

Vol. 762
No. 10



Tuesday
9 June 2015

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Introduction: Lord Keen of Elie	723
Oaths and Affirmations.....	723
Questions	
Pensions: Draw-down Charges	723
Housing Associations: Right to Buy.....	725
Air Pollution.....	728
Burma: Rohingya	731
Armed Forces Deployment (Royal Prerogative) Bill [HL]	
<i>First Reading</i>	733
Automatic Electoral Registration Bill [HL]	
<i>First Reading</i>	733
Referendums (Franchise) Bill [HL]	
<i>First Reading</i>	733
Right to Die at Home Bill [HL]	
<i>First Reading</i>	733
Polling Day (Saturday) Bill [HL]	
<i>First Reading</i>	733
Built Environment Committee	
<i>Motion to Agree</i>	734
Equality Act 2010 Committee	
<i>Motion to Agree</i>	734
Sexual Violence in Conflict Committee	
<i>Motion to Agree</i>	734
Social Mobility Committee	
<i>Motion to Agree</i>	734
Psychoactive Substances Bill [HL]	
<i>Second Reading</i>	734

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The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
Con Ind	Conservative Independent
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Lab	Labour
Lab Ind	Labour Independent
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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House of Lords

Tuesday, 9 June 2015.

2.30 pm

Prayers—read by the Lord Bishop of Derby.

Introduction: Lord Keen of Elie

2.38 pm

Richard Sanderson Keen, Esquire, QC, having been created Lord Keen of Elie, of Elie in Fife, was introduced and took the oath, supported by Lord Mackay of Clashfern and Lord Faulks, and signed an undertaking to abide by the Code of Conduct.

Oaths and Affirmations

2.43 pm

Several noble Lords took the oath or made the solemn affirmation, and signed an undertaking to abide by the Code of Conduct.

Pensions: Draw-down Charges

Question

2.44 pm

Asked by **Lord Bradley**

To ask Her Majesty's Government what assessment they have made of charges on drawdown pension products; what plans they have to assess such charges on an ongoing basis; and whether they have any plans to impose a cap on those charges.

The Minister of State, Department for Work and Pensions (Lord Freud) (Con): The new pension flexibilities have given people greater choice to select the retirement product that is right for them. The pensions industry is designing new draw-down products and will actively monitor the market as it develops. We already have the power to limit or ban decumulation charges and if we see that providers are charging excessive fees, we will not hesitate to act.

Lord Bradley (Lab): But does the Minister agree with his new ministerial colleague, the Pensions Minister, the noble Baroness, Lady Altmann, who I am pleased to see on the government Bench, when she said in the *Guardian* this year that a cap on draw-down charges was important,

“so that customers are not ripped off”?

She further said:

“A 2% a year charge just to keep your pension invested and have access to it would take away much of the investment return and be a terrible deal for customers”.

In the light of these comments, do the Government intend to introduce a cap on such draw-down charges?

Lord Freud: We are going to see how the market develops. It has been going for only two months, and if it looks appropriate, as I just said, we will introduce a cap on charges. I know that my new noble friend, the

Minister for Pensions, absolutely agrees with that. The Prime Minister has also promised that we will keep a close eye on this.

Lord German (LD): My Lords, at all stages between the pension saver's pocket, the investment and back again, there are hidden charges and fees—admin charges, investment charges, platform charges, transaction charges and advice costs, to name just a few. Does the noble Lord agree that there should be transparency for pension savers, and that they should know what hidden fees and charges are attracted to the money that comes from their pocket?

Lord Freud: My Lords, I imagine that quite a lot of noble Lords in the House today will remember the amendment we made to ensure that we would get transparency of charging, and we are working on that process. That is for accumulation funds, but there is no reason why we should not introduce the same thing for decumulation funds, if that is appropriate.

Lord Flight (Con): My Lords, the last Government introduced some really useful reforms for people saving for their pensions, and I trust the new Government will continue in that vein. I would simply make the point that it would be more useful if the Government were to put pressure on those firms providing products to have a reasonable charging structure, rather than seek to achieve this by legislative means. It seems to me that there is a very strong moral case for the Government so to do.

Lord Freud: We are doing that, as exemplified by the new Pensions Minister meeting the industry and working with it to make sure that it produces the right level of charging. The Government and the FCA are able to monitor that to see that we get appropriate and fair charges.

Baroness Drake (Lab): My Lords, I refer to my entry in the register of interests, including my role with the Pensions Advisory Service. Some providers of income draw-down will charge between £150 and £200 each time a customer takes out cash, so a person with a £30,000 pot who takes out £5,000 in cash over six years will lose between £900 and £1,200. Will the Minister challenge the industry on why the charge to access cash now is so ridiculously high?

Lord Freud: As I said at the outset, this market is two months old and we are watching very closely to see how the charges develop. There is a range of different charges; some providers charge for drawing down and others do not, but we will be watching it very closely.

Lord Hughes of Woodside (Lab): My Lords, when this policy was first made, to a great fanfare of trumpets, the Government were warned of the difficulties that would arise unless they took control of the matter. What the Minister is really saying is that no planning was done whatever and no thought whatever was given to how this matter would develop. Is he aware that, the way things are going, this will make the PPI scandal look like a children's tea party?

Lord Freud: My Lords, noble Lords will be pleased to know that a great deal of effort has gone into making sure that this reform works. In particular, we introduced guidance in the shape of Pension Wise. We are working with the industry and monitoring what is happening. As I said, we will be prepared to go in and put caps on charges and address the issue of transparency if that is thought to be necessary.

Lord McFall of Alcluith (Lab): My Lords, complexity and inertia still define the characteristics of this industry. The Government said that they would not hesitate to intervene if there is a rip-off, but rip-offs take place daily at the moment. In the absence of the Government's will to go one step further, is there not a compelling case to ensure that the cash element is disclosed in these documents, so that people can see exactly what they are being charged on a monthly or yearly basis?

Lord Freud: That is one of the things that we will look at very closely. Clearly, we need to get evidence of how this particular part of the market develops. We already have transparency in the accumulation phase. If that is necessary in the decumulation phase, we will not hesitate to introduce it.

Lord Davies of Stamford (Lab): My Lords, you do not need to wait to watch the market to believe that transparency is absolutely essential in any honest financial business. Why cannot the Government decide that there should be complete transparency of charges from the beginning? Should they not have decided that at the outset, when they introduced this new reform?

Lord Freud: My Lords, we have a marketplace and it is fair to give it a chance to develop. At the moment, according to the *FT* and *Which?*, the annual charges applied to decumulation pots are somewhere between 0.25% and, for high-end performers, 1%. For the set-up, the charge is somewhere between £70 and £300. As we start to gather this evidence and assess it, we will know whether we need to intervene.

Lord Campbell-Savours (Lab): Is the noble Lord's ministerial colleague, sitting at his side, equally in favour of this watching approach?

Lord Freud: I think the noble Lord will be able to see a quote saying exactly that: she is monitoring this very closely.

Housing Associations: Right to Buy Question

2.52 pm

Asked by **Baroness Gardner of Parkes**

To ask Her Majesty's Government what plans they have to consult Housing Associations, local authorities and the general public before finalising the proposal to extend the right to buy to Housing Association properties.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con): My Lords, Ministers and senior officials in my department already engage with the housing association sector, local authorities and other key stakeholders, as they do on a continuous basis in relation to key policy issues.

Baroness Gardner of Parkes (Con): Is the Minister aware of the very difficult position of some of those who bought their council flats in the early days, about 30 years ago, for about £10,000 and now find themselves as leaseholders with no income but a small—well, it is not that small—state pension? They now receive bills for more than £12,000 as part of their contribution towards the block. I understand that there are 24 such cases in one estate. How widespread is this situation, and what do the Government intend to do to avoid a similar situation arising if housing-association properties are sold in the same way?

Baroness Williams of Trafford: My Lords, I recognise the problem that my noble friend talks about. Recognising the challenges that these leaseholders face, my department introduced a new law in August 2014 that caps the amount that councils can charge leaseholders for repairs to their home. This is called "Flo's law". It limits the amount that can be claimed by councils from local-authority leaseholders in a five-year period to £10,000 outside London and £15,000 inside London for government-funded works.

Baroness Hollis of Heigham (Lab): My Lords, I declare an interest as chair of Broadland Housing Association. Housing associations are mostly charities. As the chair of Peabody said:

"Peabody's assets belong to us. They are not the government's to sell".

Does the Minister not agree that the forced sale of charitable assets at knock-down prices damages the housing chances of those desperate and on the waiting list, damages rural communities, damages the stability of housing finance and damages the very concept of a charity, what it does and why it even exists?

Baroness Williams of Trafford: My Lords, this is not about seizing the assets of housing associations. The right to acquire currently operates on the basis that receipts from homes sold enable housing associations to reinvest in new affordable housing.

Lord Best (CB): My Lords, in carrying out the consultation that she has mentioned, would the Minister include the Institute for Fiscal Studies, along with commentators in the *Economist*, the *Telegraph*, the *Times* and the *Financial Times*, which have all pointed out the very grave consequences if this unfortunate policy is pursued?

Baroness Williams of Trafford: My Lords, the Government, and in particular my honourable friend in the other place, the Minister, Brandon Lewis, are already leading the engagement with the sector on our housing commitments, as set out in our manifesto, and are happy to meet Members of this House and others.

Lord Shipley (LD): My Lords, what guarantee will the Government give that they will replace houses sold on a one-for-one basis, given that, in the previous sale of council houses, only one house has been built for every 10 sold?

Baroness Williams of Trafford: My Lords, the Government can go on their record on this, which is that under the coalition Government more council homes were built than in the previous 13 years. Also, if the new revitalised scheme does not yield that one-for-one replacement within a three-year period—the one-in-10 figure is actually quite misleading, because we are only at the end of the first three-year period of the first council home sold—the HCA will take on those properties and sell them.

Lord Cormack (Con): My Lords, how are we going to increase the supply of affordable housing, which is desperately needed, by selling some of the most affordable houses at very great discounts?

Baroness Williams of Trafford: My Lords, when affordable houses are sold, the discount to date is then refunded back to the housing association by the Government. As for replacing affordable with affordable, that capital receipt allows a new similar home to be built.

Lord Richard (Lab): My Lords, the Minister said that the Government are already consulting housing associations on this policy. Has she found any housing association that approves of it?

Baroness Williams of Trafford: My Lords, I have said that the Minister in the other place, Brandon Lewis, is engaging with the sector. I have not had any personal engagement with the sector, but I am very happy to report back.

The Lord Bishop of Rochester: My Lords, I am grateful to the Minister for confirming that intention to consult the sector. Is she able to offer any indication of how Her Majesty's Government propose to implement this right to buy in relation to housing-association properties in small and rural communities, where such housing is often built on rural exception sites defined in the National Planning Policy Framework as intended, "for affordable housing in perpetuity"?

Baroness Williams of Trafford: The right reverend Prelate is absolutely correct when he says that rural communities are different. The development of that particular policy is ongoing, and details will be set out in due course.

Lord Naseby (Con): My Lords—

Lord Spicer (Con): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My noble friends are competing with each other. I do not think that we have heard from my noble friend Lord Spicer for a while.

Lord Spicer: How many empty dwellings are there these days? When I was Minister for Housing, there used to be one million. Should not some of those be sold off, if appropriate?

Baroness Williams of Trafford: My Lords, we have significantly dealt with the issue of empty properties. I shall get my noble friend the exact figures on the number of empty properties that have been brought back into use, but I can confirm to him that it is significant.

Baroness Howarth of Breckland (CB): My Lords, many of the houses developed through specialist housing associations have very expensive adaptations, many of them paid for by charitable donations and donors. Does the Minister not think that this is an area where there might be some protection to ensure that these houses move on to other severely disabled people when they are vacated?

Baroness Williams of Trafford: My Lords, I am sure the intention in this area will be set out in due course.

Air Pollution Question

3 pm

Asked by *Baroness Jones of Moulsecoomb*

To ask Her Majesty's Government, in the light of the 29 April Supreme Court judgment on nitrogen dioxide levels, when they will bring forward plans to ensure that the whole of the United Kingdom complies with air pollution limits by 2020.

Lord Gardiner of Kimble (Con): My Lords, successive Governments have worked hard to improve air quality significantly in recent decades. Tackling air pollution continues to be a priority for this Government. We are fully committed to submitting revised plans to the European Commission by the end of this year with a view to ensuring that the UK is compliant with nitrogen dioxide limits in the shortest possible time.

Baroness Jones of Moulsecoomb (GP): I thank the Minister for that Answer. Are the Government aware that the Mayor of London has said that he can bring London into compliance by 2020 if the Government act? Are the Government considering two measures that the Mayor of London has suggested? The first is a national scrappage scheme to get the worst-polluting diesel vehicles off the road, and the second is a proper government review of vehicle excise duty, which has encouraged more diesel vehicles on to the roads.

Lord Gardiner of Kimble: My Lords, vehicle excise duty is clearly a matter for the Chancellor of the Exchequer to consider. While there are no plans at the moment for a national scrappage scheme, we will be keeping all measures under review. I assure noble Lords that the Government take the health consequences of this matter very seriously. I know from my few weeks in the department that this is being considered very strongly indeed.

Earl Attlee (Con): My Lords, is it not the case that other European cities are experiencing very similar problems and that the reason is that some of the technical changes made to heavy goods vehicles in recent years have not delivered the benefits expected?

Lord Gardiner of Kimble: My Lords, my noble friend is right. It is fair to say that all countries in the EU have difficulties with adhering to the limits. The most recent figures show that 17 of the 27 EU countries are in difficulties on their nitrogen dioxide limits. That is why in this country we want to deal with it as swiftly as we can.

Baroness Parminter (LD): My Lords, I welcome the noble Lord to his new parliamentary role. With nitrogen dioxide at such high levels right across the UK, can the Minister say whether the Government accept that measures to achieve legal compliance will have to include a national network of low emission zones?

Lord Gardiner of Kimble: My Lords, this is one of the areas that we will be looking at. In London the mayor has been very strong about the zero emission zone and is also considering an ultra-low emission zone. There are a number of other towns and cities in the country which have a low emission zone. They are for buses in particular. Clearly this is part of the package that we need to look at. What the Mayor of London is doing is a very positive first step.

Lord Hughes of Woodside (Lab): My Lords, is the Minister aware that central London is virtually gridlocked during daylight hours? Travelling times are doubled at least. Has any assessment been done, or will he do an assessment, of the increased pollution caused by roadworks which are said to help cyclists and which will not be completed until the middle of next year? God help us all if that goes on.

Lord Gardiner of Kimble: My Lords, obviously when we are implementing change there are always times when there are issues. Certainly one of the important features is to keep traffic moving—slowly, but moving—because it is when you have stop-start that you have some of the most significant particle emission. In the previous Parliament an investment of £278 million was made available for cycling and walking initiatives. They are all about getting all of us to change some of our habits so that we improve the air quality in our cities and towns.

Baroness Finlay of Llandaff (CB): My Lords, have the Government costed the excess mortality and morbidity from atmospheric pollution in those areas that are exposed to high pollution? It is not only nitrous oxide but other diesel particulate matters that are causing a great deal of pulmonary damage—that is, lung damage.

Lord Gardiner of Kimble: My Lords, the noble Baroness is right that health is one of the key features of this. It is why Defra is working closely with the Department of Health and with Public Health England and its expert committee. I do not have before me the

figures on the costs in terms of health and I will look at that, but it is one of the reasons why this Government and the previous one have committed to spend £2 billion on measures precisely to deal with the two problems with pollutants.

Lord Borwick (Con): My Lords—

Lord Cunningham of Felling (Lab): My Lords—

Baroness Ludford (LD): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, I think that sometimes noble Lords just want me to stand up and take control of the situation. We started with the Green Party and we have been going around the Chamber very carefully. If we go around in order then it is the turn of the Conservative Benches and, therefore, my noble friend Lord Borwick.

Lord Borwick: My Lords, I declare my interest as a trustee of the British Lung Foundation. Does the Minister agree that the best thing an individual can do to help with this dreadful air pollution problem—other than not driving, which is totally impractical—is to buy a new car? The newest cars are very much cleaner on average than the old ones that we drive.

Lord Gardiner of Kimble: My Lords, my noble friend is of course right that we need to encourage the use of the ultra-low emission vehicles. That is why there has been considerable investment in the marketing of low-emission vehicles. Indeed, we in this country are now attracting global investment, with Nissan, which produces the Leaf electric car, duly investing £250 million to build a plant that will help to build the electric black cab. This is all part of the mix of things that we have to do.

Lord Cunningham of Felling: My Lords, it is not necessary for Members of your Lordships' House to have a GCSE in chemistry to know that all oxides of nitrogen—as well as oxides of sulphur, for that matter—have a very deleterious effect on health and the environment. It is, however, necessary for your Lordships' House to understand that this Government apparently do not have a comprehensive, wide-ranging set of policies to deal with the problem. As for suggesting that people buy new motor cars, that is akin to saying, "Let them eat cake".

Lord Gardiner of Kimble: My Lords, I assure the noble Lord that my experience in Defra is that his description is not the case. A considerable amount is being done not only by the department but in working with local authorities and the EU Commission. This is all part of the plan that we will bring forward for public consultation later this summer precisely to deal with the point that the noble Lord made, which is that this is a health issue. That is why the Government are determined and will be bringing forward plans—because we are aware of the effect on people's health.

Burma: Rohingya Question

3.08 pm

Asked by **Baroness Warsi**

To ask Her Majesty's Government what emergency support they have provided in response to the flight of Rohingya refugees from Burma.

The Parliamentary Under-Secretary of State, Department for International Development (Baroness Verma) (Con): My Lords, at over £18 million since 2012, DfID is one of the largest humanitarian donors in Rakhine, providing over 126,000 displaced and conflict-affected people with water and sanitation and reducing malnutrition and gender-based violence. We are also working on community dialogue and reconciliation and are one of the largest donors to a major rural livelihoods programme in Rakhine.

Baroness Warsi (Con): My Lords, I am sure that the whole House commends the Government for their consistent efforts in this tragedy. However, does my noble friend also understand the sentiments of Abdul Hashim, a Rohingya refugee now in the United Kingdom, who said last week:

"We don't need food, we don't need shelter, we don't need education. We need rights?"

Could she detail the latest discussions that have taken place with the Burmese Government on what human rights groups have now defined as "systematic ethnic cleansing" and a "state policy of persecution" of Rohingyas by Burma?

Baroness Verma: My noble friend is absolutely right that there are some real, complex concerns and issues that need to be addressed. As she rightly pointed out with reference to one individual's case—and there are many such cases—of course there is a great need for the Burmese to do a lot more and to be more inclusive of all communities in Burma. My noble friend will know from her own experience in her past role in the Foreign Office that the Government are very much involved in talking to the Burmese Government and in looking at how we can empower civil society organisations to work much closer within Burma. So a number of issues need to be addressed, but I think the Government are right in their position of working closely with Burma while being a critical friend and highlighting areas where we need to work much better.

Lord Avebury (LD): My Lords, the Foreign Office Minister, Hugo Swire, had to summon the Burmese ambassador in April to complain about lack of access and protection for humanitarian aid workers in Rakhine. Can my noble friend say whether that had any effect, and how much of the generous aid which the Government are giving to succour the victims of persecution in Rakhine is getting through to those victims? Can she also say what is happening about the 7,000 people at sea and whether ASEAN is mounting any sort of rescue operation to prevent them from losing their lives?

Baroness Verma: The noble Lord is absolutely right to raise the issue of those people who are taking to the seas. There has to be much greater regional co-operation in that area. My right honourable friend Hugo Swire was right to call in the Burmese ambassador to speak to him on issues that concern the rights of people within Burma and what we need to do to address them. As the noble Lord is aware—I know that he also takes a very keen interest in this area—these discussions are ongoing, but we need to continually push hard to ensure that progress is being made. However, he is also right to highlight that the amount of aid we are giving in that country is there to help support a change in approach to helping people in Rakhine and to ensure that their rights are fully recognised.

Baroness Kinnock of Holyhead (Lab): My Lords, does the Minister recognise that forcing desperate people into fleeing by sea is only the latest in a series of ethnic cleansing efforts against the Rohingya people in Burma? When the independent evidence of systematic genocidal cruelty which we heard about earlier is so clear, why do not our Government do what President Obama has done and restore sanctions to at least the level recently renewed by the United States?

Baroness Verma: My Lords, our priority remains to address the immediate humanitarian situation and human rights abuses that are occurring, while we develop more broadly with other partners a comprehensive plan that seeks to address the challenges that are facing that state. It is our responsibility to deliver that, and that is what we are focusing on at the moment.

Baroness Afshar (CB): My Lords, what is the evidence that the aid that is intended for those groups is getting to them? When discrimination operates at the kind of level when a whole part of society is regarded as being non-people, there is no way that humanitarian rights and entitlements can be bestowed on them without having some kind of control over the Government.

Baroness Verma: The noble Baroness is right to address that particular area of concern, but we are working very closely with civil society groups there and DfID is present there, so we are doing a lot on the ground. However, the overall problem needs to be addressed, and we must make sure that there is a collective response in addressing that particular serious issue.

Lord Collins of Highbury (Lab): My Lords, I welcome the noble Baroness to the Front Bench and to her new responsibilities. Can she tell us what discussions the Government have had with Malaysia, Thailand and Indonesia regarding the safety of the Rohingya fleeing Burma?

Baroness Verma: First, I thank the noble Lord for his welcome. The issue is absolutely about getting those neighbouring countries to be better supported. We are trying to make more progress on that through our work in DfID and through our dialogue with those countries. It is right and proper that the neighbouring countries take greater responsibility for the refugees fleeing there, and we need to have a dialogue with nations such as Thailand and Malaysia and others in

[BARONESS VERMA]

order to be able to respond with the assistance that is desperately needed. By providing food and shelter, we are assisting the refugees in their camps, and we are trying to be as supportive as we can be in this situation, which is becoming dire. Of course, we need to work much harder, and we need to get the neighbouring countries to work harder, towards the comprehensive plan that is so desperately needed.

Armed Forces Deployment (Royal Prerogative) Bill [HL]

First Reading

3.15 pm

A Bill to make provision about the approval required for the deployment of Her Majesty's Armed Forces by the Prime Minister in the event of conflict overseas.

The Bill was introduced by Baroness Falkner of Margravine, read a first time and ordered to be printed.

Automatic Electoral Registration Bill [HL]

First Reading

3.15 pm

A Bill to impose certain duties on Her Majesty's Government to ensure the accuracy, completeness and utility of electoral registers; to make provision for the sharing of data for the purposes of electoral registration; and for connected purposes.

The Bill was introduced by Baroness McDonagh, read a first time and ordered to be printed.

Referendums (Franchise) Bill [HL]

First Reading

3.16 pm

A Bill to amend the franchise for referendums in the United Kingdom to include all citizens of 16 years of age and over.

The Bill was introduced by Lord Tyler, read a first time and ordered to be printed.

Right to Die at Home Bill [HL]

First Reading

3.16 pm

A Bill to create a right to die at home.

The Bill was introduced by Lord Warner, read a first time and ordered to be printed.

Polling Day (Saturday) Bill [HL]

First Reading

3.17 pm

A Bill to make provision to move the polling day of all elections to a Saturday.

The Bill was introduced by Lord Kennedy of Southwark, read a first time and ordered to be printed.

Built Environment

Motion to Agree

3.17 pm

Moved by Baroness Stowell of Beeston

That it is desirable that a Select Committee be appointed to consider the development and implementation of national policy for the built environment, and to make recommendations, and that the Committee do report by 23 March 2016.

Motion agreed.

Equality Act 2010

Motion to Agree

3.17 pm

Moved by Baroness Stowell of Beeston

That it is desirable that a Select Committee be appointed to consider and report on the impact on people with disabilities of the Equality Act 2010, and that the Committee do report by 23 March 2016.

Motion agreed.

Sexual Violence in Conflict

Motion to Agree

3.18 pm

Moved by Baroness Stowell of Beeston

That it is desirable that a Select Committee be appointed to consider the United Kingdom's policy and practice of preventing sexual violence in conflict, and to make recommendations, and that the Committee do report by 23 March 2016.

Motion agreed.

Social Mobility

Motion to Agree

3.18 pm

Moved by Baroness Stowell of Beeston

That it is desirable that a Select Committee be appointed to consider social mobility in the transition from school to work, and to make recommendations, and that the Committee do report by 23 March 2016.

Motion agreed.

Psychoactive Substances Bill [HL]

Second Reading

3.19 pm

Moved by Lord Bates

That the Bill be read a second time.

The Minister of State, Home Office (Lord Bates) (Con): My Lords, the objective of this Bill is to protect the public. New psychoactive substances are not merely a bit of harmless fun providing an instant buzz. These

substances are untested and unknown, with clear evidence of short-term harms and potential long-term adverse consequences. The trade in these substances is quite simply reckless. Those who perpetrate it have no regard for the welfare of the end user. Indeed, the producers of these substances deliberately seek to evade the controls on drugs by manufacturing products that mimic the effect of controlled drugs.

However, in mimicking the effects, these synthetic copies can also replicate the dangers associated with the original drug. It is not just the manufacturers of new psychoactive substances who take this cavalier approach to public safety. Those who sell them are not open and honest about the products that they are marketing. Instead, they seek to absolve themselves of liability by selling the substances in packages labelled “not for human consumption”, “plant food”, or some other fiction.

We should be under no illusion about the harms caused by new psychoactive substances. They have been associated with paranoia, psychosis and seizures, and tragically have led to the death of too many unsuspecting users. Indeed, the number of deaths has been growing at an alarming rate—from 29 in England and Wales in 2011, to 60 in 2013, with a further 60 deaths reported in Scotland in the year before last.

There has also been a sharp rise in new psychoactive substance-related inquiries by health professionals to the National Poisons Information Service. In addition to the health hazards, a number of local authorities have reported instances of anti-social behaviour in the vicinity of retail outlets selling these products, known as head shops.

The open sale of psychoactive substances on the high street and the internet gives the false impression that they are somehow safe to use. Indeed, it is for this reason that they are commonly referred to as legal highs. The very term seeks to reassure the user that they are both legal and safe. I have already sought to debunk the notion that these substances are safe. As for their legality, research has shown that nearly one in five in fact contain controlled drugs.

In short, many new psychoactive substances present a very real hazard to their users in the same way as controlled drugs. As they are untested, there is no way of knowing which, if any, are benign and safe to use.

Over the period of the last Parliament, we sought to deal with this challenge. We set up an early warning system to monitor closely the availability of these substances. The Police Reform and Social Responsibility Act 2011 introduced temporary class drug orders so as to speed up the process of bringing harmful new substances within the tight controls of the Misuse of Drugs Act 1971. We have used the powers in that Act, as amended, to ban over 500 new psychoactive substances. Although these steps have afforded some protection, we found ourselves sucked into a game of cat and mouse: no sooner do the Government ban one substance than another pops up with a new chemical formulation designed to evade the current controls, with the added concern that these new formulations have greater potency. And so the process continues.

It was against that backdrop that, in December 2013, the Government appointed an expert panel to undertake a review of new psychoactive substances.

The membership of the panel included representatives from medical science, social science, law enforcement and other criminal justice agencies, local government and those working in the field of education and prevention. The expert panel was asked to make a clear recommendation for an effective and sustainable legislative response to new psychoactive substances.

In coming to a view on the most appropriate way forward, the panel considered various alternative approaches and looked at how these had been applied in other jurisdictions, such as the United States, Ireland and New Zealand. The panel’s findings in relation to the regulatory approach adopted in New Zealand are instructive, given the interest shown in this approach by the All-Party Parliamentary Group on Drug Policy Reform, chaired by the noble Baroness, Lady Meacher, and including, on that inquiry, my noble friend Lord Mancroft, the noble Lord, Lord Howarth, and the noble Baroness, Lady Hamwee.

In its own 2013 report into new psychoactive substances, the all-party parliamentary group was attracted to the New Zealand model because it afforded the prospect of low-risk substances being licensed for sale. However, the expert panel expressed a number of reservations about a regulatory approach and pointed to the difficulties of defining low risk from a legislative and harms perspective. The panel was also concerned that a regulatory regime would send out confusing messages about the safety of new psychoactive substances. Finally, in relation to New Zealand, it is worth recording that no applications for a licence have been submitted to the regulatory authority. Consequently, in practice, a blanket ban is in operation there.

Having considered the approach in New Zealand and elsewhere, the expert panel recommended that the Government develop proposals for a general prohibition on the supply of non-controlled psychoactive substances. Last October, the then Minister for Crime Prevention, Norman Baker, accepted the expert panel’s advice on behalf of the Government. This indeed has been the position of all three parties, reflected in the manifestos on which they stood in the general election.

The Conservative manifesto said:

“We will create a blanket ban on all new psychoactive substances, protecting young people from exposure to so-called ‘legal highs’”.

The Labour manifesto said:

“we will ban the sale and distribution of dangerous psychoactive substances, so called ‘legal highs’”.

The Liberal Democrats said that they would,

“clamp down on those who produce and sell unregulated chemical highs”.

I now turn to the detail of the Bill. Clauses 1 and 2 and Schedule 1 define a psychoactive substance for the purpose of the Bill. The definition is purposefully wide; it encompasses any substance that,

“is capable of producing a psychoactive effect in a person who consumes it”.

In defining what we mean by a psychoactive effect, our definition draws on scientific advice and international precedents, including the 1971 UN Convention on Psychotropic Substances. As I have indicated, we make no apologies for the breadth of the definition. If we were to adopt too narrow a definition, we could, in a few months’ or years’ time, find ourselves having to

[LORD BATES]

bring forward further legislation because we were faced with a new generation of harmful substances that escaped the controls provided for in this Bill.

Lord Howarth of Newport (Lab): The Minister is arguing for the broad definition that is in the Bill. Will he clarify one point? If the Bill were already on the statute book as presently drafted and he felt moved today to send Lady Bates a bunch of flowers, the perfume of which would make her feel much more benevolent towards him and much happier about his absence on ministerial duties, would he be in breach of the law?

Lord Bates: We will come back to this many times in Committee, I am sure, but we are confident that that would not fall into this category. Clauses 2 and 3, as I am sure the noble Lord has read, set out very clearly that this is something that is taken and consumed for the purpose of achieving the psychoactive high to which I referred. So I do not accept his point, although I am sure that we will come back to it many times during the passage of the Bill.

While starting with a wide definition of a psychoactive substance, the Bill then seeks to narrow it, as in the Irish model, so as to exclude certain substances and activities—perhaps the noble Lord was slightly preempting my text—that are not the target of this legislation. The Bill does this in two ways. First, it provides for a list of exempted substances. This covers substances that are either already subject to regulation, such as controlled drugs, medicines, alcohol and tobacco, or those where their psychoactive effect is negligible, namely caffeine and foodstuffs. The Bill includes a power to add to or vary this list by regulations, subject to the affirmative procedure.

The second means by which legitimate activities are excluded from the ambit of the controls in the Bill is through the power, in Clause 10, to provide for exemptions to the main offences. Similar provision is included in the Misuse of Drugs Act 1971 and has been used successfully, for example, to ensure that healthcare professionals, when acting in a professional capacity, are not caught by the offences in that Act.

Let me also assure noble Lords that if there is legitimate research into new medicines to tackle any number of the conditions that afflict the human race, the Bill will not be a barrier where such research involves the testing of psychoactive substances.

Having defined a psychoactive substance, Clauses 4 to 9 go on to provide for the key criminal offences. As the expert panel recommended, these focus on the trade in psychoactive substances rather than on the users. The Bill achieves this by making it an offence to produce, supply, offer to supply, possess with intent to supply, import or export a psychoactive substance. The maximum penalty for these offences is seven years' imprisonment. I should add that the way these criminal offences are constructed excludes psychoactive substances that are not intended for human consumption. So no offence would be committed, for example, where a person produces or supplies a psychoactive substance for veterinary or industrial purposes.

I want to stress that there is no offence of simple possession. This mirrors the position with substances subject to a temporary class drug order. That said, if a new substance comes along where the evidence of harm is such as to warrant it being added to the list of controlled drugs under the 1971 Act, the personal possession offence in that Act would then apply.

As with the legislation in the Irish Republic, we have designed the enforcement framework so that the police, local authorities and other law enforcement agencies can adopt a flexible, proportionate response depending on the particular circumstances of a case. We need a system that is nimble enough to be able to nip problems in the bud before they escalate. In addition to the core criminal offences which I have described, the Bill therefore also provides for four civil sanctions: prohibition notices, premises notices, prohibition orders, and premises orders. Let me be clear that there is no requirement to escalate enforcement action through the civil powers before a criminal prosecution is considered. If the criminality is of such a serious nature as to justify an immediate prosecution, it is right and proper that the relevant enforcement agency should adopt that course.

Where the civil sanctions are an appropriate response, the prohibition notice and the premises notice will act as a final warning to those engaged in the production, supply, importation or exportation of psychoactive substances. A prohibition notice issued by the police, the National Crime Agency, the Border Force or a local authority will require the respondent to desist from undertaking relevant prohibited activities, such as selling psychoactive substances from a particular head shop or through a website. Where the prohibited activity is taking place on particular premises—again, the head-shop example comes to mind—a premises notice could be issued separately to the landlord so that they take reasonable steps to stop the prohibited activity taking place on the premises in question.

If the respondent fails to comply with a notice, the relevant enforcement agency can then move swiftly to apply to a court for a prohibition order or a premises order. Again, I should make it clear that there is no requirement to escalate a case through the civil powers. If the breach of a prohibition notice is so egregious, it is then open to the police or other enforcement agency to pursue a prosecution for one of the main offences in the Bill. A prohibition order or premises order will be made by the court, normally on an application from the police, a local authority or other relevant agency. It will be open to the court to attach such prohibitions, restrictions or requirements to an order as the court considers appropriate. Clause 21 gives some examples of these. This is by no means an exhaustive list and should not be read as such, but the examples given are significant—hence their inclusion in the Bill. A prohibition order could include a requirement on the respondent, perhaps the proprietor of an online business or of a head shop, to hand over any remaining stocks of psychoactive substances.

It would also be possible to attach to either a prohibition order or a premises order an access prohibition. This would operate much like the premises closure powers in the Anti-social Behaviour, Crime

and Policing Act 2014. An access prohibition could bar all access to premises for an initial period of up to three months, extendable to a maximum of six months. An access prohibition is most likely to be used against commercial premises such as a head shop, but could relate to any relevant premises. Where the premises are used as a dwelling, it would be open to the court to allow limited access for those who habitually reside on the premises, but the decision will be one for the court to take. Breach of a prohibition order or premises order will be a criminal offence, punishable by up to two years imprisonment. The Bill provides for a right of appeal against these orders, and the respondent or other persons significantly affected by the order may apply to the court for the order to be varied or discharged.

Also included in the Bill are bespoke enforcement powers that will enable the police, National Crime Agency officers and customs officers to stop and search persons, vehicles and vessels. The powers to stop and search a person will apply where the officer has reasonable grounds to suspect that a person has committed one of the main offences in the Bill: namely the offence of producing, supplying et cetera a psychoactive substance, or the offence of breaching a prohibition order or premises order. In such a case, the officer may search the person for evidence of such an offence. The powers to search vehicles and vessels will apply where an officer has reasonable grounds to suspect that there is evidence of one of these offences in or on the vehicle or vessel.

Additionally, there are powers to search premises for relevant evidence and to seize such evidence. These powers are subject to judicial authorisation and extend to local authorities as well as to the police, National Crime Agency and Border Force officers. The Bill sets out other safeguards, including protecting material subject to legal or journalistic privilege. Further safeguards in the Police and Criminal Evidence Act 1984, including those in the relevant PACE codes of practice, will also be engaged.

Finally, the Bill makes provision for the forfeiture of seized items. Given that the whole premise of the Bill is that psychoactive substances are, or are potentially, harmful, we should not be allowing these substances, once seized, to re-enter the supply chain or to be returned to users. There is, therefore, a clear presumption that any seized psychoactive substances will be destroyed. Where there is evidence of an offence under the Bill, or the seized item is not a psychoactive substance, the Bill provides for a judicially authorised forfeiture process. There is also a fast-track procedure for the disposal of small quantities of a psychoactive substance where, for example, this is consistent with personal use and there is no evidence of an offence being committed under the Bill.

The words of the expert panel were that there was no silver-bullet approach to tackling this issue. The criminal justice response to the trade in psychoactive substances, as provided for in this Bill, must be seen in the context of our wider strategy to tackle the harms they cause. Alongside law enforcement activity to restrict the supply of new psychoactive substances, we are driving forward another key recommendation of the

panel that we enhance our efforts to reduce demand, including through effective prevention programmes, and provide the right health-related services supporting individuals to recover from substance misuse. The dangers posed by new psychoactive substances are widely recognised, and there is now a broad consensus that the current approach is failing to provide timely protection where it is clearly needed.

The three main political parties represented in your Lordships' House differed on many things in the recent election but, as I have indicated, there was welcome agreement on the need for a general ban on new psychoactive substances. That view is widely shared, including by the police, the Local Government Association, the Royal Society for Public Health and others. However, there is one further organisation that I should like to add to the list: the Angelus Foundation. Angelus was founded by Maryon Stewart to campaign on the dangers of new psychoactive substances following the tragic death of her daughter, Hester, in 2009. The Angelus Foundation knows more than most about the potential fatal consequences of these substances, so we should heed its words with care. It said this of the Bill:

“Angelus has led the call for a strong legal response to the easy availability of these legal substances and has long campaigned for fundamental measures to disrupt the supply of these legal drugs”.

The Bill is intended to help prevent further tragedies so that other parents do not have to suffer what Maryon Stewart and her family have had to endure.

During the later stages of the Bill, noble Lords will properly want to scrutinise its detail carefully, but I trust that the House will overwhelmingly be able to join me today in endorsing its core purpose. On that note, I commend the Bill to the House. I beg to move.

3.39 pm

Lord Rosser (Lab): I thank the Minister for his explanation of the objectives and purpose of the Bill and the reasons why the Government consider it necessary. In line with a commitment we gave in our manifesto for the general election last month, we support the Bill's general approach to the increasing concern over new psychoactive substances and their effects, which it seeks to address. The proposed law is very much an extension of what we proposed in 2013 in an amendment to the then Anti-social Behaviour, Crime and Policing Bill, which would have made it an offence to supply and sell new psychoactive substances in high street head shops. When the amendment was debated in this House it was, if my memory serves me right, not exactly received with universal acclamation. We will need to discuss the detail of the Bill and its proposed means—and their effectiveness, or otherwise—of achieving the desired goals.

Over the last seven years or so, in particular, we have seen the emergence of new psychoactive substances or “legal highs” intended to produce the same effects as drugs controlled by the Misuse of Drugs Act 1971, including cannabis, cocaine and ecstasy. The chemicals in these substances are often neither legal nor safe for human consumption. They can be difficult to identify because of their diversity and the relative ease and speed with which they are developed to replace drugs

[LORD ROSSER]

that are controlled, or have become controlled, under the 1971 Act. Chemical structures can simply be modified to create a new substance that is outside any existing drug controls. Many new legal highs are legal only because they have not yet been assessed for the harm that they can do and, thus, for control under the 1971 Act—not because they have been deemed safe to use.

According to the European Monitoring Centre for Drugs and Drug Addiction, 101 new substances were identified in the European Union in 2014, up from 24 in 2009. Deaths related to legal highs have also risen, as the Minister said, up from 26 in 2009 to 60 in 2013 in England and Wales. As the Minister also said, an expert panel was appointed in December 2013 to undertake a review into new psychoactive substances. It reported in September last year and concluded that the current legislative approach in this country, including the Misuse of Drugs Act 1971, was unlikely to get ahead of developments in the new psychoactive substances market, bearing in mind how quickly such new substances appear. The panel considered a number of options and came to the recommendation that the Government should legislate to prohibit the distribution of non-controlled new psychoactive substances, focusing on the means and channels of supply rather than on those using such substances.

It is in the light of the panel's recommendation that the Government have proposed in the Bill that there should be a blanket ban on the production, sale and supply of psychoactive substances in the United Kingdom. The Bill makes it an offence to do so, but it also provides for four civil sanctions to enable police and local authorities to adopt a graded response over these matters in appropriate cases. The Bill does not make possession of such substances an offence. Clearly, with the provision for a graded response, the guidelines given to the police and local authorities on how it should be exercised will be crucial if we are to achieve some sort of consistency, and to address concerns already expressed in the media and elsewhere that items or activities that one would not have thought would be covered by the ban might be caught by it. Will the Minister say whether the Bill also has the support of his department's Advisory Council on the Misuse of Drugs and confirm that the Department of Health also agrees with the approach and measures in the Bill?

The Bill defines a psychoactive substance as,

“any substance ... capable of producing a psychoactive effect in a person”.

It then provides that,

“a substance produces a psychoactive effect in a person if, by stimulating or depressing the person's central nervous system, it affects the person's mental functioning or emotional state”.

Since this is an effect of psychoactive substances, the Government expect that the Bill, with its blanket ban, will overcome the problem of the inevitable time lag between a new substance coming on to the market and completing the lengthy and time-consuming required process—including securing evidence that physical or

social harm has actually been caused—to ban each new substance identified on an individual or group basis under the 1971 Act.

The Minister's introduction was restrained, measured and clear about whom the Bill is intended to protect and help. Unfortunately, the same cannot be said about some of the documentation that has emanated from government sources. The Government's summary of the Queen's Speech dated 27 May 2015 stated that the purpose of the Bill—and one of only two purposes listed—is to,

“protect hard-working citizens from the risks posed by untested, unknown and potential harmful drugs”.

Note that it was not a case of protecting citizens but of protecting “hard-working citizens”. The part of the document in which this reference is to be found has come from the Home Office. Unless the Minister is going to dissociate himself from the wording, perhaps when he responds to the debate he will indicate which citizens the Government do not regard as “hard-working” so that we can all be clear on precisely who is not covered by the Bill in the eyes of the Home Office. Perhaps he could then tell us why the Home Office thinks that the purpose of the Bill is specifically to “protect hard-working citizens” when, as is pointed out in the Explanatory Notes—the Minister has confirmed this today—the Government's election manifesto commitment was to create a blanket ban,

“protecting young people from exposure to so-called ‘legal highs’”.

Most of us would have hoped that the Bill was designed to protect everyone irrespective of age or some subjective judgment on whether they are or are not “hard-working”.

I would like to raise some points about the provisions of the Bill and my noble friend Lord Tunnicliffe will raise further points later.

The Bill is not dissimilar to legislation passed in the Republic of Ireland—namely its Criminal Justice (Psychoactive Substances) Act 2010. In the three months following the implementation of that Act, the number of head shops fell from about 100 to just six—as I say, in a period of three months. All Irish-based websites supplying new psychoactive substances also shut down. The Government's impact assessment for this Bill, in referring to the Republic of Ireland, states:

“No formal evaluation of the impact of the legislation has been undertaken”,

and that prevalence data for 2014-15 will be available in 2015 allowing for,

“a comparison of trends in NPS use since 2010/2011”.

Can the Minister provide us with any information on the impact that the legislation in the Republic of Ireland has had on the usage of new psychoactive substances in that country, since the main purpose of such legislation, and indeed of this Bill in the United Kingdom, must be to reduce the NPS market, and thus the numbers of people who suffer as a result of taking these substances? Is the experience of the impact of the legislation in the Republic of Ireland positive in respect of usage in addition to its impact on head shops and websites? What impact on usage of NPS do the Government estimate this Bill will have in the United Kingdom? To what extent do the Government consider that the Bill will lead to the market in NPS going underground, with the potential risks that that

might involve? What is the experience in the Republic of Ireland in regard to the supply going underground as a result of its 2010 Act?

In respect of websites and online selling, what steps will the Government take to reduce sales of these substances to people in this country, via websites and online, from outside this country? Are discussions taking place with other Governments to address this point? Will the offence under the Bill of importing or exporting such substances fit with existing EU directives?

The Bill provides for listed substances which are capable of producing a psychoactive effect to be exempt from the Bill, either because they are already controlled through existing legislation, such as alcohol, tobacco or medicines, or because their psychoactive effect is negligible, such as caffeine. Is it the Government's intention that it should be possible to add to this list of substances that are exempt from the Bill? If so, in what circumstances would the Government envisage this might occur, and what process would have to be gone through before this could happen, and on whose advice or recommendation would it happen?

The Bill provides for it to be a statutory aggravating factor when sentencing an offender if the supply or offer to supply took place at, or in the vicinity of, a school. Another area of significant concern is the situation in our prisons. A number of inspection reports have shown high levels of use of synthetic cannabis by inmates and there have been reports of debt, bullying and violence associated with the use of legal drugs, which are not identifiable through mandatory drug-testing. Have the Government also considered making the supply or assisting the supply of NPS at or in a prison an aggravating factor when sentencing an offender, since many prison inmates are, in reality, highly vulnerable people—albeit they may not come under the Home Office definition of “hard-working citizens”, for whom apparently this Bill is intended?

During the discussions on the Bill we will also want to find out exactly what the Government are doing and intend to do to address the point made by the expert panel in its report that the response to the challenges on legal highs through,

“intervention and treatment, prevention and education, as well as information sharing”,

needs to be enhanced. Currently only 15% of English schools provide teaching about drugs for one hour per term or more. The Minister mentioned the Angelus Foundation, the charity raising awareness of the harms of these substances, which has campaigned, as he said, for provisions like those in the Bill. Its figures show that in school surveys, 13.6% of 14 to 18 year-olds have taken a legal high, and a survey of university freshers showed 19% had tried one.

A recent Parliamentary Question from the shadow Home Office Minister Diana Johnson MP on drugs awareness elicited the information that between 2013 and 2015, only £180,000 was spent on NPS campaigns. The Home Office seems to rely on its Talk to FRANK scheme as the basis of its education commitment. However, the scheme does not reach out to young people through film or social media, and the provision of information does not necessarily equate to greater awareness. The Government have previously stated that 34% of people who visited the scheme website

were less likely to take legal highs as a result. What they did not mention was that, as I understand it, 22% of visitors to the site were more likely to take a legal high as a result. By inference, the website also had little impact on an even bigger percentage of those visiting the site. If equal attention to that given, rightly, to legislative changes is not paid to the key point raised by the expert panel about prevention, education, intervention, treatment and information, the desired objective of the Bill to address much more effectively the increasing concerns over the spread and impact of legal highs will just not be achieved. Changing the law in isolation will not deliver.

I am sure there will be a lively debate on the Bill, in particular over the extent to which it will achieve its stated objectives. Clearly, the current position is unsatisfactory—indeed, dangerous—and cannot be allowed to continue. Action needs to be taken—action that will improve the situation and provide much better protection to all citizens than is given at present from the risks posed by untested, unknown and potentially harmful drugs. There are too many victims already and whatever views may be held on the Government's proposed legislation—and I have set out where we stand—those victims should be at the forefront of our thoughts in our discussions on the Bill.

3.53 pm

Lord Paddick (LD): My Lords, I will start by explaining briefly my background. I was a police officer for more than 30 years. I served at every rank up to and including Deputy Assistant Commissioner. On a more personal level, two years ago a former partner of mine, who subsequently became my best friend, died from an accidental overdose of a controlled drug. This is not just a professional interest of mine; it is a very personal one.

I do not want to break up the happy consensus portrayed by the Minister about what the position of the three political parties was. As he quite rightly said, the Liberal Democrat manifesto talked about clamping down on those who produce and sell psychoactive substances—not necessarily, as we will see, banning them.

We on these Benches are as concerned about the harm caused by people misusing drugs as the Government and the Labour Party are. We believe that there should be a health-based approach, aimed at reducing harm caused by drug misuse, rather than a legalistic approach that is likely to further criminalise drug users. Successive Governments have gradually eroded the link between criminal penalties and the harm caused by drugs by ignoring the scientific evidence and the advice that they have been given, to the extent that the drug laws in the UK are no longer considered by many people to have any credibility. The Bill, by failing to differentiate between dangerous psychoactive substances and those that are harmless, and by criminalising the production and supply of these substances but allowing simple possession, adds to that confusion and further undermines the credibility of UK drug laws.

As drafted, the Bill is far too broad and indiscriminate, further undermining credibility and efficacy in reducing harm. Legal minds far greater than mine have speculated

[LORD PADDICK]

on whether producing and supplying scented roses, or perfumes that evoke a sense of well-being or romance, could be illegal under the Bill. Those who claim that simply sniffing such substances falls outside the scope of the Bill clearly need to go back to school to learn some simple biology and chemistry. If you sniff something, you are inhaling it; you are taking molecules into your system, exactly as described in the Bill.

As drafted, the Bill would not outlaw simple possession of new psychoactive substances that come on to the market, which could potentially be far more toxic than drugs currently listed as class A under the Misuse of Drugs Act. The Government may well reply—I think that the Minister alluded to this in his opening remarks—that if that is the case, they could be temporarily banned and then designated as controlled drugs under the Misuse of Drugs Act. That course is available to the Government now, without the need for the Bill. My understanding was that the whole purpose of the Bill was to get away from manufacturers constantly changing the formula of psychoactive substances to avoid a drug being banned, yet it does not criminalise possession of what are potentially very dangerous drugs, which could quite easily change in formula in the way that the Bill is designed to eradicate. Either the Government want to send a very strong message that these substances are dangerous, which they may or may not be—in which case, why is possession not a criminal offence?—or they want to say, “Well, actually, these drugs are not as dangerous as controlled drugs”, when in fact they may well be.

As the Bill allows possession of new psychoactive substances while possession of drugs controlled under the Misuse of Drugs Act is a criminal offence, the police will be faced with situations that make enforcement very difficult, if not impossible. If the police suspect that I have EX-1, a synthetic imitator of real ecstasy—I hasten to add that an internet search taught me that—in my possession for my own use, the Bill does not give the power for the police to stop, search or arrest me because to possess the substance will not be a criminal offence. However, if the police suspect that I have a real ecstasy tablet in my possession, they can stop, search and arrest me because it is a controlled drug. How are the police going to know? Some will say, “They will assume that it is a controlled drug, and search and arrest you anyway”. So what if I tell the officer that I have nothing illegal on me, that the tablet is indeed a legal EX-1, that they have no grounds to search and arrest me and that if they do, I will sue them? What if the tablet turns out to be legal to possess? Where does that leave the police? What if the police officer backs off because of my assurances, but the ecstasy tablet that I have is in fact a real one? The Bill, quite clearly, has not been thought through in terms of its practical application.

At the moment, I can buy legal highs from a head shop on the high street. It is acknowledged in the briefing given by the Government on the Bill that, contrary to what the Minister said in his introduction, many of these head shops are well run, with those that manage them being very keen to comply with the law. At the very least, I can be pretty sure that what I am buying is not a dangerously addictive class A drug.

If things go badly wrong once I have taken a legal high purchased from one of these head shops, someone can go back to the head shop where I bought it and at least have some idea of what I have taken, and action could be taken to ensure that others are not similarly affected.

Many people buy legal highs now. They like what they do to them, and their use is increasing. If the Bill passes, the only way they can get psychoactive substances and be sure that they are not breaking the law is to go to a local drug dealer. Many of these street dealers have no incentive to ensure the quality of the drugs that they sell, because they could just disappear overnight if things go wrong. The chances of tracing and establishing what drug I had actually been given, were things to go badly wrong, would be much lower.

These drug dealers could just as easily sell me highly addictive class A drugs, and indeed they may have a vested interest in misleading me by giving me a highly addictive class A drug instead of the legal high that I asked for; the high is likely to be greater, and if I get addicted, I could become a regular client. It would make no difference to the dealer, if he were to be caught, whether he was supplying controlled drugs or other psychoactive substances—a long term in prison would await.

We are likely to criminalise many more people as a consequence. If you order psychoactive substances online—we have heard evidence this afternoon about how Irish online sites closed down with the introduction of their legislation—the chances are that the website you are ordering from will be based abroad. Even if you are buying psychoactive substances only for your own personal use, you will be guilty of the criminal offence of importing drugs. If you buy a few tablets to share with your mates on a night out, again you will be guilty of a criminal offence. A lot more people are going to end up with a criminal record as a result of the Bill, even if their primary intention is just to consume the drugs themselves.

The genie is out of the bottle. Many people take legal highs, and they will continue to get hold of them one way or another—whether head shops disappear from the high street or not—or they will simply switch to far more dangerous controlled drugs. The reason that millions of people break the law by taking controlled drugs is that, quite rightly, they see that our drug laws lack credibility. I have never heard a discussion among young people about to go on a night out as to which class a particular drug belongs to, and therefore which drug they are going to take on that basis. The Bill, as currently drafted, as I have said, further undermines the credibility of the drug laws in this country.

We need a new approach: a health-based approach that will genuinely reduce the harm caused by drug misuse and that has credibility among those who misuse drugs, not just an approach that appears to have credibility among politicians who do not really know what they are talking about. We need a system that differentiates between the psychoactive substances that cause most harm and those that are relatively safe—at least as safe as smoking tobacco or drinking alcohol—and we should control and regulate the supply of those relatively safe substances as we do with tobacco and alcohol. To do anything else would lack credibility, particularly in the eyes of young people.

If someone is caught in possession of harmful psychoactive drugs for their own use, controlled or otherwise, and they are a social user, they should have their drugs seized and be placed on an education programme. If someone is caught in possession of harmful psychoactive drugs, controlled or otherwise, and that person is addicted, they should be placed on a rehabilitation programme. If they refuse to co-operate, they should be given a civil fine. Such an approach would be much simpler and far more effective in dealing with this problem than giving thousands of young people a criminal record that could ruin their life chances because they made stupid mistake.

It is time that we started treating those who misuse drugs as victims of drug dealers rather than as criminals. It is time that we confronted the fact that criminalising young people for possessing substances only as harmful—or less harmful—than alcohol or tobacco lacks credibility.

Lord Tunnicliffe (Lab): For the avoidance of doubt, is the noble Lord saying that the Liberal Democrats so oppose the essence of the Bill that they will either vote against it or propose wrecking amendments?

Lord Paddick: My Lords, we do not propose to wreck the Bill. Clearly, we cannot allow head shops to continue operating as they do now—purporting to sell substances that are harmless when they are far from harmless, or trying to get around the law by saying in very small print on the back of the substances that they are not fit for human consumption. However, the dangers in the Bill as drafted are to make the drug laws even more of a laughing stock than they are currently.

4.06 pm

Baroness Hollins (CB): My Lords, the Bill defines a new psychoactive substance as any substance intended for human consumption,

“capable of producing a psychoactive effect”.

It describes a substance causing a psychoactive effect on a person as,

“if, by stimulating or depressing the person’s central nervous system, it affects the person’s mental functioning or emotional state”.

I speak as someone who has been a psychiatrist for many years, although this is not my field of psychiatry. However, alcohol produces this effect. Antihistamines for hay fever do, too, as do many of the most helpful medications for neurological disorders such as multiple sclerosis. In fact, many medical drugs also have a value on the street, being taken by those seeking their psychoactive effects. Will future novel versions of these medicines also be banned before they have been through a definitive clinical trial? Will those trials even be allowed to take place? The Minister said yes they would in his opening words but many researchers have written to express concern that without dramatic revisions to the Bill such research will not take place and people with neurological disorders may be the poorer because of that.

According to the Home Office briefing, there was a doubling of NPS-related deaths in England and Wales between 2009 and 2013, from 26 to 60. However, even

this low number of deaths is disputed by scientists. I have read statistics that put the number both higher and lower. That may be because of the inclusion of substances that if analysed would be found to contain illegal components, or due to different modes of reporting. Interestingly, the Home Office impact analysis expects to reduce the deaths caused by NPS by only 12 per year. I will return to that later. Although the use of new psychoactive substances is clearly growing, the evidence remains unclear about how many deaths are directly related to NPS. I suggest that that must be better understood before the law is changed, as must the infrastructure required to implement such a change in the law.

Ireland, along with Poland and Romania, tackled NPS through a general prohibition on the distribution of non-controlled NPS. The Irish Republic’s Criminal Justice (Psychoactive Substances) Act 2010 was enacted to target the proliferation of high street retail premises selling NPS. It is aimed at those involved in trading in NPS rather than users. Following the Act, as we have heard, the number of retail shops fell from 102 to virtually zero, which seems a good outcome. The expert panel convened by the Government concluded that the Irish approach,

“best addressed the key elements of the guiding principles that should be in the Act”.

Would Her Majesty’s Government not consider that approach instead of seeking to prosecute the users—with, probably, the added effect of filling up Her Majesty’s prisons, which, after all, are already at capacity?

The policy objective is to reduce the harms caused by and associated with NPS while ensuring that the UK’s response to NPS is proportionate. Intended effects are largely to end the legal sale of NPS from high street stores and UK-based websites, to increase public awareness and to reduce harmful effects. In its own analysis, the Home Office expects that approach to save nearly £21 million from around 12 fewer fatalities a year. It is not clear to me how it produced that estimated saving. It is not from health costs, since the impact assessment suggests that around £200,000 per year would be saved to the NHS from fewer NPS-related hospital admissions. This gain appears to be a best estimate cost to the taxpayer of about £100 million. Surely that could not be considered proportionate. This is probably not taking into account new costs for the criminal justice system.

I wonder whether the Bill could have a disproportionate effect on young and/or vulnerable individuals, such as those with mental health problems. As a psychiatrist, I am aware that late adolescence and early adulthood are times when young people take risks in order to learn the safe boundaries of life. For some, this will include the use of NPS. This Bill is unlikely to change the human psychological developmental process; people will find a new way to experiment, or a new vice—and I guess they will always be ahead of government in that.

I welcome the increased focus on the hazards of NPS. I recognise the small but significant risk of adverse effects, including severe toxic reactions or overdose, heart irregularities, organ damage, psychosis and longer-term physical and psychological dependence.

[BARONESS HOLLINS]

A report by the Royal College of Psychiatrists last year, called *One New Drug a Week*, highlighted the issue of health services being ill equipped to deal with the rise in NPS drug use. It is vital that there is an increase in capacity and range of specialist addiction services to aid those wishing to stop using any of these drugs, particularly those that are addictive. To establish that capacity itself would incur additional costs. Given the rapid rise in the number of people requiring treatment—a 32% increase between 2011 and 2013 alone—could the Minister confirm whether the Government will commit to ensuring that increasing treatment provision is a key part of their strategy to protect UK citizens from the risks posed by psychoactive substances?

I agree with some of the comments made by Professor David Nutt on this subject. He says:

“We know that at least 85% of the population like to use recreational drugs since this proportion drink alcohol”.

He said that the Bill may,

“force individuals who wish to enjoy the recreational effects of”—

what they consider to be safe drugs,

“to use alcohol”.

Professor Nutt suggests that that is a far more dangerous and societally expensive drug. Hazardous alcohol use has health and social consequences that impact on individuals, their families, and the wider community. In 2013 alone there were 20,000 deaths related to alcohol and it remains the leading risk factor for deaths among men and women aged 15 to 49 in the United Kingdom. Public Health England has identified harmful drinking as one of its seven priority areas. Despite widespread media campaigns to educate the public, such as the Drink Aware campaign, few gains have been made in adults. Statistics published just this month show a gradually increasing trend in hospital admissions specifically related to alcohol, with the highest rise being seen in women, and alcohol-related mortality remains stubbornly high at 11.9 per 100,000 in England between 2011 and 2013. Despite this, hazardous drinking remains socially acceptable and culturally defined.

I do not support the progress of this Bill in its current format. I wonder what the mood of the House will be and whether, as I suggest, the Bill should be delayed until there is good evidence that this approach could work, in particular by reviewing the Irish data for an alternative approach. An amended Bill is required, which is more specifically designed to tackle the importation and supply of new harmful psychoactive substances, not the individuals who take them. I ask Her Majesty’s Government also to focus their attention on the considerable harms caused by alcohol and not least to introduce the minimum unit pricing that has been campaigned for by many over the past few years. The BMA and the Royal College of Psychiatrists—I declare an interest as past president of both—believe that a minimum unit price would lead to a decrease in the thousands of alcohol-related deaths. This is not just a health issue but contributes to public disorder, domestic violence and homicide, as well as to suicide.

In closing, I want to say something more personal. If you appeal to my emotions as the mother of two adult children who were assaulted in separate incidents by assailants who had been using psychoactive substances, I might wish that all psychoactive substances are removed from the market, but from a more pragmatic and, perhaps, intelligent stance, I end with a plea that health-related policy must be evidence-based policy and part of that evidence must be to demonstrate the likely effectiveness of a new policy. I suggest that this Bill does not do that.

4.16 pm

Baroness Browning (Con): My Lords, it is a great pleasure to follow the noble Baroness, Lady Hollins. I begin by paying tribute to the work that Norman Baker did at the Home Office in this area. For a very short while, I had responsibility at the Home Office for this policy area, and I can sense the frustration of many Home Office Ministers faced with trying to catch up. That is how it feels—you are running to catch up with something that is for ever disappearing over the horizon: the technology used in the manufacture of these drugs, which stays just a few steps ahead of the law not just in this country but worldwide. As legislators, it is very difficult to know just what to do to feel that you have at least got ahead of it.

This is a very important area. The expert panel whose report Mr Baker accepted,

“indicated that ‘after years of stable and declining drug use, the emergence of NPS has been a “game changer””.

That is just how it feels: a game changer. What can we do? The panel considered the existing legislative response, including the use of the temporary class drug orders that I took through this House—it seems only yesterday but it was quite some time ago—inadequate to keep up with the challenge before us.

I hate the term “legal highs”. I always hated it. It is dangerous. The composition of these drugs is many and varied. A high percentage of them contain substances that have already been criminalised, or that could be dangerous if consumed by humans or even animals. Many contain pharmaceutical drugs, which normally a doctor would prescribe, that have been obtained illegally on the black market. They are marketed in attractive packaging under attractive names, but even then there is no guarantee that if you buy a particular product one week, what is in it will be in it again the following week.

And in some of those packages will be killers. We have talked about numbers today—we always come down to statistics—but, as many other Home Office Ministers have done, I have spoken to parents who have lost children and young people through legal highs and, whether the figure is 50, 60 or 100, one is too many. I understand that the latest figures up to 2013—perhaps the Minister will correct me if I have got this wrong—were 60 in England and Wales and another 60 in Scotland, where the figures are aggregated separately. These figures are going up all the time, as is the use of these drugs. The problem is not just deaths, though of course they are the worst thing. We know from surveys done in Scotland that the use of these drugs can lead to psychotic states and unpredictable

behaviours, attendance at A&E—I hope the Minister can reassure Members of the House who have raised this issue, but I understand that since the Irish system was put in place they have noticed a reduction in A&E attendances—sudden increase in body temperature and heart rate, coma, risk to internal organs, confusion leading to aggression and violence and intense comedowns that can cause users to feel suicidal. As the Minister in the Commons, the right honourable Mike Penning, has said, this is Russian roulette.

This is what we are trying to deal with in this legislation. I hear from my noble friend Baroness Hollins, sat on my right, and from others around the House, concerns about some of the detail, but unless we can collectively agree to take this forward we will be left with a game of Russian roulette out on our streets, in the clubs and in the many social areas where many young people gather—the problem affects not just young people but it affects them in particular—and there is nothing worse for sullyng a life chance than to take one of these drugs and get the wrong one.

I thought a very good point was made about how police officers are going to know whether or not the substance they are looking at is a legal high. I hope that as the Bill progresses, the Minister will reassure the House that this issue can be addressed in a way that gives the police the power to do the job they have to do without having to be involved in a lot of bureaucracy, and ensures that they know they are confident in what they are dealing with. We have to find solutions to these problems because, if we do not, we will have moved no further forward while all the time the technology and the wicked people out there are beating us all to it.

On a lighter note, I would like to make an aside. The noble Lord, Lord Howarth, and I have known each other for many years, although to my certain knowledge he has never given me any flowers. The noble Lord, Lord Paddick, also raised the question, which was quite new to me, of someone giving you a bouquet of flowers and their aroma somehow sending you into—I do not know what. I have received many flowers in my lifetime and have always taken a rather Constance Spry approach to them, worrying about how to arrange them, but they have never made me swoon. I say to the Minister, though, that I hope the Bill is not going to include chocolate. I am being facetious about a serious subject, although I have to say to noble Lords around the Chamber—and I am afraid it is mainly the gentlemen—that if they think to make a woman swoon they should give her a bunch of flowers, they are all on the wrong track. Men have tried for centuries to find out what will make women swoon and are still nowhere near finding out.

I agree with what has been said today about the need to address drug and alcohol abuse. We still do not put enough resources into dealing with this, and we do not reach the ultimate conclusion that I feel is the way forward. Following their treatment, we often just leave people at that point, but they need to be moved on from treatment to recovery. That takes much longer and requires a lot more resources, and it sometimes requires various innovative approaches.

I say to my noble friend that although I realise that the substance of the Bill is ultimately not about that, we are talking about drugs—substances that are potentially

addictive. I hope that the Government will not forget that when people become addicted—whether to these sorts of substances or others—there are solutions; but it is about having the will to press on and push people to the point where a difference is made to their lives.

Other matters have been raised, such as the medical research implications. I have to say that I have not read in the paperwork available to the House that medical research will be impaired, but I hope that as the Bill progresses my noble friend will be able to reassure us on that. None of us wants the Bill to be so broad that it impairs genuine, legitimate medical research, but because of the nature of these psychoactive drugs, it has to be broad. Once you start narrowing it down, you lose momentum in dealing with the problem. I hope that my noble friend will reassure the House on that as we go through.

I welcome the Bill. It may not be perfect but it deals with a very difficult problem, and I wish it Godspeed in its passage through this House. I am sure that my noble friend will steer it through with the judgment and wisdom he has shown during the passage of previous legislation.

4.26 pm

Lord Patel of Bradford (Lab): My Lords, I heed the warnings from the noble Baroness, Lady Browning, about chocolates and flowers, but given that this is a Home Office Bill and given the Home Secretary's liking for shoes—although it has nothing to do with the legislation—shoes might be one way forward.

I am very interested in the Bill, having worked for a considerable number of years in the field of substance misuse and having been a member of the Advisory Council on the Misuse of Drugs. I certainly agree with many of the points that noble Lords have already raised, particularly the noble Lord, Lord Paddick, and the noble Baroness, Lady Hollins. I agree with the Government that the continuing development and use of so-called new psychoactive substances, or NPSs, as they are now known, is a matter for serious concern.

I welcome the Government's interest in trying to prevent these substances causing harm, particularly if we are to prevent deaths amongst young people who are otherwise law-abiding citizens, and who perhaps understandably are attracted to new experiences at a time in their lives when exploration and risk-taking are normal. I also appreciate the Government's desire to control and minimise the harms caused by the production and importation of these harmful new substances from “producer” countries such as China, which appear to be the source of many of the “psychoactive powders” that are currently found in the UK. Similarly, I understand the wish to control the supply of potentially harmful substances from so-called head shops and professional drug dealers in the UK.

Having said all that, I have a number of concerns about the Bill in its current form: that it may not only fail to achieve those aims but result in greater harms. For any avoidance of doubt, I do not say that lightly, or simply to make a political point, but rather to assist in making sure that this legislation is workable and that it gets through. I have been looking at the scientific

[LORD PATEL OF BRADFORD]

evidence that is currently available, and I believe that there are some serious fault lines within the Bill as drafted. I will be looking for assurance from the Minister with respect to how the Government are addressing the scientific evidence, particularly the advice from the Advisory Council on the Misuse of Drugs and other concerned bodies, so that we can ensure that no serious unintended consequences happen as a result of the Bill.

Notwithstanding what the Minister said about the expert panel, I understand that the Home Office did not consult with the ACMD on the drafting of the Bill. Given the advisory council's obvious expertise and statutory standing with respect to the Misuse of Drugs Act, can the Minister say why that was the case? Have views been sought from other government departments? Again, I come back to what the noble Lord, Lord Pannick, said about health: this has to be health related. Have we taken advice from the Department of Health? What are its views, and what is the view of Public Health England on the implementation of this Bill? Can the Minister also say why there has not been much wider consultation on this legislation, given that it is such a complex area with a wide range of potential impacts on a variety of stakeholders? That point was also raised by two fairly influential agencies, Transform and Release.

One of the biggest issues that I have to question is the rather different procedural approach in the Bill, whereby the precautionary principle is being employed—that is, this legislation attempts to ban everything on the basis that it is better to be safe than sorry. That may sound sensible to some but it flies in the face of our long-standing approach to drug laws in this country, which is based on the principle of reducing harm where it is known to exist, and that, I would argue, is much more focused and less ambiguous. However, I will leave the legal arguments of procedure to other noble Lords who are more qualified than I am, while I briefly outline some of the areas where I seek assurances.

First, as I understand it, one of the principal drivers of this legislation is to halt the proliferation of head shops, which are viewed as a main source of supply for many NPSs in the UK. As noble Lords are aware, and as has already been mentioned, a similar ban on NPSs with this aim was introduced in Ireland five years ago. However, my understanding is that the Irish experience has shown a rise in use as a result of the ban on head shops because the market has been driven underground. We know that use of NPSs among Irish youths has increased since the 2010 ban—with reported lifetime use going from 16% in 2011 to 22% in 2014—with reports of a shift to the street and online markets. What can the Minister add to that latest evidence? My noble friend Lord Rosser raised that issue, as have others. Do we have up-to-date evidence of Ireland's experience in this area?

This kind of blanket ban can not only result in an increase in NPS use but lead to the transfer to more dangerous substances, as those seeking them elsewhere move into the arms of drug dealers, where they may be exposed to the sale of illegal drugs such as heroin. Some noble Lords have said that if people cannot go to a head shop and the substance is not legal then they

will not go elsewhere, but they will. My experience of working with many, many young people with drug problems is that they will go elsewhere to seek a substance and that they will be driven into the arms of drug dealers.

The European Monitoring Centre for Drugs and Drug Addiction has warned that a blanket ban will push NPSs into a “grey marketplace”. By that, it means parts of the internet that cannot be controlled or policed—the so-called dark net. So a country-specific ban on NPSs will most likely fail to have a great impact on new substances and may well expose people to other, unknown harms. Can the Minister assure me that the Bill will have a real impact on the supply chain and on those making money through the nefarious activities of creating and distributing harmful substances for money and not simply push a new generation into a more dangerous environment where the sales of these and other drugs thrive?

I also have some concerns about the scope of the Bill. As it stands, the Bill covers all psychoactive substances. This position goes much further than the recommendation in the report of the expert panel on NPSs that substances which are not harmful or which have minimal harm are not drawn into the Bill. I realise of course that the Government propose a list of exemptions in the Bill for things such as food supplements, controlled drugs and so on, but I have considerable reservations about whether this will be effective. Again, I seek reassurance from the Minister on this point.

Not all psychoactive substances are harmful and indeed some, such as those used in eastern medicines for centuries, may be beneficial. Many homeopathic and herbal remedies and some products taken to aid well-being could be psychoactive yet are not on limited approved lists. Examples are Ginkgo biloba, which can be bought off the internet, and products containing guarana, a mild stimulant contained in many drinks, including some produced by world-leading companies.

The problem is that the Bill makes no distinction between very dangerous substances and those of little or no harm. In effect, this could mean that the principle that the seriousness of the punishment should relate to the seriousness of the offence may be significantly altered, and not in a beneficial way.

I am very aware that experts do not yet agree on the best way to define what is psychoactive. This could make implementation of the Bill very difficult and potentially open to legal challenge. Perhaps most worryingly, the Bill as drafted could create a situation where we are criminalising and damaging the lives of otherwise law-abiding young people. For example, the Bill could create a situation where many young adults would face severe importation and supply offences if they bought an NPS on the internet, perhaps even unaware that they are being shipped from abroad. My understanding is that, if they shared them with their friends, the weight of the law as written in the Bill could be quite disproportionate to the offence. Can the Minister reassure us that a proportionate response will be taken?

If I might, I will just digress for a second. This is undoubtedly a very important area of drug policy and legislation and we are right to spend parliamentary

time on it, but I would strongly argue that the significant harms associated with the abuse of and addiction to prescribed medication deserves as much time, if not more, to be debated and addressed. Recently, I discussed with the noble Earl, Lord Sandwich, and others the idea of reconstituting an all-party group on prescribed medications. I will not steal the noble Earl's thunder, as I know that he will speak about this in his contribution, but suffice to say that many will be aware of the very serious concerns that have been voiced on the issue of prescribed medication. This concern was most recently raised at the Maudsley debate, where it was suggested that prescribed medications may be the third-leading cause of death after heart disease and cancer. That has to be viewed in the context of deaths from legal NPSs.

In addition to tranquilisers, other types of psychoactive medication can lead to dependence, including anti-depressants, stimulants, anti-psychotics and painkillers. Withdrawal from these drugs can result in severe long-term symptoms and, in some cases, long-term or even permanent neurological injury. There were over 57 million prescriptions for anti-depressants in England alone in 2014, a rise of over 7% since 2013 and over 500% since 1992. In total, around 80 million prescriptions for psychiatric drugs were issued in 2014, often for mild and moderate conditions where other non drug-related interventions may have been more appropriate. This increase in prescription rates has led to a significant rise in demand for the services of withdrawal support charities, which have only about 5% coverage. I am not saying that many people do not benefit from these drugs, but too many are prescribed long term without support, guidance and advice, and let me tell you that the resultant harm is, in my experience, extreme. It is certainly an area that we need to look at very carefully.

Finally, my noble friend Lord Rosser spoke about NPSs being an issue in prisons. If my memory serves me, a report last year on pain management in prisons gave a snapshot study of two relatively small prisons with a population of around 1,600 people. In one month, they were prescribed 350,000 analgesic tablets, and that does not include paracetamol, Nurofen, pregabalin or tramadol. Prescribed drugs are a major issue.

I will be following this debate and the passage of the Bill with interest. I strongly suspect that I will not be alone in calling for the Bill to be improved so that it is evidence based, proportionate in its aims and can achieve what it was intended to achieve—that is, to control the importation and supply of new harmful psychoactive substances by professional drug suppliers and dealers, who are set to make large amounts of money from this trade.

4.38 pm

Lord Kirkwood of Kirkhope (LD): My Lords, it is a pleasure to follow the noble Lord, Lord Patel of Bradford, whose experience is of service to the House. I hope that he will take an active interest in the remaining proceedings of this Bill. I concur particularly with his point about the alleged lack of consultation. If that is true—I hope the Minister will find time to reassure us about this—it is seriously worrying. The advisory committee on medicine and drugs has been a well-established, much-respected part of the environment since 1971. If there is any suggestion that they were

deliberately body-swerved in order to get a political outcome by resorting to an expert committee, that would leave some of us of a more sceptical disposition more worried than we might need to be. If the Minister could make that clear, it would leave me sleeping slightly easier in bed at night.

Attached to that, the lack of a regulatory impact assessment is also a mistake. In the course of further proceedings in Committee, I hope that we get a chance to explore why there was no regulatory impact assessment. The point was made powerfully by the noble Baroness, Lady Hollins, that these substances are important to research and to industry. This is a vast category of substances and it is a blanket ban, so we need to be really careful about who is and is not affected. I am not sure that we have done enough work, certainly to satisfy me, that that was the right thing to do.

I have two loci in this important subject: I am from Scotland and this Bill applies to Scotland. It is more important now for this House to ensure that anything we do that has a United Kingdom reference takes account of what it is doing in other parts of the devolved legislatures. I have some concerns that can be pursued at a later stage about the way the criminal justice system, which my noble friend expertly explored, will fit with the other criminal justice processes and systems. The culture and approach can be quite different. My noble friend knows a lot more about this than I do, and I hope to talk to him over the course of the Committee stage to see whether I understand this properly, but anything that we do we must do in concert with our colleagues north of the border. The Minister will know that the Scottish Government had their own expert committee and made recommendations that are entirely sensible and that I think work with the grain of his approach, which I will seek to avoid doing in a moment. My point is that whatever we do, we must stay in step with other legislatures.

The other thing that I can plead by way of an interest in this is that I am a non-practising pharmacist, and I would recognise a molecule of ecstasy if the Minister wrote it down in front of me on a bit of paper—or at least I used to be able to in 1970 when I qualified. A pharmacy degree is a complete aversion therapy course against drugs. I spent a long time trying to learn how to get the active ingredient through the substrate. Colleagues need to understand this. This is not just about active ingredients; it is about dosage. Some of these manufactured substances are in pills. You can make 1,000 pills and all the active ingredient is in the last substrate, which is how my attempts ended up in the labs at Heriot-Watt University. It is not an easy thing to do; it is a very skilled thing to do. You need equipment and training.

This does not happen by accident, so people should not think that it is just about getting the molecules identified; it is the dosage within the distribution of the substances that are being taken that is part of the problem. I hope to be able to think about that a little more clearly and bring some of that past experience to bear. Russian roulette is an exact description of what I have just talked about; trying to get the active ingredient evenly distributed through the substrate is certainly Russian roulette—the noble Baroness, Lady Browning, is absolutely right about that.

[LORD KIRKWOOD OF KIRKHOPE]

The noble Baroness, Lady Hollins, mentioned at the end of her remarks the important point about alcohol-related deaths. It will come as no surprise to the House that Liberal Democrats are very focused on that issue at the moment, for rather obvious reasons. As the noble Lord, Lord Rosser, said, we must think of all victims as we go through this legislation and try to improve the situation in the best way we can. I was also pleased to hear the noble Baroness, Lady Browning, mention the work of Norman Baker. What he achieved in his short time at the Home Office should be recognised.

I echo and cheer on my noble friend Lord Paddick in his approach to the Bill and I will support him absolutely. The noble Lord, Lord Tunnicliffe, tried to catch my noble friend on the hop, but he failed, and rightly so. I am not the spokesman, but if it was left to me I would vote against the Bill, because the opportunity to look comprehensively at everything that has happened, including the provisions of the Misuse of Drugs Act 1971, should be taken now. That is why the point about consultation is so important. We do not really know how fast this situation is changing and accelerating. The circumstances that we are facing now are wholly and entirely different from those in 1971, so as a legislature we should be pausing—someone mentioned earlier the need to do this—and take a really good look at them. I would argue, as I think my colleagues on these Benches would argue, for looking at the harm rationale, which is a much better approach to these problems than a blanket prohibition.

It is not easy, and the public hate it because they like language like “war on drugs” and “crackdown on drugs”. It makes them think that the issue is being taken seriously. Actually, much more has to be spent on prevention and research to get beneficial outcomes, and this must be treated as a health issue. I am absolutely all square with my noble friend on that, but it is a harder sell to the public. Those on the other Front Benches who attack us because we are allegedly soft on drugs will fail, because in the long run a health approach along with research and education is the way forward. If we could capture the resources that we are now unleashing—criminal justice will need a lot of extra resource to do this properly—and devote them to health and education, we would have fewer victims. That is my view. I am prepared to look at the evidence, and I hope that we will explore some of it in a little more detail in Committee, but this is my general approach to dealing with all this.

This is not an easy Bill to amend if you come at it with our approach, and the Minister will have to understand that. But I think that there is a majority view in the House for doing something of this kind, and I look forward to joining my colleagues in trying to make the Bill as good as it can be. However, as far as I am concerned, people need to understand that this is the wrong direction of travel. I hope I am wrong, but that is my view at the moment, and I look forward to considering the Bill in greater detail in Committee.

4.47 pm

Lord Rea (Lab): My Lords, I have enjoyed listening to the contributions of noble Lords so far and I agree with much of what has been said, so I hope that your

Lordships will excuse me if I repeat some of the words that have been spoken already.

I can understand why the Government feel the need to bring forward legislation on this subject: it is to reflect the public’s belief that something must be done about the increase in the availability and use of these substances. However, as the noble Lord, Lord Kirkwood, has just said, consultation before the Bill was published was noticeably scarce. Even the Advisory Council on the Misuse of Drugs was not approached until after the Bill had been drawn up, although it is actually a legal requirement set out in the Misuse of Drugs Act 1971 that the ACMD must be consulted before alterations to the Act or new legislation is brought in. Instead, a specially appointed expert panel was set up by the Home Office. I can only suggest that this was done because the opinion of the ACMD is often not exactly welcomed by the Home Office. The result is a Bill which may, I think, have unintended and rather damaging consequences. I suggest that it is better to have no Bill rather than one which may make things worse.

In December last year, while debating the long-named Social Action, Responsibility and Heroism Act, of which he did not have a very high opinion, the noble Lord, Lord Hurd of Westwell—who is in the Chamber, and who was one of the wisest Home Secretaries of recent times—said that if a Bill is not necessary, it is necessary not to have the Bill. I would not go quite as far as that in this case, but we need a lot more time to think about it. Considerable amendment and thought could improve the Bill so that it is useful.

I shall mention just a few areas where I think the Bill is mistaken. I think most noble Lords would agree that to prohibit the use of a psychoactive substance seldom stops its use—in fact, the reverse may be the case. We saw that after the Misuse of Drugs Act 1971 was passed and heroin use increased quite dramatically, which was the case until very recently when it started to decrease. As we know, that reduction has coincided with an increase in the use of these psychoactive substances. That may be a coincidence, or there might be a closer relationship between the two. As my noble friend Lord Patel mentioned, there is also the recent Irish experience of blanket legislation on psychoactive substances and the closure of head shops. However, according to one report that I have seen, the use of psychoactive substances there has apparently increased from 16% to 22%. There are many similar examples.

A serious consequence of prohibition, as has been mentioned, is that supply routes and outlets will go underground and even less will be known about the nature of the substances used. Some of these substances are extraordinarily dangerous, as has also been said. Although the Bill does not make possession in itself an offence, importation will be. Many users get their supplies through the internet—the dark net, as my noble friend Lord Patel said—and as these come mostly from abroad, the users will also become importers and therefore have broken the law.

Another important consequence of the Bill, as several noble Lords have pointed out, is that research would be more difficult. That is particularly important because identifying and testing these substances is crucial to deciding how to control them. Research will

also be more difficult because the users of substances that should be examined will now be reluctant to come forward. There will also be much legal—and probably pretty well-paid—argument in the courts about the definition of a psychoactive substance as laid down in the Bill.

In Committee I will back amendments that seek to postpone enactment of the Bill until much more work has been done to assess its impact. The assessment so far has not been adequate. I shall also move or back the many other amendments that will seek to improve the Bill.

4.54 pm

Baroness Meacher (CB): My Lords, I welcome the Government's commitment to reducing the risks of drugs to our young people. I also thank the Minister for spending time discussing the Bill with me last week.

I start with the views that the Government and I have in common. We all agree that it is most unhelpful to criminalise young people. From my point of view, the best feature of the Bill is that it does not directly criminalise young people for simple possession or use of psychoactive substances. Also, we all want to reduce deaths of young people from drugs. We want to see a reduction in the incidence of drug addiction. We agree that to ban the most dangerous drugs is necessary, if only to give a clear message to young people that these should not, on any account, be taken. So far, so good. Now let us consider each of the above points and ask whether the Bill will achieve what the Government, I and others hope it will.

First, on deaths from drugs, the argument has been that some 97 people died in 2012 from synthetic psychoactive substances, with similar numbers in other years. In fact, I think that the number is probably nearer 60. The important question is: would a ban reduce the number of such deaths? Unfortunately, it seems not. The experts tell me that all but about five of those deaths resulted from young people taking banned substances—not necessarily even psychoactive substances.

Indeed, I am told that in Ireland, which introduced a blanket ban in 2011, deaths have actually increased. On the basis of existing evidence, therefore, if the Bill has any effect on deaths it is likely to increase them, rather than reduce them. In Poland, too, which introduced a ban on psychoactive substances, the number of poisonings three years after the ban had risen above the pre-ban level. I understand that when the President left office he was asked what his worst mistake was. He said it was the psychoactive substances Bill.

Will the Bill lead to a reduction in the incidence of drug addiction? Sadly, it would appear not. Following the Irish ban, head shops closed wholesale, as others have said. As a result, the market has been driven underground. The Irish advisory committee report expressed concern that it appeared that, as a result of slightly earlier bans, young people had moved back to taking traditional drugs, including cocaine, ecstasy and cannabis. Even heroin use had increased. Also, the web trade in synthetic psychoactive substances is apparently thriving in Ireland. According to the experts,

the use of synthetic substances in Ireland is the highest in Europe, despite the 2011 ban—or perhaps because of it; we do not know.

Not only has Ireland seen an increase in the use of synthetic drugs following the ban, but the banned drugs are, of course, far more dangerous today than they were before. They can be purchased only from illegal drug dealers or through the web. Such dealers have no interest whatever in the health of the people who buy materials from them. They regularly mix the drugs with other agents, as we all know, including poisons that cause untold damage and, indeed, death. That is why the deaths issue is far from straightforward. Also, a ban on all synthetic substances means that, by driving them to the dealers or on to the web, young people have no idea what they are taking. This may be the worst aspect of drug taking in this country and elsewhere.

Head shops, on the other hand, want to look after their customers. They do not want to kill or even to harm them. They want them to come back and buy more of their delightful substances. They therefore sell the less-risky substances. Illegal drugs leading to deaths are not generally—perhaps ever—sold by head shops; they are sold in other ways. We may not like head shops, but does the Minister agree that illegal dealers and the web are both infinitely more dangerous? If so, will he discuss how we can best deal with what I call the Irish dilemma?

One of the most important ways to reduce the risk of drugs to young people is through information and education, as the noble Lord, Lord Patel, and others have mentioned. By banning all psychoactive substances for consumption—even the most harmless ones and maybe even beneficial ones—the Government will fail to give any useful message to young people. Yet messaging and education is far more useful than any law. The law has to be a message; it really does.

If, on the other hand, the Government adopted the proportionate approach of the European Union regulation, young people would immediately recognise that the drugs which were regulated were relatively safe—that is, those that are labelled with the risks and side-effects of the drug and the recommended dose. Those would be regulated drugs. Within such a system, young people would be far more likely to avoid drugs which were banned because the message would be abundantly clear—“Don't take those; have a go at these”. That is very helpful, I would have thought. Young people really do not want to kill or seriously injure themselves. The problem is that they do not know what on earth they are doing half the time. All they need are clear messages. The Bill does not achieve that at the moment although I hope that we can turn it around so that it does. This is far too important an issue to be left to regulations. I can see that the Bill offers opportunities for regulations to achieve some of these things, but I do not believe that is the right way to do it. I will argue in Committee that we should take this seriously.

We all agree that the Government need to avoid criminalising young people, as I said. A way needs to be found in the Bill to discourage people from switching from synthetic to traditional controlled drugs for which

[BARONESS MEACHER]

they will immediately face criminal sanctions. They will be criminalised and the Bill will not have achieved its one really good intention—namely, not to criminalise young people. Therefore, I hope that the Minister will be willing to discuss how best to achieve this incredibly important objective. Does he agree that the penalties related to a substance should be proportionate to the risks associated with that substance? If so, will he discuss possible ways to achieve that objective, too? For example, we hope to debate an amendment to the Bill which will discourage young people from switching from relatively safe synthetic substances to alcohol. This cannot be a good thing. After all, alcohol kills about 22,000 people a year, as I think the noble Baroness, Lady Browning, mentioned. Okay, five people is five too many but five relative to 22,000 is rather a different order of things.

I turn to a few rather different points. Many widely sold drinks contain psychoactive substances. Schedule 1 refers to food, including drink, which does not contain a prohibited ingredient. Does the Minister agree that, as it stands, the Bill would ban beverages containing, for example, small quantities of psychoactive amino acid or quinine? Is tonic water to be banned? One does not want to be frivolous but it is important that we take on board the breadth of this Bill.

Similar problems could arise with commercial products where it is not clear to the authorities whether the substances are for human consumption or not. I understand that industrialists will not be at all happy to be interviewed by the police just in case their normal inputs are covered by the Bill. We need to protect industrialists and people operating in the commercial world. That is what those behind the proportionate European Union regulation exercised themselves to achieve. They did not want the regulation to bother or interfere with commerce.

Another issue concerns establishments involved in research into psychoactive substances. The Bill covers that issue to a degree but does not cover it completely, and there is a lot of worry out there on the part of researchers. Will the Government consider exempting all research units, universities and research enterprises from the scope of the Bill? It would be much simpler if people were not investigated about substances they are importing simply for their work.

Before ending, I want to touch briefly on New Zealand, as the Minister mentioned it. New Zealand tried to introduce a proportionate system whereby private companies were encouraged to pay for research into low-risk substances, and then have those products licensed. It is true that the system did not produce any licensed substances because the costs were too high for those businesses. If the Government were willing to create a rational, successful policy, they could do so, but the research would have to be funded by either foundations or the state, or perhaps a mixture of both. Such a system could be incredibly cost-effective because of course drugs are incredibly costly to the taxpayer, in criminal justice costs, health costs and so on. If you had a number of licensed products—properly labelled and all the rest of it—that young people could take safely, you really might save an awful lot of money for the taxpayer.

In conclusion, new psychoactive substances offer real opportunities for a sensible Government—and I believe this is a sensible Government—to achieve a rational drugs policy which would create a safer world for our young people. I hope we can all work constructively together to achieve that objective.

5.05 pm

Lord Farmer (Con): My Lords, I support the Bill, not least because it is a good example of why we should take the needs of families into account when setting the legislative agenda. It is my firm belief that we should consciously seek to strengthen families throughout the legislative agenda. This means backing parents as they seek to raise their children with clear boundaries, and protecting young people from those who would seek to profit from their misery. As has been noted throughout this debate, we really are concerned with young people—they are who we keep on mentioning; it is not the older generation but young people we are concerned with.

Our debate is all the more poignant because, according to yesterday's papers, one young woman remains in hospital after five young people were admitted over the weekend suffering from the effects of taking one such legal high, which was sold openly to them at a festival. It is this human tragedy and the effects on families that should move us to act. It is clear that a rising number of families are being ripped apart by these drugs. Although the shadowy nature of the drugs makes estimation difficult, the signs are there. We have heard a lot of statistics today, but the number of police incidents involving these drugs, including domestic abuse, has gone up by more than 150% in the past year. More people—mostly young, as I have said—are being admitted to hospital. More are entering addiction treatment dependent not on illegal drugs but on this new generation of substances. Tragically, as we have heard, the number of deaths linked to these drugs is rising.

Part of the blame must lie with the sellers, but it also lies with the inadequacy of the law as it stands. Repeatedly, people have said, "They are available in the shops, I thought they were safe". What help are we providing to parents if we continue to allow this confused state of affairs? On the one hand, we say through the law that certain substances such as cocaine or heroin are bad and should not be available; on the other, we say that substances that produce the same or worse effects are freely available to buy in high street shops—the so-called head shops. The targeting of children is particularly egregious and reveals the intentions of the sellers. Despite being labelled as not for human consumption, these substances are often packaged like sweets and sold at pocket money prices. As numerous undercover reports have found, the sellers know exactly what they are doing and provide advice on how people should take the drugs. It is this availability that is part of the danger to the young. How can parents hope to educate and protect their children when the Government send out such a confusing message?

I want to address those libertarian arguments that people have the right to do whatever they want and government has no right to intervene. With regard to this debate, I am afraid that such an approach does

not take into account the realities of life or how people lead their lives. It also abrogates our responsibility to protect the most vulnerable in our society. First, the effects on others in society of those who have consumed these drugs can be profound, which impacts the freedom of others. Beyond the burden on public services—and thereby the taxpayer—we should note the increasing reports of assaults, violence in prison and domestic abuse, all related to the consumption of these drugs.

More importantly, we have a duty, as I say, to protect young people, who are not deemed to be responsible adults. The evidence from Ireland, which we have heard much about this afternoon, is that banning the high street sale of these drugs works to protect young people. I have evidence here which is possibly in contrast to that of the noble Baroness, Lady Meacher. The Centre for Social Justice spoke to doctors in hospitals across Ireland last summer, and the message that came back was clear. In 2010, when the ban came in, the number of admissions of young people suffering the effects of these drugs was greatly reduced. One doctor said that the difference was like night and day. This was because the number of head shops went from more than 100 to fewer than 10.

With the internet as an alternative source for these drugs, your Lordships might find it counterintuitive that young people were accessing these substances in high street shops at all. There have been several suggestions as to why this was the case. First, young people think that because the substances are available to buy in a high street shop, they are somehow regulated and therefore safe.

Baroness Meacher: One possible explanation for the drop in people going to hospitals when a ban is introduced is that they are nervous of turning up there having taken an illegal substance. It is possible that the increase in deaths may have something to do with people not going to get the help that perhaps they needed—but we need some more research into these matters.

Lord Farmer: I thank the noble Baroness for her intervention and I take note. Secondly, young people do not necessarily have access to credit cards with which to make online purchases. Thirdly, they might not like the idea of having these drugs delivered to their parents' home. Whatever the case, the results were stark and the doctors were supportive of the ban. It is of course not the entire solution. Enforcing this law so as to tackle the supply online will be key. What plans does the Minister have to discuss the implementation of the ban with the National Crime Agency?

We also need to ensure that addiction treatment services are available to those who need help. Local authority budgets are, as we all know, strained and everyone is having to make adjustments. However, helping people off drugs and into work is surely an investment worth making. Crucially, we must make sure that prevention, early intervention and education are priorities. We know from prevention science that any message that children receive at school must also be backed up by what they hear at home. This ban will send a clear signal to children and parents that these substances are dangerous and should be avoided. Rather

than undermining parents' authority, the law will put us back on their side. There is no silver bullet—I think that we all agree on that—but as part of a broader response, this action is necessary and proportionate. It is our duty to protect the vulnerable and the young—and so I, too, welcome the Bill and wish it well on its passage through the House.

5.13 pm

Baroness Bakewell (Lab): My Lords, I am pleased to join in this debate about the Government's Psychoactive Substances Bill because the issue is one about which we should all be concerned. There is evidence from across Europe that there is a steady increase in such newly created drugs, with some 450 currently being monitored there. Statistics from the UK detect a slow rise, from 41 such substances in 2010 to 49 in 2011, 74 in 2012 and 81 in 2013. However, the very Home Office review setting out those statistics also said that substances so identified were not in widespread or even limited use.

There have been deaths associated with such substances. We have heard the statistics—one of the problems of speaking late in a debate is that your Lordships will already have heard them. However, the numbers are going up: from 29 in 2011 to 52 in 2012 and 60 in 2013. Every death is to be regretted but those figures are, as that same review commented, relatively low compared to overall deaths from drug misuse generally, which amount to nearly 2,000. Of course, the number of alcohol-related deaths is much higher—some 20,000 a year, which we regularly accept—but alcohol is the one psychoactive substance specifically excluded from the Bill.

I welcome the chance to debate the Bill because I believe that its proposed blanket ban, with special exceptions, is contrary to the way we do law in this country. British citizens expect to be free to behave and do as they wish and to consume what they choose unless those things are expressly forbidden one by one. Blanket bans are not the way we go about life in this society. I believe this blanket ban will have numerous unintended consequences that will not be to the benefit of those it seeks to protect.

There is no doubt that we face a growing increase in the number and use of drugs throughout national life. Many are beneficial: medical discoveries are hailed with delight as they promise treatments and even cures for ailments that have long devastated lives. The world of sport is dominated by the use of drugs to enhance performance. The issue for each sport is to determine which drugs, and in what combinations, are allowed and which are specifically banned. At every turn the chemists are rushing to be ahead of the ban, to avoid exclusion and to bring human sporting performance to ever higher peaks.

When it comes to leisure use, there is an evolving pattern of use that, in some cases, becomes acceptable. The baby boomers' liking for cannabis has ceased to be the "shock, horror" habit it once was considered to be. Now, legal highs are the latest to pose problems for how we protect the vulnerable and limit harm. We have to face the fact that drugs in all forms will be an increasingly present element in contemporary society.

[BARONESS BAKEWELL]

That is why I believe we need a more nuanced and subtle approach to how we regulate them and how we advise and educate citizens to live with them.

I have been reporting on issues of drug use for BBC television since the 1990s. When I hear that the Local Government Association has called for an outright ban on legal highs, I recall how often I have heard drug specialists, academics, lawyers and police officers tell me that prohibition does not bring about the result society would like. Prohibition of alcohol in 1920s America spawned a vast network of speakeasies and Mafia criminals. Prohibition of drugs has not brought the drug trade to an end; it continues to be one of the world's most established criminal enterprises.

I understand that local authorities are hoping that the Bill, once passed, will enable the closure of head shops, which, among their other goods, sell what are called legal highs—out in the open. This is exactly where they need to be: where they can be identified and monitored rather than being driven underground, where they will fuel another criminal network.

What resources in money and manpower will be made available to tackle the criminal activities that will result from a blanket ban? All psychoactive substances need regulation, which is why we have strict rules governing the distribution and availability of alcohol. In a recent BBC "Panorama", I reported on the major crisis of alcohol-related illnesses among the old. When I subsequently asked, in this House, whether the Government would consider a minimum pricing policy in England to limit the damage that those who would so self-harm can do, the Government refused. Such a policy operates in Scotland, which has seen a fall in alcohol-related deaths. I would like the Government to explain the paradox of being so ready to ban substances sampled by so few, while refusing modest moves against other acknowledged dangerous drugs enjoyed by so many.

In seeking to regulate psychoactive substances, examples are often given—as we have heard several times—of what happened in Ireland and is happening in Poland. I have the same statistics and will not repeat them, but it would be worth the Minister examining in some detail exactly what is going on in Ireland and Poland, and then giving us the up-to-date information.

I look forward to Committee, where we can explore in more detail the ways to regulate NPS and inform and educate all our citizens about the risks that they might consider taking. We have a fine example of a drug control that we might follow. The campaign to reduce smoking is an ongoing success. Steadily and thoroughly, generations have now grown up knowing the risks that smoking brings and seeing on packages and in retail shop notices a constant reminder of the risks they must live with. I am eager for the Government to pursue a policy that brings forward such an informed awareness in the young about the continuing temptation of NPS.

5.21 pm

The Earl of Sandwich (CB): My Lords, this has been a good-humoured while serious debate. Drug addiction, whether legal or illegal, remains a severe

test of the ability of all of us concerned—doctors, psychiatrists, parents, police and lawmakers—to offer sensible advice and durable solutions. We can go on saying that the law must be reviewed and the Misuse of Drugs Act revised. We are now discussing a radical change: a blanket ban on new psychoactive substances. However, the results will always vary because of definitions and because of the effects of drugs on individuals. We are all different human beings and our metabolisms react in different ways.

The Minister mentioned the cat and mouse game. The noble Baroness, Lady Browning, said it was playing catch-up. The law may easily be intervening on the wrong people all the time. So I begin, not for the first time, in sympathy with the Minister who has to steer through these difficult problems and answer this debate. I also welcome the noble Baroness, Lady Chisholm, to the Front Bench on this issue for the first time.

I link this discussion directly to the related problem of prescribed drug addiction, which the noble Lord, Lord Patel, kindly mentioned in his contribution and which the Home Affairs Select Committee linked it with in its report 18 months ago. Here I declare an interest because, as some colleagues will remember from the Health Bill and before, a member of my family has for several years been severely affected by withdrawal from prescribed medicine. Incidentally, patients in this category must not be stigmatised because most are following doctors' orders and doctors can get it very wrong. Some doctors deny that the prescribed drug has caused the problem at all. Patients are then left to cope with withdrawal on their own.

My points are very simple. First, addiction to medicines is every bit as serious an issue as legal highs and controlled drugs. The negative effects of legally prescribed medicines can be devastating and they potentially affect many more people than controlled drugs given the vast number of prescriptions issued every year. Of course, the same point was rightly made about alcohol.

Secondly, while huge resources are rightly devoted to criminality, virtually nothing is spent on prescribed drug addiction because it appears that no harm is caused to society; it is society that is causing the harm. Yet a mere handful of charities are coping with increasing numbers of desperate people who become dependent and cannot easily withdraw. Despite the—I am afraid—feeble efforts of the Department of Health and a few exceptions among primary care trusts, the devolved NHS and three successive health Ministers have virtually ignored the problem, having shown a lot of enthusiasm to begin with.

I refer to a fact-sheet produced by the Council for Evidence-Based Psychiatry for a meeting of APPGITA, the All-Party Parliamentary Group on Involuntary Tranquilliser Addiction, founded by the late and respected Jim Dobbin, of both of which organisations I am a member. The noble Lord, Lord Patel, mentioned some of these points. In England alone last year, there were over 80 million prescriptions for psychiatric drugs. Almost 10 million people in the UK, or around 15% of the population, are taking tranquillisers, antidepressants or other psychiatric medications at any given time, all of which have the potential to create addiction or dependence. Some 57 million prescriptions were issued

for antidepressants in 2014 in England, which is a rise of over 500% since 1992; 11% of women and 6% of men are taking them regularly.

The prevalence of depression has not risen since 2003, but prescription numbers are increasing because more patients are taking antidepressants for longer. Over 1 million people are long-term users of tranquillisers, including sleeping pills, despite clear guidance that they should be used for no more than four weeks. Tranquillisers, antidepressants, antipsychotics and other psychiatric drugs can all be helpful in the short term, but long-term use—as with cocaine, cannabis or alcohol—is associated with serious harm. Furthermore, a large number of patients suffer debilitating symptoms for years following withdrawal from prescribed drugs, while some are left with symptoms that may persist indefinitely.

The government response to the Select Committee report, published last May, draws attention to various half-hearted attempts by the Department of Health to deal with the problem of prescribed drugs. However, it welcomes, as I do, the initiative by the Board of Science of the British Medical Association, which is at last undertaking a long-awaited report on involuntary dependence on prescribed medicine. This report, when it comes in October or soon after, will undoubtedly have enormous influence on the Government's attitude to this whole issue. But it will be too late for some of the withdrawal charities. One of them, CITA in Liverpool, had to close recently because of a lack of funding, following changes in the NHS. There are only a handful of these charities. Another closed last year in Cardiff for similar reasons, and the saintly counsellor who ran it now finds herself unable to find alternative employment because the negative effects of prescribed drugs are just not a priority for the local clinical commissioning group.

Patients depend on a frail voluntary service. There are fewer than 10 charities groups that provide support to individuals trying to withdraw from benzodiazepines. They are currently located in Belfast, Bradford, Bristol, Camden—only in Camden, in the whole of London—Cardiff, Liverpool—at least there was one in Liverpool—Manchester, north Wales and Oldham. Only three of these support individuals withdrawing from antidepressants and none specialises in withdrawal from other psychiatric drugs.

The Government have a particular duty to provide appropriate services for people who have been harmed by medicines supplied through the NHS, yet they are clearly failing to do so. Guidelines need to be updated to reduce overprescribing, and support services need to be introduced across the country to help affected patients withdraw slowly and safely. Doctors need to be properly trained to recognise these harms and to provide appropriate support. More research is needed to investigate the harms associated with long-term use.

Finally, there is the acute problem of the misuse of both NPS and prescribed drugs in prisons. The noble Lord, Lord Rosser, mentioned this earlier. I know that this is already in the sights of the Ministry of Justice. Her Majesty's Inspectorate of Prisons has drawn attention to it and the Centre for Social Justice highlights it in its most recent report on drugs in prison. Once again, this

shows the grey area between lawful prescription and criminality and the constant risk that while some culprits may be caught, the innocent victims will usually be forgotten.

5.30 pm

Lord Mancroft (Con): My Lords, I am very pleased to welcome the Government's attention to this important issue. Drugs use is an extraordinarily complex political issue, which is why it has proved so intractable. It is also one of the most damaging social issues in the UK today. The cost to the criminal justice system of dealing with drugs is, at the last count, about £12 billion a year and rising, so it is not cheap.

We have before us today a Bill that implements a policy that I thought, until the noble Lord, Lord Paddick, spoke, was agreed by all three main political parties in their manifestos, although apparently not the Liberal Democrats. I do not know whether it is agreed in the Scottish National Party manifesto because, although I am sure it is a cracking read, I have not got round to it yet, but I am sure the SNP will support us in spirit if not otherwise. As many noble Lords have said, it is also supported by an expert panel. I have been around a long time, and I tend to think that when all political parties agree about something, particularly when they are supported by an expert panel, they are probably heading in the wrong direction, but that is the way things are.

It is helpful to start where the noble Baroness, Lady Meacher, started by seeing what we have in common. Every speaker in this debate, those listening to it and those on the Front Benches are all motivated to try to reduce the harms drugs do, particularly the health, social and criminal harms. The noble Lord, Lord Paddick, who is not in his place, talked about his experience. I, too, had great personal experience of drugs, experience I would rather not have had, many years ago. That gave me an interest, which I have developed. I have had a particular interest in drug treatment for about 28 years. For the last 15 or so years, I have also had an interest in drug prevention.

The noble Earl, Lord Sandwich, talked about the treatment of prescription drug addicts and used the word "feeble". I say to him and the rest of the House that most of the treatment in Britain today is feeble. One of the reasons for that is that we do not spend enough on it. We spend just under 10% of our drug budget on treatment, and just under 1% on drug prevention. That is to deal with the demand for drugs. The sad thing is that we know that treatment works—we can demonstrate that—yet we spend so little time and focus on it.

Reducing the harm of drugs was the motive behind the Misuse of Drugs Act 1971. It is quite clear to those who have read the papers that that is what the drafters of that Bill were thinking at the time. Looking at it now, 45 years later, it is very difficult to come to the conclusion that the Misuse of Drugs Act, which aimed to prevent the distribution and use of drugs, including heroin, cocaine and cannabis, was an overwhelming success. This Bill is a response to a change in the pattern of drug use. Heroin, cannabis and cocaine were not really problems in Britain in the 1950s, but by the time the 1960s finished and the 1970s started they

[LORD MANCROFT]

were becoming a problem, and the result was that the Government of the day introduced the Misuse of Drugs Act. Ten or 15 years ago, although we had psychoactive substances, nobody really used them as drugs, certainly not as recreational drugs, but that too has changed. Like other drugs, people take them for fun, but some people—thankfully a small minority, although it is growing because use is increasing—incur harm: mental health problems, physical health problems and, as we have heard, death. The Government's response, which was explained carefully and thoughtfully in a measured way by my noble friend Lord Bates, is similar to that of the Governments in the 1960s and 1970s and is to restrict supply by use of a mix of criminal and civil sanctions.

The Bill, as we know, aims to ban the manufacture, sale, marketing, distribution and supply of all these substances. In practice, what it will do is prevent the sale of these substances by retail outlets—the so-called head shops, of which there are a few hundred here in the UK. Most of the substances sold are manufactured in China and India and have found their way here by post. The Government believe that the majority of sales take place via the head shops, the retail outlets, while acknowledging that a small but immeasurable amount comes via the internet and then the post. If you look at the evidence widely from around the world, and indeed from the various departments here, it is clear that the evidence is not as clear-cut as has been suggested. What is clear is that the amount of these drugs bought on the internet and coming in through the post is quite large and has increased, and there is no suggestion that it is going to do anything but increase in future. That is the lesson not just in the UK but from around the world.

My real concern is that the Bill will lead not just to a closure of head shops, which I am sure will happen, but to what happened after the Misuse of Drugs Act was passed in the 1970s: it will just mean a diversion of supply. The noble Lord, Lord Patel, and the noble Earl, Lord Sandwich, both drew attention to the problem of prescription drugs. In that case, the dealer is the biggest dealer of psychoactive drugs in Britain: the National Health Service. If it, with all its rules, regulations and committees, cannot do this properly, what hope does the Home Office have with one small Bill?

It is not just the manufacture and content of the drugs that are always one step ahead of the law; it is also the importation, supply, marketing and sale. The nub of the matter before us today is this: I share with the Government the desire that our children, grandchildren and godchildren, and indeed everyone else's, should not take drugs, but I am not so naive as to believe that, whatever I or the Government say—and I do not set much store by government messages—children will not do that. Every scrap of evidence that we have tells us that they will and do take drugs, in exactly the same way that your Lordships will drop into the Bishops' Bar for a drink after this debate, and for exactly the same reason.

Here is where I differ from the Government: when our children and grandchildren go out to buy drugs, I would infinitely prefer that they bought a product that was as safe as we could make it—safer than nicotine

or alcohol, I hope—with its contents free for all to see, at a price that is reasonable, and from a regulated supplier, like nicotine, alcohol and, I hope, prescription drugs. Today the Government are ensuring that that will not happen and that the only suppliers of these products will be unscrupulous criminals, way outside the reach of the law, selling drugs to our children and grandchildren in the dark—the dark of the street corner or the dark of the web. Some will be caught; most will get away with it. Actually I do not really care what happens to them, but I care desperately about the young people who will be harmed and their inconsolable families.

My noble friend Lady Hollins talked about evidence. We do not have enough evidence. She talked about delaying the Bill. I doubt that the Government will; they never delay Bills. It is clear from the remarks all over the House that the evidence about where these drugs come from, and how they will arrive in future, is unclear. However well meaning the Government are, and I am quite certain that they are, all the evidence from the past 40 years is that attempts to control the supply of drugs have failed, and that tells us what might happen in future.

The Government cite as support for their case what has happened in Ireland and Poland. The Minister was kind enough to take the trouble to go through the Bill with me, and I am grateful for that. The Government clearly believe that the measures in Ireland and Poland have been a success. I have to say that the evidence I have seen, as for other speakers around the House, indicates that the early fall in drug use and its consequences in those countries have been reversed, and that the problems are now increasing and will increase further, as the noble Lord, Lord Rosser, suggests. Both sides cannot be right but it is clear that the evidence is not well-enough developed to form a balanced opinion, and to legislate without a balanced view, without being able to make a judgment, is a mistake.

In preparing for this debate I looked at the European Union's contribution: its directive, which is 47 pages long. Rather like the SNP's manifesto, it may be a cracking read, but I could not keep awake for all 47 pages. However, one part of it that jumped out at me from the page was where it said that the European Union's own response was "inadequate". To call your own response inadequate is quite something—and it needs another response. Whether the next one will be another 47 pages, I do not know.

Past evidence has repeatedly shown that a gap in the market is almost immediately filled by somebody else. More than that, a restricted drug is replaced by a more dangerous one, as we have already heard. That has happened in the UK in the past, and it will happen again now. Poly-drug users—users of lots of different drugs, which nowadays is everybody—are not by their nature very choosy.

Fascinatingly, in the Bill, for the first time ever, as other noble Lords have pointed out, possession for personal use will not be a crime. I would be fascinated to hear my noble friend explain the Government's thinking behind that. I agree with it, but if it applies to these drugs, why does it not apply to all the other drugs, too? That would be the route to go down.

In politics, as in most things, timing is everything. All over the world today, the mood is turning against the war on drugs. The USA, South America and middle America, and other countries such as Afghanistan and Mexico, which have been torn apart by drug cartels and drug-related crime and which have enormous health and social problems, are slowly beginning to turn away from using the criminal justice system to solve what is a health and social problem. I admire the Government's resolve and I applaud their motivation in seeking to tackle this issue today, but I wonder about their motivation, and whether they remember the story of King Canute.

Recreational drugs are a demand-led market. Before us today is another measure to restrict the supply of those drugs. It may or may not succeed; I imagine it will, to a certain extent. Past evidence is that it will not displace some supplies for very long. However, the demand following this measure will remain unchanged, and so the likelihood on the evidence we have today is that the demand will be met in another way, and that will lead us back to square 1.

5.42 pm

Lord Howarth of Newport: My Lords, we are agreed on all sides of the House that, with new psychoactive substances, we are presented with a seriously dangerous situation. Noble Lords have mentioned the numbers of deaths that have been recorded; we have no statistics—we cannot obtain them—on the amount of long-term damage to mental health and on other health damages that may be caused by the use of those substances. Very frequently, we read stories in the media about tragic outcomes for young people who have taken a new psychoactive substance of one sort or another. The noble Lord, Lord Farmer, spoke eloquently about the anxieties of parents and the responsibilities that government has to support parents and families, and he was quite right on that point.

It is a simple thing for a moderately competent organic chemist to tweak the molecular structure of an existing, controlled substance to create a new substance which, as the law stands, is uncontrolled. The development of the internet has transformed the marketing and distribution of drugs, so that we face this hideously dangerous combination of the facility with which new substances can be created, distributed and obtained.

The latest annual report of the European Monitoring Centre for Drugs and Drug Addiction talks in some detail about how web sales are developing. It is an unfortunate fact that Britons appear to be exceptionally reckless, prone to bingeing and poly-drug usage and relaxed about buying their drugs from sources about whom they know little or nothing. The new toxicology is terrifying. Mephedrone is effective at a 10th of the dose of ecstasy, and a gram of a new hallucinogen may contain enough to provide 5,000 doses. The noble Lord, Lord Kirkwood, talked about the importance of dosage in this situation. People who consume new psychoactive substances are doing so on the basis of no information about the composition, safety or toxicity of the substances that they are ingesting. It can be only a question of time before a new psychoactive substance that has widely lethal consequences is launched on a market of ignorant and gullible consumers.

Clearly, action is necessary and the Government are right to seek to address this problem. However, there is no clear solution, as I think we all agree. What we certainly need is a rational discussion, and I am very pleased that the All-Party Parliamentary Group on Drug Policy Reform, chaired so ably by my noble friend Lady Meacher—I call her “my noble friend” because I regard her as a great friend—initiated this process. I add to the praise that has been given to Norman Baker for the work that he did as a Minister in the Home Office in the coalition Government, and for the establishment of the expert group, which indeed contains some very real experts—among them people who were witnesses to the all-party group's inquiry. Similar processes have been undertaken in Scotland and Wales, leading to broadly similar conclusions.

However, I believe that the impulse to slap into manifestos a commitment to ban was all too typical of the way that politics works and that we would have done better to go more slowly. Is it really true that the Government omitted to consult the Advisory Council on the Misuse of Drugs as they drafted this legislation—or at least not until the very last stage when the Bill was already written and just before it was tabled in Parliament? Did they ask the council for its advice on the relatively narrow, though very important, aspect of the legislation, which is how on earth people are to discover what is a psychoactive drug and what is not? As my noble friend Lord Patel noted, the ACMD has a statutory duty to act as the Government's adviser in this field. I hope that if they failed to seek the ACMD's advice earlier, it was not because Home Office Ministers have all too often not liked the advice that they have received from the ACMD, whether it is about the classification of cannabis or about khat, or indeed about how to deal with nitrous oxide, which it recommended should not be banned but will be caught by the Bill. The ACMD should not be sidelined.

Noble Lords will have seen a very powerful critique of the legislation from Transform and Release, which reached me only yesterday. If noble Lords on the Front Benches have not yet had an opportunity to study that critique, I hope that they will do so. The briefing from Transform and Release raises a whole number of questions about police powers, the legal and scientific complexities associated with the Government's proposals, the impacts on research and the thinness of the impact assessment. All those matters we can examine more closely in Committee.

The problem that we have to deal with is not that people use psychoactive substances. They always have, whether for stimulus, for insight, for relaxation, for pleasure, for oblivion, for the thrill of risk or for the thrill of challenging authority. The question is not whether we should seek to ban all psychoactive substances; the Government are not proposing to do that. Who are we, as politicians, to tell people what psychoactive substances they may use or what their recreational practices should be? At least I am pleased that the Government have not sought to criminalise use. However, I fear that this decriminalisation is more apparent than real, because they will criminalise social use in the sense that a group of people might share a substance, and they will of course criminalise the importation of psychoactive substances. The problem that we need to

[LORD HOWARTH OF NEWPORT]

address is the risks and dangers that consumers are undergoing. We need to ask how we can protect them as well as we can from the dangers that many noble Lords have described. The object in drugs policy should be to minimise these dangers and the harms that drugs cause.

All the evidence we have about the history of prohibition, as my noble friend Lady Bakewell reminded us, shows not only that it does not work but that it is counterproductive. During our recent era of prohibitionist orthodoxy—since the 1960s with the UN conventions and the passage of the Misuse of Drugs Act 1971 in this country—we have seen, generation by generation, an increase in drug usage. I understand that it is now the case that about one quarter of people in their 50s and 60s have used drugs, one third of those in their 40s have used drugs, and more than half of those in their 20s and 30s have used drugs. Even during the period of prohibition, there has been a cultural normalisation of drug usage. There have been many unfortunate consequences of this—among them, I contend, an alienation from politics. Such large numbers of people as regularly use recreational drugs, and, certainly in their own belief, come to no harm, consider that the politicians who seek to ban their pleasures are authoritarian, ignorant and irrelevant and do not understand them. This is one factor that has tended to undermine people's respect for the political class.

As the noble Lord, Lord Mancroft, reminded us, the costs are absolutely huge. The impact assessment is extraordinarily optimistic. It seems highly likely that one consequence of this legislation will be a misallocation of rapidly declining police resources that need to be harboured and used for top priorities in ways that will really be effective. Prohibition creates a free market in crime—it is a gift to international organised crime—and of course causes immense misery and human waste. I see no reason why this new extension of prohibition will not have the same effects.

The expert panel identified arguments on both sides. It identified merits in the course that the Government are pursuing, but it also identified a number of problems. Among the problems is the confusion that the legislation will cause. For example, there will be inconsistency between the regime created by the Misuse of Drugs Act and the regime created by this legislation. Why decriminalisation under one piece of legislation and for one range of drugs but not another?

Critics of the Bill will be tempted to accuse the Government of hypocrisy and irrationality when they look at Schedule 1, which exempts tobacco and alcohol. Tobacco is so lethal and, as the noble Baroness, Lady Hollins, reminded us, the number of deaths caused by alcohol is vastly greater than the number of deaths caused by controlled drugs. However, while the Government ban new psychoactive substances, they refuse to introduce minimum pricing for alcohol. What about sugar? I do not know whether sugar could be a psychoactive substance, but food is exempt and so presumably sugar is exempt. We have all heard of a sugar rush. Simon Stevens, chief executive of NHS England, described the habitual use of such quantities of sugar in the national diet as a “slow burn of poison”, and yet I do not think that any action is being

taken on that. People will see the policy as arbitrary and see introducing a blanket ban as evidence that policymaking on the basis of evidence is being abandoned.

The Bill will be impractical. How on earth are people to know what a psychoactive substance is? The definition is very broad. In practice, we are going to be faced with the difficulty that very inadequate resources are available for forensic testing. The ACMD has belatedly been asked what its views are on this. There will be big costs to the criminal justice system as test cases are brought and the attempt is made to establish legally watertight definitions in this field.

Above all, though, the Bill will not work. Yes, head shops will be closed down and that will be pleasing to the Local Government Association—one understands its worries about anti-social behaviour on the part of some numbers of young people gathered round some head shops and the difficulties for overstretched trading standards officers. But the Government are missing the opportunity, if they would choose to take it, to mobilise head shop proprietors as useful advisers—people who might actually seek to help young people. That may seem an improbable notion to some noble Lords, but it would not have been beyond the bounds of possibility.

With the closing of head shops, we will no doubt see, as in Ireland, Poland and perhaps Romania, a temporary fall in the consumption of new psychoactive substances. But the experience, as noble Lords have said, of Ireland and Poland is certainly that subsequently, as consumers turn to online sources, consumption rose. My understanding is that young people in Ireland are now the heaviest consumers of new psychoactive substances in Europe. Those experiments that took place in Ireland and Poland were laboratory experiments from which the Government might have learnt. Evidently, they were an own goal, as my noble friend Lady Meacher told us the President of Poland admits. Instead of seeing that, the Government are copying that legislation.

The culture of this country has changed so far. I understand that it is now widespread in universities, particularly in academically elite universities, to use so-called smart drugs to improve people's performance. In highly competitive situations such as in universities or the City, modafinil, Ritalin or varieties of amphetamines are routinely bought by significant numbers of people online. We may well see that chemical cognitive enhancement becomes almost as much a familiar practice as cosmetic surgery.

People will turn to buy their drugs online. They may go to China. Have the Government had discussions with the authorities in China about how they might seek to work with them to prevent our fears being realised? When mephedrone was banned, they had discussions with the authorities in China—production was immediately transferred to India, the quality deteriorated and consumption rose. Official corruption is widely pervasive in the countries from which these substances come. It will be impossible to inspect all the packages that come through, and I fear that we shall end up worse off than we have been.

I see that I have talked for too long, as I too often do. I will conclude by saying that I do not think that legislation in one country can work. There will be an

opportunity to develop international collaboration on a constructive basis. Next year, the United Nations General Assembly will hold a special session on drugs. There is a tide of change, as other noble Lords have noted, away from criminalisation and towards treating drug abuse as a health issue and social issue rather than a criminal issue. Yet between 2009 and 2013 in the United Kingdom, 60,000 young people aged 20 and under were criminalised for possession of drugs. At the same time, the Home Office's international comparative study, on which I congratulate it, concluded in 2014:

“Looking across different countries, there is no apparent correlation between the ‘toughness’ of a country’s approach and the prevalence of adult drug use”.

The Home Office was tiptoeing towards decriminalisation but then, come an election, the default position was to resort to a ban.

All of us need to think hard about this. The Government need to think again and I hope that in Committee we can assist the Government to think again and find useful ways to advise the elected House by way of amendments to this legislation.

5.58 pm

Baroness Hamwee (LD): My Lords, last week during the debate on the Queen’s Speech, I asked a question that was not facetious. I asked why, if it was as easy as a blanket ban, we had gone through such hoops over the past few years. The press coverage that has been given to this Bill has given the answer: it is not that easy, certainly as defined. Examples of psychoactive substances falling within the definition have been given.

We have heard about flowers today, and air fresheners have been mentioned—as have e-cigarettes, ironically. I have to say that if the Bill were to outlaw those smelly devices that hang from the rear-view mirrors of some minicabs, masking who knows what other aromas, I would be delighted. I must not be too facetious, but I will say that I am very relieved that the Home Secretary allows me my substance of choice, which is coffee. I am sure that it is addictive both physically, because I have felt withdrawal symptoms, and psychologically; I need that mug on my desk. But like chocolate, it affects my mood, and I did wonder whether to send for a bar of chocolate to present to the Minister at the end of the debate. My noble friend suggested that that would be improper.

This is about definition. We have talked about the Irish legislation, and one question I have for the Minister is about the difference in definition between this Bill and the Irish legislation. It is very similar, but it talks specifically of,

“stimulation or depression of the central nervous system ... resulting in hallucinations or a significant disturbance in, or significant change to, motor function, thinking, behaviour, perception, awareness or mood, or ... cause a state of dependence, including physical or psychological addiction”.

The term “significant” may be significant. I do not know whether the Minister is in a position to tell the House why that definition is not replicated, or if not now then perhaps when we put down an amendment to explore it at the next stage.

But as noble Lords have said, definition is not everything, and it seems that in Ireland the closure of head shops has led to displacement to a more risky market. On the question of definition, I confess that I am baffled by the definitions set out in the schedule of exemptions, listing products that do,

“not contain any psychoactive substance”.

There is circularity in this and the Minister knows that I am concerned about it. If we need to express this more clearly, let us say so.

We also need to consider whether dosage should affect legality—a point made by my noble friend Lord Kirkwood. Let us look at how we express things. The Association of Convenience Stores has understandably asked for guidance in this area.

A term often used in debates in this House is “balance”. On this subject, like the noble Lord, Lord Patel of Bradford, I would focus on “proportionate”: a proportionate response to harm on the basis of evidence as to the whole context and the overall outcomes. I start from the view, which I think I share with the noble Lord, Lord Mancroft, that human beings with their frailties will always be human, and that they will, as they have always done, continue to take drugs. In other words, there will always be a market. So how do we get to the position of “least harm”? I suggest that we should look not just at Ireland and Poland but at states such as Oregon in the United States of America, which, in my terms at any rate, are progressive.

Some drugs we ban, and we know that prohibition does not work. Indeed, it may be the prohibition of classified drugs that has led to a demand for new psychoactive substances. People died from drinking moonshine when alcohol was prohibited. Some we regulate like nicotine and some we tax like alcohol. I risk becoming frivolous again, but if quinine is outlawed, are we to be driven to drinking neat gin without the tonic?

All this has led me to think that something like the New Zealand model deserves more attention. As I understand it, the model has not been abandoned and is still a work in progress. It incorporates the benefits of working from an evidence base as to harm with a thorough risk assessment, addresses the reliability of the product—quality control—and the reliability of the source, and avoids engagement with illegal suppliers. The noble Baroness, Lady Meacher, talked about the cost-effectiveness of that sort of model.

This is too serious a subject to ridicule, and because it is so serious we must not let the Bill be a knee-jerk political—in the worst sense—reaction to the problem. It is not a matter of being tough or soft on drugs. I do not see it in that dimension at all; it is far more complex. It is a great pity, with all respect—and real respect—for the Minister that the lead on drugs is not the Department of Health and that we are not using this opportunity to introduce different responses, as for instance in Portugal, with more emphasis on treatment. Addiction is not an appetite that can be turned on and off at will. I see the Bill as a lost opportunity. From these Benches, but not only these Benches I suspect, we will try to use the opportunities that we might be able to grasp in the forthcoming stages.

[BARONESS HAMWEE]

Like others, I must mention education, but I mean something far more than formal school-based education, although I have to say that the unsatisfactory approach to PHSE that we have seen for too long is not encouraging. The noble Baroness, Lady Bakewell, referred to it as “informed awareness”, which is a very good way of looking at it. The Minister has acknowledged this, but he will understand the danger, which concerns many of us, of diverting both attention and resources from health and education to enforcement, and from the more important focus of enforcement—the point made by my noble friend Lord Paddick from both experience and informed imagination, if I can I put it that way.

I am baffled that the Government’s projection is of only five prosecutions a year. Like others, I am pleased that possession for personal use is not to be an offence. But is it realistic to ban social supply, to rely simply on police discretion, and to make it an offence to import for personal use? These points were made by noble Lords, Lord Rea and Lord Howarth. I was a member of the APPG, led by the noble Baroness, Lady Meacher. The work done was immensely informative and helpful. I was struck during the evidence sessions that significant numbers of young people were taking NPSs because, the NPSs being called legal highs, they were aware of the implications that illegal highs would give them and of the implications of collecting a criminal record. I am not suggesting that we should oppose what the Government are trying to achieve. I was also struck during those hearings that the name of a drug is no guarantee of its content, which can vary from week to week and from place to place.

I hope that we can take the opportunity—the amendment, which is very moderate, is already drafted—to look at the medicinal use of cannabis and other products that deal with neurological conditions. This House will clearly be interested in whether the Bill is too restrictive of research, as the noble Baroness, Lady Hollins, mentioned, and—I do not think this has been mentioned—in issues that we have addressed in other Home Office Bills, such as there being only a civil standard of proof for orders that will have significant consequences.

Like my noble friends, I endorse the purpose but not the means in this Bill. Culture is, indeed, stronger than law, so why not a full regulatory regime with proper assessment of harm? Legislation must be rational and trusted and command respect. That will guide amendments from these Benches. Clearly, from the debate today, that will not be only from these Benches.

6.09 pm

Lord Tunnicliffe: My Lords, I rise in the somewhat uncomfortable position of speaking from the Opposition Front Bench to support the generality of the Bill. I hope this will not be a role I shall have to take too often, since Oppositions normally disagree with Governments.

The Bill before us is quite simple. It is interesting that today’s debate has, in many ways, not been about the Bill. Today’s debate has been about the essence of drug policy. A number of noble Lords have said—I praise those who have said it, such as the noble Baroness,

Lady Hamwee—that prohibition does not work. That is not the position of the law at the moment, of the Misuse of Drugs Act 1971, of the Government, of the Opposition, or of a majority of the general public. There is a belief that prohibition works and the law seeks to enforce those prohibitions. Debate on decriminalisation—that is what much of the debate has been—has been interesting, but it is not what we seek to do.

Baroness Meacher: I just want to raise the point, which has already been mentioned, that it is absolutely clear to everyone involved that across the world and certainly across Latin America, which has been most severely affected by prohibition, prohibition has not worked.

Lord Tunnicliffe: The debate will proceed smoothly if we recognise that I am in a minority. I repeat: prohibition is the policy of the Government and of the Opposition, and it is supported by the majority of people in this country. There have been many interesting speeches, but they have not persuaded either major political party or the general public that that is the way to go.

I put to noble Lords who have that belief that probably the worst place to start with decriminalisation is with NPSs. The whole problem with NPSs is that they are drugs of unknown consequence. The debate about alcohol—I entirely recognise the point that alcohol has serious negative effects, but, as a user, I have to say that it also has some really rather nice, positive effects—should be addressed through education. I entirely take the point brought out by the noble Earl, Lord Sandwich, and by my noble friend Lord Patel that prescribed drugs can have extremely serious effects when mismanaged, but the problem with NPSs and why they should be added to the prohibition we presently have is the unknown consequences. Ultimately, the goal of the manufacturers of these drugs is to create drugs every bit as potent as the presently proscribed drugs and to sell them to our young people, our old people, our hard-working people and our lazy people.

We support what the Bill is trying to do. It is intellectually extremely simple. It basically says that this is a race that is impossible to win, through which dangerous drugs are introduced to the markets, the merits of their impact are then determined and only then are they banned. It is a race that we simply will not win—the criminals will run faster. For that reason, we support the intellectual concept that we ban the generality and then make exceptions. Either you live with that concept and support the essence of the Bill, or you do not.

I have heard a number of speeches essentially saying that noble Lords do not support the essence of the Bill. I praise in particular the noble Lord, Lord Kirkwood, for his unambiguous statement that he will oppose the Bill. That is fair enough and I see where he is coming from; I just do not happen to agree with him and nor do the Opposition. I find it difficult to understand how he can say that after the speech of the noble Lord, Lord Paddick.

Part of the Bill could be interpreted as moving into the area of harm: the regulatory powers in Clause 3. Clause 3 allows the Government to add to the list

substances which are harmless or negligible in their impact, as the noble Baroness, Lady Meacher, said. The Opposition cannot think of such substances or envisage such a situation, but clearly the Bill allows for it. It is arguable that providing that absolute ban and an absolute power in Clause 3 to add new substances to Schedule 1 should be better defined. I would like the Minister to explain further how Clause 3 will be used. What will be the criteria, and the process, for allowing a new substance to be added to Schedule 1? If somebody develops a safer form of alcohol with a different molecular structure, how would they set about getting it added to the list? I do not believe there is a safer form of alcohol; safer consumption is all about education. However, if a safer drug was developed and it came under the terms of the Bill and was introduced, what processes would the manufacturer of such a drug follow?

There are also absolutely proper concerns about research and industry, which were mentioned by a number of noble Lords, including the noble Baronesses, Lady Hollins, Lady Browning and Lady Meacher, and the noble Lord, Lord Kirkwood. The Government must go out of their way to convince us that those concerns are met. We have to recognise that research is not just about finding out what we do not know, but finding out what we do not know about places where we may not want to go, because you have to understand the environment in which a situation arises. You may be doing research that leads in a direction with which the Government feel uncomfortable, but that is no good reason to ban research that is better informing the debate about drugs. Research establishments, especially established ones with good ethics policies—I am sorry to be rather conservative about this—that know which research to do and how to do it, should have a pretty easy ride in getting their processes approved under Clause 10.

The other area on which I think there is consensus everywhere except in the Treasury is that the non-legislative thrust of the anti-drugs policies should be greatly strengthened. The £180,000 that the Government have almost boasted of spending in this area is pitifully inadequate compared with the problems we are addressing. Therefore, I hope that the noble Lord, Lord Bates, will be able to assure the House that the education and prevention programmes referred to in paragraphs 12, 13 and 14 of the Angelus Foundation literature and the education of professionals to stop prescribed drug abuse activities will be undertaken in parallel.

I hope that the Minister will also be able to assure me that the programmes outlined in the October 2014 government response to the new psychoactive substances review expert panel report still stand, given that that review was published under the coalition. Are the new Government conservative in tooth and claw, as it were? Will they stick to the non-legislative concepts that they promise to stick to in the response, and try to ensure that such efforts are every bit as vigorous as the legislative efforts?

The Bill takes a sensible, proportionate and progressive approach to enforcement. It has the concept of the notice, the order and the criminality. I welcome the fact, as other noble Lords have done, that it is not

criminalising simple possession and use, but the problem with that flexible approach is that it needs to be co-ordinated between many local authorities, police forces and the National Crime Agency. I would therefore like an assurance from the Government that the right amount of effort will go into providing guidance to make it work at a local level, and that there will be proper consultation with people who understand this area about providing that guidance. We have heard a number of concerns about the consultation that has gone into the Bill.

On a more detailed point, I dutifully read the Bill, the notes and all the relevant paperwork; I almost feel that one should get a medal for that. But I am still unclear about the “not for human consumption” loophole, so I seek an assurance from the Government that that loophole, which has been used in the past, is properly covered by the Bill.

Finally, the noble Lord, Lord Farmer, raised the issue of international co-operation. The Government should assure us that there will be vigorous efforts to co-operate with our friends in Europe—at least, my friends in Europe—because the extraterritorial jurisdiction issues in this area are very complex, and the more co-operation we can have worldwide, the more effective we will be. But I come back to the fact that we believe in prohibition. We believe the loophole is a dangerous one, and we believe that this Bill is a sensible way of plugging it.

6.22 pm

Lord Bates: My Lords, this has been a debate of characteristic quality in your Lordships’ House. Immense expertise from around the House has been brought to bear on this issue—by people who have actually devoted their lives to trying to understand and tackle this issue of drugs. I was very struck by the words of my noble friend Lord Mancroft, who talked about the common approach shared by all sides of the argument about seeking to protect our children and the community from the effects of these harmful substances. In that we are united. How we go about that will be a matter of some debate as the Bill moves into Committee, should your Lordships choose to grant it a Second Reading, and the Government will welcome that.

Your Lordships’ expertise has raised some very thoughtful points. I summarise them as falling into two broad categories: those that look at the particular issue of psychoactive substances and those that relate to wider drugs policy. The noble Lord, Lord Tunncliffe, touched on that when he said that effectively there were two debates going on here. The all-party group has done some excellent research and taken great evidence—I read its report and recommendations very carefully before this debate, as your Lordships would expect—and I think it is almost quorate in this debate, with the noble Lords, Lord Rea and Lord Howarth, my noble friend Lord Mancroft and the noble Baronesses, Lady Hamwee and Lady Meacher, all present and all making points.

Another view points to the growing threat of these new psychoactive substances. The early warning system in the European Union—among our European friends, with whom we are working closely on these issues—

[LORD BATES]

identified 24 new substances in 2009; in 2010 there were 41; in 2011, 49; in 2012, 74; and in 2013, 81. We are on an exponential rise in the number of these new substances. As my noble friend Lady Browning made clear, this amounts to playing Russian roulette.

I found one of the most telling contributions to be that of the noble Lord, Lord Kirkwood, because he came at it from the perspective of pharmacology. I hope that does not impinge on his street cred among his colleagues. He talked about the challenges of dosage and of manufacturing these compounds. Things are coming into this country and being identified at the moment which people are consuming when they have absolutely no understanding of how they have been produced or what is being put before them. People are looking at that and saying, similarly to my noble friend Lord Farmer, who talked about families, that things must be done. That approach is not lacking in intellect.

There is a growing number of substances so, effectively, we have a choice before us. Do we go down a route where we have base legislation in the Misuse of Drugs Act and then the Government come forward with 500 individual measures and temporary banning orders on banned substances, but their manufacture is unshown? It is almost like a Whac-A-Mole game in the arcade; once one is stopped, another pops up somewhere else. Or do we go down the route of a blanket ban? I know that that is not supported in many of the contributions that were put here, but let me offer some of the places where it is supported.

The Home Affairs Select Committee took a lot of evidence, and a lot of the people who gave evidence to it also gave evidence to the all-party group on the misuse of drugs. The Select Committee said in its summary, first, that:

“We conclude that there is currently an epidemic of psychoactive substances and it is highly likely that the creation of new psychoactive substances will continue to increase in the future unless immediate action is taken”.

It went on to recommend that,

“new legislation, brought in to address the problem of ‘legal highs’, is specific and focused. The law must ensure that the police and law enforcement agencies can take action comprehensively against those who sell new psychoactive substances and remove the reliance on existing legislation which is ill-suited to comprehensively tackling this problem. The legislation needs to allow sellers of new psychoactive substances to be prosecuted for an offence which is equivalent in sanction to that of the Misuse of Drugs Act”.

In addition to the Home Affairs Select Committee, support comes from: the expert panel appointed by Norman Baker, as was mentioned; the similar panel appointed by the Scottish Government to look into this, which came to the same conclusion; the Health and Social Care Committee of the National Assembly for Wales; several countries, including Ireland and New Zealand, which were mentioned; and each of the main political parties in England and Wales at the election. I am simply saying that it is not an inconsequential body of opinion and we are, rightly, trying to follow the evidence in legislation. I suggest that even if it is not compelling in some areas, that is quite a comprehensive body of evidence.

I want to address some of the specific issues raised.

Lord Howarth of Newport: Before the Minister departs from what he has just be discussing, I would be grateful if he would answer one point. He suggested that there is a binary choice: either we carry on attempting to swat these new psychoactive substances as they arrive in our midst or we have a blanket ban. However, there is a third option, which is selectively to legalise and strictly regulate certain drugs of which society has long experience, which are less dangerous and which society on the whole knows how to deal with. Is that not an option that ought to be considered? It is a market solution. People would be interested in and attracted to taking those drugs if they were looking for some psychoactive experience, but if they found that they could get satisfaction from a range of carefully selected, legalised substances, they would be much less interested in buying what the online merchants were offering them. It would be a market way to address the problem.

Lord Bates: I hear what the noble Lord says and once again I appreciate the passion that he feels about the topic and his knowledge of it, but in a sense that debate went before this piece of legislation. We looked at that. I do not want to run through the whole list again but other people, including the Home Affairs Select Committee and the expert panel, all looked at that and came to the view that that was not the case. That is a point of wider drug policy. It is perfectly legitimate to continue to have that debate, but not in relation to the Psychoactive Substances Bill now before us, which is seeking to tackle a very specific problem in a way that we believe is in keeping with the expert opinion that we have had.

I recognise that the noble Lord, Lord Patel of Bradford, and many others—I keep saying this—have an immense level of expertise. I should, in mentioning expertise, say that I am very grateful to be assisted on the Front Bench by my noble friend Lady Chisholm, who also brings immense experience to this, from her understanding both of drugs and of their health effects. The noble Lords, Lord Rosser, Lord Patel, Lord Kirkwood and Lord Rea, asked about the Advisory Council on the Misuse of Drugs. Its 2011 report called on the Government to explore legislation for new psychoactive substances. The Home Office set up a six-month policy review, with a primary focus on looking at how law enforcement powers could be strengthened. Ministers informed the ACMD in October 2014 of the Government’s plans to develop the blanket ban approach. The Home Secretary has written again to the ACMD, and welcomes its views on how we strengthen the UK’s forensic capacity and capability to support the implementation of the legislation in 2016. The ACMD continues to provide expert scientific advice which is greatly valued by the Government. The Misuse of Drugs Act 1971 will remain the cornerstone of our response to dangerous drugs and the ACMD will continue to have the central statutory role in assessing the harms of specific new psychoactive substances and provide advice to Ministers.

Lord Mancroft: I am most grateful to my noble friend for giving way. In the course of what he was just saying, he talked of the Misuse of Drugs Act being a cornerstone. I understand that, but the Misuse of

Drugs Act's primary purpose was to restrict the supply of certain drugs—heroin, cocaine et cetera—and it has completely and utterly failed to do that. It has not restricted the supply; we have a massive oversupply. You could say that that is because time has passed, but the fact is that the Act has failed. If that is the cornerstone, and we are moving on to another stone in the same pavement, it is completely logical to ask why this new stone would succeed where every previous measure has consummately failed.

Lord Bates: My noble friend asserts that the Misuse of Drugs Act has failed. You can of course observe and point to the availability and prevalence of drugs within society and draw some conclusions, but one cannot make a direct comparison because, had the Misuse of Drugs Act not been in place in 1971, perhaps that situation and the situation that we are trying to address might be a whole lot worse.

What can you do in government? You can look at issues. We have parents, including Maryon Stewart, and the Angelus Foundation coming to us and urging us to take action and clamp down on these drugs. We read in our regional and national newspapers of horrendous situations—young lives lost and blighted. We see new drugs come on to the market branded as “plant food” and “not fit for human consumption”, as if that gets the sellers off the hook of their moral responsibility for what they are selling. Are we supposed to say “No, we do not take any action”, simply because there is an availability of drugs in society? Well, the Government do not take that view and nor did the expert panel, the Home Affairs Select Committee or any of the mainstream political parties in their manifestos. I am sure that this debate will go on, and it is good that we do this. I will now try to address some more of the particular points raised.

The noble Baroness, Lady Bakewell, and my noble friend argued the case and called for a more regulatory approach. As I indicated in my opening remarks, the expert panel considered the regulatory model along with others in operation in different jurisdictions, and concluded that it presented significant practical difficulties. Trying to define what we mean by low-harm substances would be a legislative and scientific minefield. For many substances, the evidence of chronic harm can take years to emerge, as can dependence potential. It is not clear how the harms could be properly assessed to medicine standards without animal and human trials. Do we really want to contemplate further animal testing for these purposes? I also remind the House that there have been no applications for licences in New Zealand—further evidence, if it were needed, of the difficulties of going down the regulatory route.

The question of definition was raised by the noble Baroness, Lady Hamwee, and the noble Lord, Lord Patel. The Bill is designed to capture substances supplied for human consumption that have a psychoactive effect. Its aim is to capture substances that are not currently controlled under the Misuse of Drugs Act 1971 but that, as with all drugs, carry health risks when misused. Many new psychoactive substances are still legal due to the speed at which they are produced, with manufacturers inventing new substances by tweaking chemical formulas, as I already mentioned.

The point about criminalising young people was raised by the noble Baroness, Lady Hollins, again from her deep experience in this area. I assure her and other noble Lords that there is no question of criminalising the users of psychoactive substances. As proposed by the expert panel, the Bill is focused on the trade in these substances: those who manufacture, import, distribute or sell new psychoactive substances. The Bill contains no offence in relation to simple possession—a point welcomed by the noble Baroness, Lady Meacher. As she suggested, for young people tempted to use new psychoactive substances our focus must be on prevention and, where necessary, treatment. I look forward in Committee to setting out in more detail the comments in that expert panel report on the work that will need to go hand in hand with education and health prevention available to people.

The noble Baroness, Lady Hollins, argued in favour of the Irish approach. The Bill is closely modelled on that approach. I will come back to that specific point about the Irish definition.

The impact on research was raised by the noble Baronesses, Lady Meacher and Lady Hollins, the noble Lord, Lord Kirkwood, and my noble friend Lady Browning. A number of noble Lords sought reassurance about the impact of the Bill on legitimate research. I can indeed offer such reassurance. Research that does not involve the human consumption of a psychoactive substance would not be caught by the provisions of the Bill. Where research has reached the stage of clinical human trials, Schedule 1 to the Bill exempts investigational medicinal products from the scope of a psychoactive substance. This includes active substances being used in such trials. If further latitude for research were needed, the regulation-making power in Clause 10 enables us to exclude specified activities from the ambit of the offences.

The noble Lord, Lord Rosser, raised the issue of keeping the list of exempted substances under review. He asked about the process for ensuring that the list of exempted substances in Schedule 1 is kept up to date. We believe that the list will be relatively stable. Indeed, Ireland has not needed to amend its equivalent list in the five year since its legislation was enacted. I should add that we are not legislating here for a regulatory regime for new psychoactive substances; there is no provision in the Bill to enable the licensing of so-called low-harm substances, and the regulation-making power in Clause 3 is not designed for that purpose.

The noble Lord, Lord Rosser, and my noble friend Lord Farmer asked about the implementation of the Bill. We are working with the police, the National Crime Agency and the Border Force on implementation, including the development of appropriate guidance, and we will extend those discussions to the Local Government Association—another organisation that is actually being supportive of the Government's approach here. We are also ready to work with other bodies, such as the Association of Convenience Stores, to provide bespoke guidance for their members. A very good point was made about what we are doing to engage with countries that lead in supplying these things, such as India and China. I do not have an answer to that, but I shall write to noble Lords about that in further correspondence.

[LORD BATES]

I mentioned the cross-European approach. The noble Earl, Lord Sandwich, asked whether we could be more specific about when the ACMD is due to report. NICE and the Medicines and Healthcare Products Regulatory Agency have published advice to clinicians on how to help people to withdraw from medicines to which they are addicted. Public Health England has produced advice to commissioners on how to assess the need in their area for specialist services to help people to withdraw from medicines to which they are addicted.

I am conscious that there are a number of issues that I have not had time properly to address here, and I shall be very happy to write a follow-up letter to begin a discussion with colleagues, and perhaps to arrange, ahead of Committee, meetings between interested Peers and some of the experts from whom we have taken our opinion. I am very happy to give an undertaking to do that. With those assurances—

Lord Kirkwood of Kirkhope: The Minister has been very solicitous in answering the legitimate questions that have been asked. It would help me enormously to prepare mentally for Committee if he could give me some idea of what he would consider success to look like over the next five or 10-year period, should this Bill become an Act.

Lord Bates: There is some of that in the impact statement, although I accept that it may not be as much as noble Lords would like. However, I am very happy to see whether we can go back and see what extra we can produce in answer to that very specific question. I shall write or provide further comment in Committee. But in the light of those remarks and those commitments—

Lord Patel of Bradford: I have just one question about the Department of Health and Public Health England. Many noble Lords have said that they would prefer to see this legislation under the health remit. I just cannot see where Public Health England and the Department of Health have been engaged or involved in taking this Bill forward, and it would be useful to have a view on that.

Lord Bates: That is a very fair point, because what we are talking about here is the legislative response, and what we are passing into law here is in relation to the Psychoactive Substances Bill. That is an element of the stick that is part of government policy, but it cannot be set aside from the carrot—if I can express it that way—set out in the expert panel's report, which said that the health elements must be equally as strong and robust. I have not dwelt on them as much because that is not the subject of the Bill, but it is the subject of government policy. I would certainly be very happy to set that out in greater detail for other noble Lords.

Lord Winston (Lab): I apologise for interrupting at the end of the debate. I was held up at Imperial College, which is why I did not put my name down to speak. When I was chairman of the Science and Technology Select Committee some years ago, we looked intensively at the medicinal uses of cannabis. One of the pieces of evidence was very compelling and enabled us to think about rather permissive legislation. It was that a number of people who had medical conditions, such as glaucoma and multiple sclerosis, took cannabis, which was not prescribed, to relieve their symptoms. They were very clear that they did not want a high. They did not want to get intoxicated. They monitored how much they were taking so that they were in complete control. Will the Minister clarify the position? Possession of those drugs would still be legal, but any attempt to obtain them would involve those people in an illegal act, would it not?

Lord Bates: I am very cautious in responding to the noble Lord, who has a well-deserved reputation for knowledge in these areas. I will write. He will be reassured to know that other noble Lords are planning to bring forward an amendment in Committee to allow a more substantive debate on that point, which they are perfectly entitled to do. I assure the noble Lord that at that point I will outline the Government's position in more detail.

Bill read a second time and committed to a Committee of the Whole House.

House adjourned at 6.46 pm.

CONTENTS

Tuesday 9 June 2015

Introduction: Lord Keen of Elie	723
Oaths and Affirmations	723
Questions	
Pensions: Draw-down Charges	723
Housing Associations: Right to Buy	725
Air Pollution	728
Burma: Rohingya	731
Armed Forces Deployment (Royal Prerogative) Bill [HL]	
<i>First Reading</i>	733
Automatic Electoral Registration Bill [HL]	
<i>First Reading</i>	733
Referendums (Franchise) Bill [HL]	
<i>First Reading</i>	733
Right to Die at Home Bill [HL]	
<i>First Reading</i>	733
Polling Day (Saturday) Bill [HL]	
<i>First Reading</i>	733
Built Environment Committee	
<i>Motion to Agree</i>	734
Equality Act 2010 Committee	
<i>Motion to Agree</i>	734
Sexual Violence in Conflict Committee	
<i>Motion to Agree</i>	734
Social Mobility Committee	
<i>Motion to Agree</i>	734
Psychoactive Substances Bill [HL]	
<i>Second Reading</i>	734
