If there are drafting issues, it is surely not beyond expert drafters, of whom I am not one, to come up with a form of wording that encompasses the aims of the three amendments we are discussing, while countering some of the issues raised by Government Members.

Lyn Brown: Does the hon. Gentleman agree that the Government have opened the door to this by not wanting to prosecute possession? The Government themselves are therefore saying that they want to get to certain classes of pusher and of people involved in psychoactive substances, not individuals who just possess a drug.

Owen Thompson: It largely comes down to another unintended consequence. We are not looking to target those individuals or small groups of friends, whatever the circumstances happen to be, who are not the object of the Bill. It is a question of how we capture that in a way that leads to successful prosecutions where necessary but manages to support people where it is not the mass-scale issues we have been talking about.

The amendment is a probing one. We will not push it to a vote, but I urge the Government to use it as an opportunity to seek an alternative and look at how best we can manage this aspect in a way that meets the genuine concerns raised by Government Members, while protecting young individuals who may find themselves charged with supply when, in fact, it is what anyone else would see as personal use.

Mike Penning: I fully understand what colleagues on both sides of the Committee are saying, but I have some real concerns. If we exempt a group—not because they are young; we keep saying that, but we are just old and they are all younger than us—we will open up a significant loophole in the Bill, not least because of what my hon. Friend the Member for Enfield, Southgate spoke about from personal knowledge. What is personal use? We have discussed that in lots of other areas. While I desperately

do not want to criminalise young people, there is a whole set of measures in the Bill that will prevent us from getting to that position. That is why they are there.

I advise the Committee that some things that have been said are not quite factually correct. Supply does not need proof of payment under the 1971 Act, but proof of payment is a consideration in sentencing, which is exactly what we would look for in this measure. It is not for me to tell the Sentencing Council exactly what its guidelines should be. We have moved away from politicians doing that—it is now people who are much more expert than I am—but I have already committed to writing to the Sentencing Council once the Bill has completed its passage in order to advise it on the will of the House. We will return to that when we discuss children’s homes.

3 pm

The range of proportionate, graduated sanctions allowed by the Bill, and the fact that we will keep a close eye on the sentencing guidelines, means that the really innocent ones should—that is an interesting word—not be caught up in the way outlined by the shadow Minister, but there would be a significant loophole in the Bill if we exempted a group. The questions of what is for personal use and what is supply for gain is a very dangerous area. The rest of the legislation does not replicate that, so it does not have to be about financial gain or other gain—there are gains other than financial. Sadly, I ask the hon. Member for West Ham to withdraw her amendment.

Lyn Brown: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment made: 6, in clause 5, page 3, line 14, leave out from “subject to” to end of line 15 and insert “section (Exceptions to offences) (exceptions to offences).” —(*Mike Penning.*)

This amendment is consequential on amendment 11 and NC3.

Clause 5, as amended, ordered to stand part of the Bill.

Clause 6

AGGRAVATION OF OFFENCE UNDER SECTION 5

Lyn Brown: I beg to move amendment 47, in clause 6, page 3, line 20, leave out “B or C” and insert “B, C or D”

This amendment is consequential on amendment 48.

The Chair: With this it will be convenient to discuss the following:

Amendment 48, in clause 6, page 3, line 43, at end insert—

“(8A) Condition D is that the person who committed the offence knew, or had reason to believe, that the consumption of psychoactive substance would cause the person consuming the substance harm.”

Makes it an aggravating factor to sell a substance which the person knew or suspected to be harmful.

Amendment 55, in clause 9, page 5, line 26, at end insert—

“(2) In sentencing, account shall be taken of the relative harm associated with the psychoactive substance that was the subject matter of the offence”

This amendment seeks to ensure sentencing is commensurate with the potential harm done by the substance involved.

Lyn Brown: We have tabled these amendments to address concerns about disproportionate sentencing. I raised this issue on Second Reading, and it figures heavily in the Home Affairs Committee report, which concluded that

“there is a lack of clarity in the Bill with regard to the relative harm associated with different types of NPS and the appropriate sentence commensurate with the offence.”

Amendments 47 and 48 would make it an aggravating factor to supply a psychoactive substance that the supplier knows, or has reason to believe, is harmful.

Under the 1971 Act, sentences are linked to the harm caused by the drug possessed, supplied or produced. The more harmful the drug, the harsher the maximum sentence. For example, someone prosecuted for possession with intent to supply a class A drug such as heroin could potentially receive a life sentence. The maximum punishment for possession with intent to supply a class C drug such as anabolic steroids, however, is 14 years. There is judicial discretion in applying individual sentences, but the general approach of linking to relative harm is important.

The Bill represents a radical departure from previous attempts to control drugs because it legally decouples controlled substances from an independent and objective assessment of the harm they cause. We understand why that might be appropriate. The process by which the ACMD determines the harm of a substance can be lengthy and resource-intensive, which is precisely why the Home Office cannot keep up with the illicit market. It is difficult to introduce a concept of harm in the Bill without denying the Home Office the tools it needs to address the central problem.

However, by introducing the concept of harm in clause 6, which exclusively addresses statutory aggravating factors, I do not believe we would hamstring the Home Office or prosecutors. Prosecutors would not have to prove a substance’s harmfulness to secure a prosecution for supplying, producing, importing or exporting a psychoactive substance; they would only have to demonstrate that the individual had reason to believe that the substance was harmful in order to establish an aggravating factor and a harsher punishment.

3.5 pm

Sitting suspended for Divisions in the House.

3.30 pm

On resuming—

Lyn Brown: Just as importantly, the Home Office and enforcement agencies would still be able to control substances without having to prove that they are harmful. This amendment would therefore not place the authorities one step behind the market, which is the problem the Bill is designed to solve.

Section 1 of the Drugs Act 2005 included aggravation within its scope. I understand that this is hardly used. Does the Minister know how often it has been used successfully in court? He may seek inspiration on this one, or I am happy for him to write to me with the answer.

Mike Penning: I will write to the hon. Lady.

Lyn Brown: I am looking forward to it.

Mike Penning: It will be a very long letter.

The Chair: I do not think we should be overly detained by the Minister’s billet-doux.

Lyn Brown: The greatest benefit of the amendment is that it would formally recognise that someone ought not to receive the same sort of punishment for supplying a relatively harmless substance as someone supplying a substance which they ought to know could be very dangerous. It keeps the traditional link between harm and sentencing, which is an important principle, without wrecking the Bill.

Andrew Gwynne: My hon. Friend makes an important point on the issue of harm and sentencing. We probably all agree in the Committee that it should be the intention of the law that the more harmful the substance being supplied, the harsher the sentence should be for that supply.

Lyn Brown: Absolutely. I think that were this included in the Bill it could have a deterrent effect on those involved in supply and change the nature of the market towards less harmful psychoactive substances. I note that the Scottish National party has an alternative amendment which seeks to achieve a similar end. I will repeat what I said when we found ourselves in the same situation when discussing how to exclude social supply: I am very happy to work with other parties and with the Government in order to ensure that our shared goals are reached. I hope that they take this offer in the serious manner in which it is intended.

I look forward to the Government’s response with interest. They will know that this is an issue which has exercised supporters and opponents of the Bill alike, and that if a way round the problem can be reached, we ought to grasp it. Our amendment has the potential to bring even more consensus to the Bill.

Owen Thompson: Apologies for my slightly delayed return; I had to act as a Teller for the vote that has just happened. Our amendment 55 is an amendment to clause 9 not clause 6, although it does fit nicely with those that are here. Our approach is to look to ensure that there is a genuine protection in the concept of relative harm, as the shadow Minister mentioned prior to our suspension, and that the associated psychoactive substance is the subject matter of the offence, so that we do take account and any sentence handed down is relative to the offence. I accept that different sentencing regimes are in place within Scotland and the rest of the United Kingdom and I appreciate the points that the Minister will, I am sure, be making about that.

Our amendment is a probing one, but the fact that it mirrors those tabled by the Opposition suggests that the intent behind the amendments is consistent, regardless of which part of this island we happen to be presenting them from—*[Interruption.]* These islands. I apologise. I suggest that, as the Bill progresses, due consideration is given to the intent behind the relative harm aspects mentioned in the amendments.

Mr Burrowes: I wish to speak to the group of amendments, in particular amendment 55, which provides the opportunity to talk about how the courts would deal with the issue when it comes to sentencing. I accept

that the Bill will hopefully help to revolutionise enforcement and provide tools for the police to get out there and deal appropriately and proportionally with getting psychoactive substances off the streets and out of harm's way for hardworking citizens—all citizens, in fact. That is welcome. The Bill also recognises the civil sanctions and the civil regime regarding the seizure of such items.

When a prosecution comes before the courts—in Ireland there have not been many prosecutions and there may not be a huge number here—we want to ensure that the penalties are just and commensurate with the offence. We therefore have a problem, because the substances are different from controlled drugs, and the Misuse of Drugs Act 1971 contains a classification system that enables relative harm to be attached to a controlled drug, and that is then relevant to the sentence. Because of the blanket ban we do not have that, but I do not want to rehearse our previous debates on the matter.

It is important, nevertheless, not least for the courts because of proportionality, to be able to distinguish between psychoactive substances. No doubt the courts will take account of statutory and non-statutory aggravating factors—we will debate those factors later—and will consider the amount of drugs, the circumstances and the degree of sophistication, but they will also need to reach a judgment on the relative harm of the substance. I draw the Committee's attention to page 13 of the Home Affairs Committee report, a report I know the Minister read avidly over the weekend—he could not put it down.

Chapter 5, on the concept of harm, draws reference to the evidence of Rudi Fortson, QC, who highlights the position, which the Minister reiterated to the Committee, that the Government do not wish to be disproportionate with sentencing—far be it from them to want to be disproportionate; they certainly do not. There is also wider consideration in case law, principles and conventions that would ensure that every penalty would be considered proportionally.

How, therefore, will the sentencing courts get that assistance? Rudi Fortson states that,

“in the absence of drug classification, or an expert's opinion (if accepted) as to harm, the courts will have little option but to assume that all psychoactive substances are equally harmful”.

That is the problem we have, and it is why the debate on amendment 55 is welcome.

The Minister has already said that as soon as the Bill has completed its stages he will write to the Sentencing Council encouraging it to take action. The problem with that is that I know from experience that the council is not the quickest vehicle where taking action is concerned. On the desecration of war memorials, there was a commitment from a Justice Minister to write to the Sentencing Council, but it could be considered only when the council was to meet to consider amending its guidelines. I therefore encourage the Minister to make it clear that the process will be expedited.

The Minister and the Government have rightly taken an expedited view in relation to getting on the statute book the legislation regarding the enforcement tools, but we also need it to be fit for purpose for the courts. That is why I would like the Minister to communicate with the Sentencing Council and seek assurance that it will consider the matter in an expedited form so that we will get an answer quickly.

I also take comfort from the recent letter from the Advisory Council on the Misuse of Drugs to the Home Secretary, which now provides a clear scientific framework to establish that this issue can be proved in the lab in vitro. That will also provide an opportunity, with the benefit of evidence that I think is going to be resourced, whether that is from the forensic strategy or the Centre for Applied Science and Technology. That material will all come together to provide the body of evidence for the Sentencing Council to come to an informed judgment. However, that will all need to happen at quite a rapid pace. That is my first point.

The second point is that there will need to be some flexibility, because there are new psychoactive substances coming on stream. How quickly will the Sentencing Council be able to provide appropriate guidance to the sentencing courts for these new substances? I would have thought that there will be a whole new regime for the Sentencing Council to deal with this, given the way that it has taken its time before.

It is absolutely vital for public confidence and the interests of justice that this particular chapter in the Committee's deliberations is taken to heart. We made a recommendation here that the Sentencing Council be requested to produce appropriate sentencing guidelines, taking account of relative harms. That was a specific recommendation; I think the Minister is intimating that he is on the same page on that one. It is very important that we have something that is fit for purpose, not just for the police but for the courts.

Andrew Gwynne: I support my hon. Friend the Member for West Ham on amendments 47 and 48, which she has tabled. I do not wish to detain the Committee for too long, because there seems to be a degree of consensus breaking out. When we were last in discussion, about the previous clause, the consensus was between the Labour and Scottish National party Members; now it seems to be among Labour, SNP and Conservative Members that there is a degree of consensus.

I urge the Minister to consider very carefully the points that were put forward by my hon. Friend when she moved amendments 47 and 48. I agree with the Minister that all of the aggravating factors set out in the Bill so far are fair and proportionate. However, we need to go that little bit further, as my hon. Friend has said, and I would argue, as she did, that her amendments are an eminently sensible solution to disproportionate sentencing.

As it stands, the Bill makes no distinction between classes of NPS. We should be introducing the concept of harm into clause 6. The hon. Member for Enfield, Southgate made some very pertinent points, which were addressed in the report by the Home Affairs Committee, and I will briefly quote from a couple of passages from page 13 of that report on the concept of harm, because they should help us to form our opinions as we discuss these amendments.

The report starts off by saying that, “one of the principal purposes of the Bill is to ‘protect hard-working citizens from the risks posed by untested, unknown and potential harmful drugs’”.

We all agree with that. That message was reiterated by Lord Bates—Minister of State in the House of Lords—who said that,

“success would mean reducing the harms caused by new psychoactive substances”.

[*Andrew Gwynne*]

It is interesting that Lord Bates is referring specifically to the “harms caused”. That is why we argue that we should tighten up on the issue of harm in the Bill.

As the HAC report goes on to admit:

“This bill does not calibrate for harm, and indeed exempts known harmful substances whilst banning substances which are not harmful simply because they are psychoactive”.

I do not wish to regurgitate the debate on poppers, but they are a case in point. That is why harm has to be considered.

I think we all agree that somebody supplying very harmful substances should receive a harsher sentence than somebody supplying a relatively harmless substance. The link between harm and sentencing is an objectively just one, which my hon. Friend the Member for West Ham and the hon. Member for Enfield, Southgate have both made very clear. It would also produce a situation where there is a greater disincentive to sell the more harmful substances.

I urge the Minister to think carefully about including the definition of harm in the Bill. It seems as though his noble Friend Lord Bates in the other place has considered that, as referred to in the Home Affairs Committee report. It does not make sense that we ban substances that are not harmful simply because they are psychoactive, at the same time as we do not calibrate for harm, and known harmful substances, as part of the Bill.

3.45 pm

Mike Penning: I thank colleagues for their contributions. The last point raised by the shadow Health Minister, the hon. Member for Denton and Reddish, is probably the most difficult for me, not least because we would be moving away from the blanket ban. That is something that we have tried to introduce for many years. I fully understand the way in which the courts have historically looked at drugs sentencing, but this is new. However, the principle should not be any different. I highlight the fact that I will correspond with the Sentencing Council, as I alluded to earlier on. The situation in Scotland and Northern Ireland is different, but I am sure that they will follow that lead, not least because of the work the Scottish Government have done.

I fully support the principles behind the amendments, and it is clearly right that the courts should take account of the harms and the type of offence, but I feel that this is very much a matter for the independent Sentencing Council. The aggravating factors proposed in the amendments are already broadly covered by the Sentencing Council’s guidelines for drug offences, which we will be replicating. I take the point that my hon. Friend the Member for Enfield, Southgate made about the speed at which the Sentencing Council may need to move, and the speed at which we in Government need to move to give it the facts it needs to make decisions.

The process will be an evolutionary one. We do not want a young person—we keep referring to young people—or a person who had a small amount of a substance and sold it on to someone else because they were broke to be treated exactly the same as a drug dealer who has imported two tonnes of the stuff in a container through one of our ports. Clearly, in sentencing, that would be wrong. I am committed to writing to the

Sentencing Council—it already knows that I am going to do this—to say that we expect it to take into consideration not only what the Committee and both Houses decide, but the relevant parts of the Home Affairs Committee report. The part that we have been discussing, in particular, is enormously helpful as we move forward. We do not want people to be treated differently under the law, but we want dealers, as we understand dealers, to be treated differently.

I cannot agree that we should move into the territory of harm, because to do so would completely damage the principle of our thinking. I accept that that thinking is completely new, and it will be quite interesting for the courts, the Crown Prosecution Service and the Director of Public Prosecutions. It is important that the Sentencing Council does its job in England and Wales, and that a similar thing happens in Northern Ireland and Wales. I noted the agreement of the hon. Member for Midlothian and the hon. Member for West Ham on that; when the hon. Gentleman suggested that it would be appropriate, there was a nod from Her Majesty’s Opposition. I have taken that on board, and I will write to the Sentencing Council. We could work together on the content of the letter.

Lyn Brown: I am grateful to the Minister for stating that he agrees with the principle behind the amendments and that he will write to the Sentencing Council to urge it to take note of what the Committee and the Home Affairs Committee have said. That is very welcome, and I therefore beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Mr Burrowes: I beg to move amendment 40, in clause 6, page 3, line 20, leave out “or C” and insert “, C, D or E”.

The Chair: With this it will be convenient to discuss the following:

Amendment 41, in clause 6, page 3, line 43, at end insert—

‘(8A) Condition D is that the offence was committed on or in the vicinity of any premises intended to locate any vulnerable child;

(8B) In this section “vulnerable child” means any person aged under 18 who is not living with their family and is—

(a) accommodated in regulated residential care or unregulated accommodation under section 17, 20, 25 or 31 of The Children Act 1989, or

(b) accommodated in accommodation under part 7 of the Housing Act 1996.

(8C) The Secretary of State may by order made by statutory instrument specify the circumstances in which paragraph (a) and/or (b) of subsection (7B) apply.

(8D) Condition E is that the offender supplies a psychoactive substance to any persons under the age 18.’

Amendment 42, in schedule 4, page 48, line 16, at end insert—

“Misuse of Drugs Act 1971

(1) The Misuse of Drugs Act 1971 is amended as follows—

(2) In section 4A (Aggravation of offence of supply of controlled drug) after subsection (4) insert—

‘(4A) The third condition is that the offence was committed on any premises intended to locate any vulnerable child or in the vicinity of said premises;

(4B) in this section “vulnerable child” means any person aged under 18 who is not living with their parents or carers and is

- (a) accommodated in residential care under section 17, section 20, section 25 or section 31 of The Children Act 1989, or,
- (b) accommodated in a multi-occupant dwelling under part 7 of the Housing Act 1996.

(4C) The Secretary of State may by order made by statutory instrument specify the circumstances in which a court must take into account Condition C;

(4D) The fourth condition is that the offender supplies a controlled drug to any persons under the age of 18.”

Mr Burrows: The amendments particularly focus on sentencing, on the aggravating factors when someone is convicted under the Bill and on whether there should be a particular focus on those who supply psychoactive substances to children outside accommodation for vulnerable children. They seek to put those factors on the same footing as supplying in the vicinity of a school.

If one thinks about the purpose of including a statutory aggravating factor applying to those who supply drugs in the vicinity of a school, which is in this Bill and in the Misuse of Drugs Act 1971, although we are dealing with new types of drugs, the principle is the same whether it relates to a controlled drug or a psychoactive substance. If someone is plying their trade outside a school, Parliament takes the view that that is a statutory aggravating factor that does not need to be left to non-statutory guidance from the Sentencing Council. We make it clear that that is an aggravating factor that will lead to an increased sentence.

The amendments seek to tease out from the Minister why there should be a distinction. We are considering psychoactive substances, so we have to look at where they are being pushed and where they are subject to wider abuse and exploitation. That is why the amendments particularly focus on extending the statutory aggravating factor to supplying outside residential children’s homes and supported accommodation such as hostels, foyers or night stops. When dealing with such accommodation, Committee members will know from their constituencies and wider knowledge that they often house vulnerable people who can be prone to other forms of exploitation. Substance misuse, particularly of psychoactive substances, can often form part of that.

The amendments refer to accommodation for vulnerable children in order to capture both residential children’s homes and supported accommodation in which local authorities place children under the age of 18. Evidence that has come before all-party groups and no doubt Ministers suggests that such children in such accommodation are more at risk of exploitation than others. It could be argued that they are more at risk of harm than those affected by the supply outside schools, because of the other types of exploitation and abuse that go on in these types of accommodation.

References are also made in the amendments to different aspects of residential care and why children are at particular risk. The Children’s Commissioner has found that a disproportionate number of children who are sexually exploited are living in residential care. Children at a high risk of sexual exploitation also run the risk of exploitation relating to drugs. The all-party parliamentary group on runaway and missing children and adults’

inquiry highlighted the targeting of children’s homes by perpetrators due to the abuse and high vulnerability of such children, which is why the amendments seek an additional statutory aggravating factor. Children in care often lack the shield of a family to protect them from risks, so 16 and 17-year-olds and others are at particular risk of abuse, whether related to drink, drugs or psychoactive substances.

In addition to children in care, vulnerable 16 and 17-year-olds may find themselves homeless or at risk of homelessness but do not become looked-after children. In that zone, they are prone to having complex needs, whether in relation to housing, substance misuse, including drugs, mental health issues, contact with the criminal justice system or wider exploitation. That is why the amendment seeks a statutory aggravating factor. Why not leave it to the Sentencing Council guidelines, which include the

“targeting of any premises intended to locate vulnerable individuals or supply to such individuals and/or supply to those under 18”?

Non-statutory aggravating factors are already in the guidance.

We have to ask whether supplying to children outside a school is worthy of a statutory aggravating factor. The amendment would amend both the Bill and the Misuse of Drugs Act so that they are consistent with each other. Parliament needs to take the lead, as we did with the Modern Slavery Act 2015, which looked at many areas of exploitation, particularly the exploitation of children. Now is the time to look at the body of evidence and see that the particular vulnerability for children is not so much in schools, where there is more of a protective shield and statutory agencies are trying to prevent things from happening, but away from the eyes of many people. In an area that is sadly subject to exploitation, there may well be a need for Parliament to get on the front foot and ensure that there is statutory provision. That is my position; I hope the Minister considers it seriously.

Lyn Brown: I have enormous sympathy for the motivations that drove the hon. Gentleman to table the amendments. One of my first jobs was working in a children’s home, so I know just how vulnerable children can be. I also know that he has the support of the Children’s Society, which has been helping to make childhood in Britain safer for more than 100 years and is a fine organisation.

The Children’s Society has highlighted the relationship between new psychoactive substances and exploitation. Sometimes, that exploitation is economic, with reports of drug dealers forcing young men to work for them in order to pay off debts they that have accumulated by trying NPS. Sadly, as the hon. Gentleman mentioned, we also face the problem of sexual exploitation. The Children’s Commissioner found that more than a third—35%—of the children most at risk of sexual exploitation were living in residential care.

PACE—Parents against child sexual exploitation—have demonstrated that young girls have been targeted by groomers with NPS to try to get them hooked. We are all shocked by the grooming scandals that have hit many of our cities and towns, and I am in no doubt that the people engaged in such crimes are just the sort of criminals who ought to be hit by the strictest penalties provided by aggravated offences.

[Lyn Brown]

I am interested to hear what the Government make of the amendments. If they cannot accept the current drafting, would they be willing to go away, think about it and come back with alternative plans on Report, because this is an important issue? Will the Minister devote special attention to making sure that vulnerable children are given specific and focused education to ensure that they have the resilience to say no to those who want to prey on them with NPS and other drugs?

Steve Brine: On Second Reading, I mentioned Baseline Training, an assessment and training company based in my constituency. Further to what the shadow Minister was saying about the exploitation of young people, Baseline gave me some truly shocking evidence before the Bill was introduced in the House. In April this year, the Hampshire and Isle of Wight drug strategy group had good intelligence that young girls had performed sex acts on men who provided them with mephedrone. There is good evidence coming from Hampshire and, I suspect, other parts of the country that backs up what the shadow Minister said.

Lyn Brown: I thank the hon. Gentleman for his intervention. I emphasise again that young people in care are vulnerable and need us as their parents, in loco parentis, to help them to say no to those who want to exploit them and prey on them with NPS and other drugs. They need support so that they can look out for themselves.

Owen Thompson: I very much agree with the principle behind the amendment. From the correspondence I have had, I know that agencies such as Who Cares? Scotland very much support the proposals. This is a particular problem, because young people in supported accommodation and the type of accommodation we are talking about require extra support, protection and help. The amendment would go a long way towards addressing some of their needs and dealing with that. I voice my support for the aims of the amendment.

4 pm

Carolyn Harris: I have been greatly troubled by some of the stories I have heard in my constituency of Swansea East from the local police, social workers and organisations. Young women are now grooming other young women, with the fee being legal highs. Some of the stories are absolutely horrendous. The Children's Society has done great work on that. For 63% of the housing providers who engaged in one of its surveys, the greatest problem they saw for these young people was involvement in legal highs.

Owen Thompson: That is very much the case. In many situations, the young people we are seeking to help and support are at a vulnerable stage of their development. There is a reason we need to give them extra help. It is about ensuring that a situation that has resulted in their being in secure or looked-after accommodation is not made worse by not putting in place extra protection to ensure we help, support and encourage their development towards the better future that I am sure we want for all young people.

Mike Penning: May I say at the outset, as I did in the previous group of amendments, that I have deep sympathy not only with the amendments tabled by my hon. Friend the Member for Enfield, Southgate but with the excellent work that charity has been doing in this area? One of the things touched on by my hon. Friend was the anomaly between schools and children's homes.

Clause 6 in its original form was included in the Bill for consistency's sake, to replicate an identical provision in the Misuse of Drugs Act 1971, because that provision was created before the Sentencing Council existed. I looked long and hard at whether it would be right at this stage to try to replicate that, because it would completely go against what we have been trying to do with the Sentencing Council in that area. We will continue to look at this, and it will be part of the submission to the Sentencing Council, which I will probably send to each of the devolved Administrations as well. While I cannot tell them what they should do, they need to know the will of the House.

We need to keep an extremely close eye on what goes on. Section 125(1) of the Coroners and Justice Act 2009 specifically says that courts must take into consideration the sentencing guidelines on this. We need to ensure that the sentencing guidelines replicate the will of the House and of 99.9% of the public, who want to see the abhorrent crimes we have discussed—and things that it would perhaps not be appropriate to discuss here but which I know about within my ministerial capacity—are subject to the full force of the law. As I have said about previous amendments, that is a matter for the Sentencing Council on which we can advise, but there must be consistency throughout the Bill.

While I understand that the amendment is a probing one, I hope I have given my hon. Friend the Member for Enfield, Southgate assurance. The principle behind the previous set of amendments shows my reaction to this. It is something we are keen to keep under review, and it has to be specific within the correspondence I will draft, with help from others, to the Sentencing Council. With that in mind, I hope my hon. Friend will not push the amendment to a vote.

Mr Burrowes: I am grateful for the debate and the cross-party agreement on the principle behind the amendment, which is the concern we all share to ensure that those convicted of supplying their evil trade to vulnerable children get the sentence they deserve. I pay tribute to the Children's Society for championing the cause.

Mike Penning: I was discourteous; I did not name the Children's Society nor refer to that charity in my remarks. A charity of such distinction and with that longevity of service to vulnerable young children deserves acknowledgement by name from a Minister.

Mr Burrowes: I thank the Minister for that.

The clause tries to ensure consistency on controlled drugs in relation to supply at school premises, which is understandable, but this is a landmark Bill. Professor Iverson spoke about the Bill being one of the most important and significant pieces of legislation for 40 years. With that comes a need to ensure that sentencing is appropriate to the particular substances and recognises the characteristics of certain substances. It has already

been mentioned how, sadly, such substances are used for exploitation, often of children and those in particular types of accommodation and in care. Supply of substances is a characteristic of the abuse, and that is why it is right for Parliament to consider whether it wants to ensure that supply to a vulnerable child is an aggravating factor.

I concede that the Sentencing Council has non-statutory guidelines that seek to address the matter, but it is important to recognise that they are guidelines, not tramlines. As a Parliament, we have a duty to vulnerable people, where there is that power imbalance. The substances that we are seeking to criminalise and to set appropriate sentences for increase dependency, create debt, stupefy children and allow them to be exploited. As a Parliament, we should have tramlines, not guidelines, and we should be absolutely clear about that.

We can say too often that we are sending out a message. We should not always send out messages with Bills, but part of this Bill is about sending a message that these substances are illegal and are not good or safe. Part of that message should relate to sentencing so that it is clear that anyone who wants to risk plying their trade to vulnerable people in the type of accommodation specified will face a hefty sentence. Those people will not be looking up the sentencing guidelines that will go to the magistrates court and the Crown court. They will not have a clue about that, but they may well get a clue that the offence has a maximum penalty of seven years or so and that they will be at the upper end of the market for sentencing.

I recognise that the Minister will consider the matter seriously and in good faith. It must be looked at across the piece, along with the relationship between drug sentencing and the Sentencing Council. The Bill is innovative, and we want to ensure that we send out a clear, stark message to those who exploit the most vulnerable. I look forward to the Minister considering the matter further at a later stage. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment made: 7, in clause 6, page 3, line 43, leave out “on prison premises.” and insert “in a custodial institution.

() In this section—

“custodial institution” means any of the following—

- (a) a prison;
- (b) a young offender institution, secure training centre, secure college, young offenders institution, young offenders centre, juvenile justice centre or remand centre;
- (c) a removal centre, a short-term holding facility or pre-departure accommodation;
- (d) service custody premises;

“removal centre”, “short-term holding facility” and “pre-departure accommodation” have the meaning given by section 147 of the Immigration and Asylum Act 1999;

“service custody premises” has the meaning given by section 300(7) of the Armed Forces Act 2006.”—(*Mike Penning.*)

This amendment replaces the reference to “prison premises” in clause 6(8) with a reference to a “custodial institution”. It then defines a custodial institution; the definition includes adult and juvenile prisons, immigration detention accommodation and service custody premises.

Ordered,

That subsection (9) of Clause 6 be transferred to the end of line 29 on page 3.—(*Mike Penning.*)

Clause 6, as amended, ordered to stand part of the Bill.

Clause 7

POSSESSION OF PSYCHOACTIVE SUBSTANCE WITH INTENT TO SUPPLY

Amendment made: 8, in clause 7, page 4, line 18, leave out from “subject to” to end of line 19 and insert “section (*Exceptions to offences*) (exceptions to offences).”—(*Mike Penning.*)

This amendment is consequential on amendment 11 and NC3.

Clause 7, as amended, ordered to stand part of the Bill.

Clause 8

IMPORTING OR EXPORTING A PSYCHOACTIVE SUBSTANCE

Lyn Brown: I beg to move amendment 50, in clause 8, page 4, line 27, leave out sub-paragraph (i).

This means it would not be an offence to import a new psychoactive substance for personal consumption.

The Chair: With this it will be convenient to discuss amendment 54, in clause 8, page 4, line 38, leave out sub-paragraph (i).

This amendment seeks to explore how we can ensure that there is no criminalisation of those who order psychoactive substances over the internet for personal consumption.

Lyn Brown: This is a probing amendment that would delete subsection 1(d)(i), which criminalises an individual for importing a psychoactive substance for personal consumption. Committee members will be aware that on Second Reading it was argued that subsection 1(d)(i) creates a troubling inequity. Although it will not be an offence under the Bill to purchase a psychoactive substance from a shop, drug dealer or website that supplies from the UK, it will be an offence to purchase the very same drugs from a website that distributes from outside the UK. That is important because the internet plays a significant role in the supply of NPS, unlike many other substances. According to the Home Office, about 6% of abusers obtain NPS over the internet, but other surveys have found a much higher rate of internet purchase of NPS. The Global Drug Survey 2014 found that 22% of its sample had bought psychoactive substances from the internet.

The inequity created by subsection 1(d)(i) is particularly worrying, because a consensus has been built around the Bill on the basis that it will not criminalise users. Unfortunately, it is hard to see how a ban on importing for personal consumption could have any other effect. In practice, it will often be difficult for purchasers to know whether they are buying from a UK-based site, so they will not easily be able to tell whether they are committing an offence. Unless amended, the law could lead to websites and sellers on marketplace sites such as Silk Road and its successors prominently advertising that they are UK-based, or perhaps foreign-based but posting from the UK, which would make a mockery of the law. Websites may also attempt to trick British users

[Lyn Brown]

into thinking that they are transferring the drugs from within the UK by adopting a .co.uk address. The subsection is bound to create unwitting criminals. What measures has the Minister put in place to mitigate that?

I suspect that the Government may be concerned that deleting subsection 1(d)(i) will create a loophole that will make it harder for them to tackle the NPS industry, because, if the subsection were removed, UK-based suppliers might be able to claim that they are importing for personal consumption and evade the law by making lots of small purchases. If the Government make that case convincingly, I will happily withdraw my amendment as I am committed to tackling this dangerous industry. However, I seek assurance that the Home Office has seriously considered how this part of the Bill can be effectively drafted not to criminalise users. For example, quantitative measures of personal consumption could be incorporated into the Bill to differentiate between personal and professional importation, as is the case for regulations that manage the importation and excise duty of cigarettes and alcohol.

I note that Scottish National party Members have also tabled an amendment exploring this issue, and I am sure they seek the same assurances. Just as on the issue of social supply, I ask the Minister to work with prosecutors and the Sentencing Council to ensure that the Bill does not go after the people we do not want it to go after. I include importers for personal consumption within that group.

Finally, I turn once again to the issue of the resources necessary to enforce the Bill properly once it becomes law. The National Crime Agency admitted that it has a continuing problem preventing the importation of NPS, particularly from China. The NPS expert review identified a number of challenges faced by UK border controls. Some of those challenges, such as the fact that Border Force needs greater powers to seize suspicious packages, will be addressed by the Bill. However, some of the challenges identified by the expert panel require a non-legislative response. The expert panel claims that the intelligence picture on NPS trade is very limited and that we have particular difficulty dealing with websites due to the anonymity provided by e-currencies. What progress has been made on addressing those weaknesses identified by the expert panel?

This is one of the most important issues in the Bill. If we cannot get to grips with the importation of such substances, closing the head shops is all the more likely to lead to the same drugs finding their way into the hands of professional drug dealers, including gangs.

4.15 pm

Owen Thompson: I will continue in the spirit of harmony and good will that has been a theme this afternoon. Our amendment 53 was identical to amendment 50, so great minds think alike.

The same reasoning lies behind amendments 50 and 54. Amendment 50 would ensure protection for people importing substances ordered online. Exporting is a slightly different situation, but the logic follows through. The spirit of the Bill is about ensuring that individual users are not criminalised; it is about addressing the wider industry and wholesale suppliers and dealers.

Society is changing—in the way in which people approach everyday shopping, for example—so we have to take account of the fact that people approach things differently. It is not simply a case of going down the street to a head shop, or whatever it happens to be, to buy a substance. With every other aspect of life increasingly moving online, we must ensure that legislation keeps pace. These amendments would ensure that there is an eye towards that.

We will seek assurances from the Minister if he does not accept the amendment. This is a probing amendment, and we are trying to ensure that these elements are fully thrashed out before Report. As more and more happens online, we need to ensure that our legislation is keeping pace and taking account of changing trends in how people access substances such as NPS.

Mike Penning: Again, I thank both the shadow Minister and the SNP spokesman for indicating that these are probing amendments, so my colleagues can relax.

The shadow Minister summed up exactly why I will not accept the amendment. We are not trying to pick on individuals who purchase these products for personal use but, as we close head shops and other avenues, there will clearly be an increase, as the expert panel highlighted. As the Minister for Policing, Crime and Criminal Justice, the National Crime Agency is my responsibility. I have been working with the NCA and other agencies, and I have particularly been working with my colleague, the Minister for Immigration, because obviously Border Force will have a crucial role.

If we accepted the amendment, the debate would be about what is personal use. During this debate we have heard about cigarettes and alcohol. My family was in the pub trade for many, many years, and there has been an issue with Transit vans—I apologise for picking on Ford—and other large vans going across to Calais and coming back full of cigarettes and alcohol. When those vans are stopped by borders, immigration and customs, the driver says, “This is completely for personal use.” That opens up a difficult area.

The amendment would make it difficult for Border Force to do the job we need it to do. As has been highlighted, we absolutely need the expertise in that relevant area. On the point that the hon. Member for Midlothian made about the difficulties that exist online, some of the expertise that we increasingly need is there, but a lot of this is organised crime, and those are the people we are after. I am absolutely determined that the NCA and the other agencies should have the powers and the expertise they need to go after those people, not the little guy who is in possession for personal use.

The difficulty in law—this has been an issue in the courts—is personal use. It is a really difficult area, and that is why I sadly cannot support the amendments. I understand fully their probing nature. I always argue that it is all too easy to build up points as a constable by picking on the little guy, when the others are the guys that we want. I assure the Committee that we have introduced the measures to allow us to get the big guys, not to pick up the little guys. We will keep a close eye on the situation, but I think we have what we need.

Lyn Brown: Has the Minister given any thought to how purchasers will know whether they are buying from a UK site? I do not think that they will be able to

tell whether they are committing an offence. There will be criminals out there who will trick people into believing that they are buying from a UK site.

Mike Penning: If they buy from a UK site, it is illegal under the Bill, because it is selling. If those who run the site try to represent themselves as a UK site to sell the product, that is just as illegal as being a head shop. What we have said all the way through the Bill is that it is not legislation that is the silver bullet but education and understanding. It will be generational for some people, but that is where the proportionality that we talked about earlier in the criminal justice system, in local government and in trading standards comes in. It is important that we discuss this point, but we need to ensure that there are no loopholes and that the agencies that we are asking to look after us and the legislation have the powers that they need.

Lyn Brown: We are not prosecuting people who have possession, and we are not going to prosecute somebody who purchases.

Mike Penning: I understand that.

Lyn Brown: But if somebody purchases from abroad or from a site that is based abroad, we will be prosecuting them. I am worried about somebody who unwittingly purchases from a foreign website.

Mike Penning: I understand fully the point that the hon. Lady is making, and it is a difficult area. What I cannot do is to open up the whole Bill because of what will, I hope, be a small group of people. The likelihood of their being prosecuted in that area is very unlikely, because of everything that we have debated. Purchase and possession would be legal—we have discussed that—so there would be no illegality on the part of the individual. It is the seller or the dealer we are after. I think I am right on that point.

Lyn Brown: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment made: 9, in clause 8, page 5, line 6, leave out from “subject to” to end of line 7 and insert “section (Exceptions to offences) (exceptions to offences).”—(*Mike Penning.*)

This amendment is consequential on amendment 11 and NC3.

Clause 8, as amended, ordered to stand part of the Bill.

Clause 9

PENALTIES

Amendment made: 10, in clause 9, page 5, line 26, at end insert—

“() A person guilty of an offence under section (Possession of a psychoactive substance in a custodial institution) is liable—

- (a) on summary conviction in England and Wales—
 - (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or
 - (ii) to a fine, or both;
- (b) on summary conviction in Scotland—
 - (i) to imprisonment for a term not exceeding 12 months, or
 - (ii) to a fine not exceeding the statutory maximum, or both;
- (c) on summary conviction in Northern Ireland—
 - (i) to imprisonment for a term not exceeding 6 months, or
 - (ii) to a fine not exceeding the statutory maximum, or both;
- (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.”—(*Mike Penning.*)

This amendment is consequential on NC2. It provides that the new offence of possession of a psychoactive substance in a custodial institution, as inserted by that new clause, attracts a maximum penalty on conviction on indictment of two years' imprisonment, a fine, or both.

Clause 9, as amended, ordered to stand part of the Bill.

Clause 10

POWER TO PROVIDE FOR EXCEPTIONS TO OFFENCES

Question proposed, That the clause stand part of the Bill.

Mike Penning: This is a technical thing, but it is important. The clause confers on the Home Secretary the power to specify exceptions to the offences in clauses 4 to 8 by regulations. As we have already debated, new schedule 1 lists certain excepted activities on the face of the Bill, so clause 10 is not required.

Question put and negatived.

Clause 10 accordingly disagreed to.

Ordered, That further consideration be now adjourned.—(*Jackie Doyle-Price.*)

4.26 pm

Adjourned till Thursday 29 October at half-past Eleven o'clock.

**Written evidence to be reported to the
House**

PSB 01 The Children's Society

PSB 02 Lyndon Sheppard

PSB 03 DrugScience

PSB 04 The Psychedelic Society

PSB 05 John Martin BA MSc, Substance Misuse Project Worker, Fife

PSB 06 Simon Topham, Chief Executive, Millivres Prowler Group

PSB 07 Rt Hon Mike Penning MP, Minister for Policing, Crime, Criminal Justice and Victims, Home Office

PSB 08 Rt Hon Mike Penning MP, Minister for Policing, Crime, Criminal Justice and Victims, Home Office—further submission

PSB 09 Chartered Trading Standards Institute (CTSI)

PSB 10 Daryl Sullivan

PSB 11 KTR Environmental Solutions Ltd

PSB 12 Danny Diskin, Interfaith Alliance UK

PSB 13 Sandra Heyward JP, Cornwall Councillor for the Gover Division

PSB 14 International Center for Ethnobotanical Education, Research & Service (ICEERS Foundation)

PSB 15 Hampshire County Council Trading Standards Service

PSB 16 Drugs, Alcohol and Justice Cross-Party Parliamentary Group

PSB 17 Dr Ornella Corazza and Dr Andres Roman Urrestarazu

PSB 18 Mr Joseph Woollen

PSB 19 The Law Society of Scotland