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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, 30 June 2015.

2.30 pm

Prayers—read by the Lord Bishop of St Albans.

Oaths and Affirmations

2.36 pm

Lord Tordoff took the oath, and signed an undertaking to abide by the Code of Conduct.

Eurostar: Passengers with Pets
Question

2.36 pm

Asked by ***Baroness Sharples***

To ask Her Majesty's Government what discussions they have had with Eurostar about allowing passengers to travel with pets.

Lord Gardiner of Kimble (Con): My Lords, Defra has not had any recent discussions with Eurostar on this issue. Government do not impose any obligation on transport companies to carry pet animals; it is a commercial decision on the part of those companies as to whether they offer this service to their customers. Eurostar does offer carriage to recognised assistance dogs, and works closely with the Animal and Plant Health Agency to make sure that all the relevant import requirements are met.

Baroness Sharples (Con): My Lords, passports for pets has been 100% successful, has it not? I was involved in that from the beginning, with my noble friend Lord Soulsby. Why, oh why, will Eurostar not take pets? You can take your dog on the sleeper to Scotland, and all the ferries take dogs, so why not the Eurostar?

Lord Gardiner of Kimble: My Lords, as I say, this is a matter on which commercial companies make their own decisions. I looked at Eurostar's website, and it is conscious of and concerned about safety in particular, although it is very keen to help with assistance dogs. I acknowledge the part my noble friend played in passports for pets. We now have an EU pet travel scheme, which last year carried over 170,000 dogs, cats and ferrets.

Lord Snape (Lab): My Lords, if it is possible to take a pet dog through the Channel Tunnel using the euroshuttle trains, why is it not possible to take them on Eurostar? Is the Minister aware that Eurostar is the only train operating company that forbids the carriage of pets? Finally, it will not do to say, "It's a commercial decision". Surely, in an area such as this the Government ought to be making representations to the company concerned.

Lord Gardiner of Kimble: My Lords, I would be very surprised if Eurostar is not listening now and understanding the exchange we are having. In point of fact, today, carriers have to be approved by the Animal and Plant Health Agency, which requires the necessary facilities to be in place to check every pet travelling with its owner for compliance with the pet travel rules. However, I of course hope that Eurostar is listening.

The Countess of Mar (CB): My Lords, are Her Majesty's Government happy that van-loads of puppies should be imported from eastern European countries with apparently fake vaccination and worming documents? If they are not, what are they doing about it?

Lord Gardiner of Kimble: My Lords, we will not tolerate any illegal passage, whether under the pet scheme or whereby animals are brought into this country under the Balai directive for sale or rehoming. I think that the noble Countess may have in mind the recent report from the Dogs Trust which resulted in the Chief Veterinary Officer writing to authorities in Lithuania and Hungary, among other countries, reminding them of their duty to ensure that pet passports are completed correctly and that the welfare of dogs intended for sale is safeguarded.

Lord Anderson of Swansea (Lab): My Lords, now that the Government have either sold off, or will shortly sell off, their shares in Eurostar—the family silver—why should Eurostar pay any attention to what the Government have to say?

Lord Gardiner of Kimble: My Lords, Eurostar is a commercial operator. As far as I know, it is trading successfully, and I am very happy if it continues to trade in the private sector.

Baroness Parminter (LD): My Lords, given the increase in pet travel, can the Minister say how many spot checks the Association of Port Health Authorities has undertaken in the last year to ensure that the pets coming in are only those that comply with the regulations?

Lord Gardiner of Kimble: My Lords, all carriers are audited by the Animal and Plant Health Agency and the results show that they are doing a good job. Last year, only 0.9% of those checked through the audit process were found to be non-compliant with the entry rules. If there are any further details, I will be in touch with the noble Baroness.

Baroness Farrington of Ribbleton (Lab): My Lords, will the Minister accept my assurance that he should be careful when dealing with the issue of ferrets? We had a ferret called Rikki-Tikki-Tavi, which belonged to my son, and she enjoyed trouser legs. It is very important that people take care. A former colleague of mine called Derek Hatton started a ferret appreciation society in Wigan. I had to warn him that I would turn up with said ferret, and that he had to beware of her interest in going up trouser legs.

Lord Gardiner of Kimble: The noble Baroness has given us a splendid reason why one should be extremely cautious of ferrets. Last year 68 ferrets came in under the pet scheme, and I very much hope that everyone has taken note of what the noble Baroness said about trousers.

Baroness Ludford (LD): My Lords, at the risk of bringing this down to the boringly serious, perhaps I may ask about Eurostar. There are supposed to be direct trains from Marseille and Lyons but everybody has to get off at Lille with all their baggage—and presumably their pets, if they have them—to go through passport and baggage checks, which takes about two hours. As we are trying to resist further runways at airports, should we not be doing everything we can to foster direct rail travel from the continent to the UK? When is that problem going to be solved?

Lord Gardiner of Kimble: My Lords, we are trying to ensure that all the requirements of the pet scheme are adhered to, because we do not wish to see the arrival of any diseases. That is why our requirements are as exacting as they are, and, as a result, we have remained rabies-free for all these years. Of course, direct travel is part of the modern way of life, and certainly of contacts within Europe. However, as far as the Question is concerned, Eurostar has made its commercial decision, and that is up to it.

Lord Grantchester (Lab): My Lords, in June 2014 the BBC made a programme called "The Dog Factory", highlighting the problems experienced by people buying puppies from unscrupulous breeders in the Republic of Ireland. Can the Minister update the House on enforcement measures between the United Kingdom and the Republic of Ireland, and can he confirm that the situation was rectified in the changes made to the pet travel scheme on 29 December 2014?

Lord Gardiner of Kimble: My Lords, we take very seriously the illegal movement of puppies from farms, wherever they may be. Ireland has recently passed its own legislation relating to the welfare of dogs, and I am very happy to write to the noble Lord, and place a copy in the Library, so that the update that I think he would like to have is available to him.

NHS: Whistleblowing

Question

2.44 pm

Asked by ***Lord Desai***

To ask Her Majesty's Government what is their policy on whistleblowing in the National Health Service.

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, the Government are committed to improving openness in the NHS and ensuring that whistleblowers are considered an asset and receive proper support. The *Freedom to Speak Up* report sets out principles and actions to help create a culture change in the NHS. It calls for local accountability, with system regulators providing national oversight and guidance. We will publish our consultation response on a package of measures arising from the review and next steps shortly.

Lord Desai (Lab): I thank the noble Lord for that Answer, but is he aware that there is considerable anxiety among junior doctors, especially among those from a black or ethnic-minority background, that their career prospects may be harmed or they may even find their contract terminated if they are whistleblowers? Will he promise to take a look into that problem?

Lord Prior of Brampton: The noble Lord makes a very important point. There are many junior doctors from BME backgrounds who do indeed feel that it is difficult to raise concerns. One recommendation in Sir Robert Francis's report is that every NHS organisation should have a local freedom to speak up guardian, which I hope will help. But whatever we do to change the law or codes from the GMC and others, it will not replace the need to have an open, transparent and learning culture in all NHS organisations.

Baroness Walmsley (LD): My Lords, would it not be more likely that such discrimination as mentioned by the noble Lord, Lord Desai, would be stamped out if there were more black and ethnic minority members of staff at senior levels in the NHS? Is he aware that the proportion in London NHS trusts of those from a BME background is only 8%, compared to 45% in the general population and 41% among NHS staff?

Lord Prior of Brampton: The noble Baroness has probably read *The "Snowy White Peaks" of the NHS*, which sets out very clearly for all to see the really shocking lack of representation of people from BME backgrounds at senior levels of the NHS. This is an absolute priority. NHS England has appointed Yvonne Coghill to look at all the racial inequality issues, and she and NHS England have my full support in their endeavours.

Lord Harris of Haringey (Lab): My Lords, I declare an interest as having two family members who work in the NHS. Further to the answer that he has given, will the Minister reflect on the fact that many trusts have contracts in which staff are warned that if they bring the trust into disrepute, they are likely to face disciplinary action? This has a stifling effect on whistleblowing and people raising issues of legitimate public concern with the media. Will he comment on that practice and what is going to be done about it?

Lord Prior of Brampton: In Robert Francis's report, *Freedom to Speak Up,* he specifically mentions—I think it is in principle 13, from recollection—that there should be no such clauses in NHS contracts unless it can be demonstrated that there is indeed a true public interest. In any severance package in which there is a gagging clause of any kind, CQC is entitled to inspect those agreements during its inspections.

Baroness Wall of New Barnet (Lab): My Lords, the duty of candour has made a big difference in hospitals to staff owning up if there is a difficulty or they have made a mistake in any part of their service. Does the Minister accept that there is a relationship between that and whistleblowing and with the guardians that are in existence in hospitals, such as in my own in Milton Keynes, where they are designated by the people in the department and so are trustworthy in the sense of how they are elected or selected? Does the Minister not agree that the duty of candour is making a difference to the whole culture of the health service being open and honest?

Lord Prior of Brampton: The noble Baroness is absolutely right. The duty of candour, which puts an obligation on organisations to show candour, is making a difference. I congratulate the GMC and the NMC, which have spelled out clearly in their codes that the professional duty of candour is equally important.

Baroness Masham of Ilton (CB): My Lords, if one was going to whistleblow, who would one contact?

Lord Prior of Brampton: There are a number of organisations that the noble Baroness might wish to contact, but most important is to raise the matter first in the local organisation. All organisations should have their own whistleblowing procedures, and that is the right way to raise concerns. If any individual finds that not to be satisfactory, the right way to proceed is through the Care Quality Commission, which has a dedicated hotline in its service centre in Newcastle.

Baroness Brinton (LD): My Lords, which takes priority: duty of candour or an employee's contract with their NHS trust where they are gagged?

Lord Prior of Brampton: The duty of candour should clearly take precedence. It should be seen in the context of an agenda to improve patient safety in hospitals; if we are not open about our mistakes, we will not learn from them.

Lord McFall of Alcluith (Lab): My Lords, the experience of whistleblowers in the NHS is not for the faint-hearted, with lip service paid to internal hotlines. To ensure the maximum protection for genuine whistleblowers with no retribution whatever, is it not time that a legal duty of care towards them is imposed on NHS trusts?

Lord Prior of Brampton: The Government have taken a lot of action to help protect whistleblowers. I think that there is a limit to the law in this regard and the changing culture is more important. The Small Business, Enterprise and Employment Act 2015 places an obligation on NHS employers not to discriminate against people who have blown the whistle or raised concerns. I believe strongly that the law has a role to play in this but that we need a fundamental change of culture in the NHS.

Lord Hunt of Kings Heath (Lab): My Lords, the noble Lord rightly expects a fundamental change of culture among NHS bodies, but does he agree that one way in which that could be helped would be if Ministers welcomed criticism from chief executives and leaders of those bodies of unrealistic expectation on the part of Ministers and of there being too few resources? Does he agree that such leaders are stamped on for making their views known, which is simply not conducive to encouraging openness in their own organisations?

Lord Prior of Brampton: The noble Lord makes a good point. If one looks back at the history of Mid-Staffordshire, one sees clear evidence that the priorities of that organisation were too skewed towards hitting financial targets and meeting other extraneous objectives such as becoming a foundation trust. The message to all NHS organisations should be that patient safety and quality of care come first.

Gaza Strip: Rafah Crossing

Question

2.52 pm

Asked by ***Lord Hylton***

To ask Her Majesty's Government whether they intend to call for the stationing of UN military observers in the Gaza Strip and the creation of a UN agency to oversee the safe passage of materials essential for reconstruction and access through the Rafah Crossing.

The Earl of Courtown (Con): My Lords, the immediate priority is for the Israelis and Palestinians to agree a long-term, durable ceasefire for Gaza that prevents a return to conflict. In the mean time, we are providing support to the UN-brokered reconstruction mechanism which is facilitating the import of construction materials into Gaza and encouraging Egypt to show maximum flexibility on opening the Rafah crossing.

Lord Hylton (CB): My Lords, is it not time that rather more imagination was used with regard to Gaza? Does the Minister agree that independent military advisers would prevent the endless arguments that we have had in recent years? Similarly, impartial supervision of incoming construction materials and their end uses would speed up reconstruction and reduce the harmful effects of the current blockade. Is it not true that the Rafah crossing is essential for urgent medical cases and, much more widely, for access to the outside world for the people of Gaza?

The Earl of Courtown: My Lords, I carefully note what the noble Lord has said, but we hope that the Israelis and Palestinians will agree to this durable ceasefire for Gaza which will prevent a return to conflict. In the mean time, we will continue to support the UN through its various mechanisms. That includes the UN special envoy on the Gaza reconstruction mechanism, which is facilitating the import of construction materials into Gaza. The noble Lord also mentioned the Rafah crossing. It is important that those areas are opened so that the conditions in Gaza can be improved.

Baroness Warsi (Con): My Lords, what is Her Majesty's Government's view on the United Nations Human Rights Council report on potential war crimes during the conflict in Gaza last year? Does the Minister accept that accountability in previous conflicts is likely to assist in preventing future conflicts? In the light of that, how does he now view the Foreign Secretary's statement in July last year when the United Kingdom abstained on the setting-up of this report by saying that it would,

"complicate the process by introducing unnecessary new mechanisms"?

The Earl of Courtown: The noble Baroness is quite right concerning accountability: there must be a robust process of accountability given the heavy civilian death toll. That includes acts committed by Hamas and other militant groups too. We are pressing Israel to demonstrate accountability for its actions during this conflict. The noble Baroness also mentioned war crimes. Both sides of the conflict have put themselves into a position where perhaps war crimes have taken place. We of course need to keep a careful watch on this matter.

Lord Turnberg (Lab): My Lords, is the noble Earl aware that while Egypt is busily destroying homes on its border with Gaza to try to prevent the smuggling of arms to Hamas, Israel is allowing through the Erez crossing more than 500 trucks—with 15,000 tonnes of goods, including medical aid, benzene and building materials—every day? Is he further aware that while Egypt has stopped the passage of anyone through the crossing into Egypt, 1,200 people a day are coming across into Israel for medical care or business purposes? Should we be pressing Egypt to do the same?

The Earl of Courtown: The noble Lord makes a good point about approaches to the problems in this area. We are concerned by the restrictions at the Rafah crossing and are urging the Egyptians to show maximum flexibility in reopening it. We are also calling on Israel to fulfil its obligation by lifting its restrictions in order to ease the suffering of ordinary Palestinians and to allow the Gaza economy to grow.

Lord Wallace of Saltaire (LD): My Lords, we have already seen Fatah lose control of Gaza to Hamas, and we now see signs that Hamas is threatened by more radical groups within Gaza which might, indeed, include supporters of IS. Given the cycle of violence between Israel and Gaza—and it is a cycle of violence, with both sides playing roles in it—do we not need something more urgent and imaginative to avoid what would be a disaster for the already poor relations between Israel and both entities of Palestine?

The Earl of Courtown: The noble Lord makes a good point. The humanitarian situation in Gaza is deeply concerning, so we are urging key donors to disperse the Cairo pledges. We are encouraging the Palestinian Authority, as the noble Lord said, to engage more in Gaza and to move forwards on reconciliation. We are also continuing to press Israel to do more on exports, power, movements and access. As I said earlier, we are also urging Egypt to show more flexibility at the Rafah crossing.

Baroness Morgan of Ely (Lab): My Lords, as of April this year, of the $3.5 billion promised by donors for the reconstruction of Gaza, only 26% of the money has been released. Not one of the 19,000 destroyed homes has been rebuilt. Can the Minister explain what pressure the Government are bringing to bear on the donors to release the promised funds, and can he confirm whether the UK has honoured its commitments to Gaza on this subject?

The Earl of Courtown: My Lords, the noble Baroness refers to the Cairo pledges. The United Kingdom has honoured 80% of its pledges and has 20% outstanding. That will be spent over the next financial year and will concentrate on job creation, getting people into work, which we all know will help their economy. As for the other countries and their pledges, pressure is being put on them to spend more money in that area.

Lord Ashdown of Norton-sub-Hamdon (LD): My Lords—

Lord Davies of Stamford (Lab): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, we have just had a spokesman from the Labour Benches ask a question, so if we are taking turns, it would normally be the turn of the Lib Dem Benches.

Lord Ashdown of Norton-sub-Hamdon: My Lords, I am most grateful. I think I heard the Minister say that "perhaps" war crimes have been committed. We cannot leave it as "perhaps" war crimes have been committed. Either they have or they have not, and surely Her Majesty's Government and others should now be taking steps to ensure that they understand whether or not that is the case.

The Earl of Courtown: At the particular point when answering that question, I could not find the notes in my folder. As I understand it, war crimes have been committed.

Childcare

Question

3 pm

Asked by ***Baroness Jones of Whitchurch***

To ask Her Majesty's Government what steps they are taking to ensure the effective monitoring of childcare places by local authorities.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, the department's statutory guidance is clear that local authorities should report annually to elected council members on how they are meeting this duty and to make the report available and accessible to parents. We know that the childcare market is thriving. The latest figures just published show that 99% of four year-olds and 94% of three year-olds are accessing the Government's free childcare offer.

Baroness Jones of Whitchurch (Lab): My Lords, I thank the Minister for that reply. He will have seen the recent Family and Childcare Trust report entitled *Access Denied*. It highlights a huge disparity in childcare places across England. For example, 49 local authorities have a shortage of free places for two year-olds in deprived areas, and while some local authorities are proactively managing the shortfall, others are not even bothering to collect the statistics, so the offer and the quality vary considerably from place to place. How can we be sure that future expenditure will be targeted at the families who would benefit the most from this money when we seem to be faced with a lack of nursery places in the most deprived areas?

Lord Nash: The noble Baroness is quite right to say that the recent report is concerning—and we are concerned. Local authorities of course must publish certain information, but only to a limited extent, so the new Bill will go further to ensure that we have better information. I can assure her that we are very focused on deprived areas, and indeed there has been a substantial increase in full daycare places in those areas over the past five years.

Lord Laming (CB): My Lords, following on from the question of the noble Baroness, does the Minister agree that this requires much more than putting a roof over the head of any child who has had a terrible start in life? It requires a robust and effective care plan to be devised for each child in order to help them overcome their difficulties. We have only a very few years in which to get that into operation.

Lord Nash: I agree entirely with the noble Lord, who is very experienced in this area. We all know that these are the most important years in a child's life, but I am encouraged that of the providers who have been inspected under the early years inspection framework, which is a more rigorous one, we now have some 85% of them being found to be good or outstanding, up from 69% five years ago.

Baroness Pinnock (LD): My Lords, does the Minister agree that the problems of undercapacity in the childcare sector will not be resolved unless hourly rates for the free places are substantially increased? The hourly rate is dependent on the vagaries of the early years funding element in the revenue support grant to local authorities. We need to address both concerns if the rates for free places are going to be increased, as well as problems around capacity in the childcare sector if the increase to 15 hours a week is to be provided.

Lord Nash: The noble Baroness is quite right to be concerned about these points; that is why we have a funding review and a task force, and will be entering into a consultation. However, we have to strike a balance between value for money and quality.

Baroness Massey of Darwen (Lab): My Lords, the Minister will be aware of the Select Committee report on affordable childcare. The report indicates that many parents find the provision of the current childcare system difficult and complex. What would the Minister advise a parent to do when they are seeking high-quality childcare for their child?

Lord Nash: The system can sometimes be complex for parents; that is why we are conducting this review. However, holiday care and after-school childcare have expanded substantially in the last few years, and it is important that we continue this flexibility.

Lord Sutherland of Houndwood (CB): My Lords, the Bill before the House could well expand educational expenditure in this area to over £6 billion annually. What steps are the Government taking to be sure that this money is well spent, and that it benefits those most in need in terms of increasing their educational opportunities?

Lord Nash: We will be looking at this closely in the coming review. We have of course been extremely focused on providing for those most in need through the early years pupil premium, the pupil premium, universal free school meals, free childcare for 15 hours for two year-olds, and of course expanding the three and four year-old offer from 12 hours to 15 hours.

Baroness Andrews (Lab): My Lords, has the Minister seen the devastating report that came out earlier this week from the Delegated Powers Select Committee? If he has, what is his response to its conclusions that the absence of any detail in the Bill and the inappropriate delegations of considerable significant powers make it practically impossible for this House to have a meaningful debate on it? Does he not think that he owes it to the House to enable us to do our job in terms of the proper scrutiny of a very important Bill that we would all like to support?

Lord Nash: The noble Baroness is quite right; I have seen that report, and I am very grateful for it. We will have the opportunity to debate it in great detail tomorrow in Committee, when I will be saying more about that. We will be considering the report extremely carefully and making any necessary appropriate amendments.

The Earl of Listowel (CB): My Lords, is the Minister aware of the decline in numbers of the highly regarded nursery schools attached to primary schools? Is he looking at how those numbers can be increased in order to develop capacity in high-quality early years provision?

Lord Nash: I am not entirely sure that the noble Earl is right about declining numbers; I will clarify that for him. I think that provision has in fact been increasing, and we have been making every effort to expand that high-quality provision. We know that it is of the highest quality and tends to have higher-quality staff. We have reduced the bureaucracy to enable primary schools to open nurseries, and we have now allowed free school applicants to apply to open nurseries attached to their primary places. We have been working with a number of schools that are already doing this to learn from the practice so that we can share that practice with other primary schools that want to open nursery provision.

Bread and Flour Regulations (Folic Acid) Bill [HL]

First Reading

3.07 pm

A Bill to amend the Bread and Flour Regulations 1998 to require flour to be fortified with folic acid.

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

Psychoactive Substances Bill [HL]

Committee (2nd Day)

3.08 pm

Relevant documents: 1st Report from the Delegated Powers Committee, 2nd Report from the Constitution Committee

Clause 3: Exempted substances

Amendment 15

Moved by ***Lord Norton of Louth***

15: Clause 3, page 2, line 9, leave out "or vary"

Lord Norton of Louth (Con): My Lords, Clause 3(2)(a) permits the Secretary of State by regulation to amend Schedule 1 in order to add or vary any description of substance, while Clause 3(2)(b) permits the Secretary of State by regulation to remove any description of substance added under paragraph (a). I appreciate that any regulation made under this provision has to be by statutory instrument, subject to affirmative resolution. I appreciate that paragraph (b), which, on the face of it, appears to be a Henry VIII power, is limited by the fact that the Minister can seek to utilise it only to remove a substance that the Minister has added under paragraph (a). A Minister cannot seek to remove a substance that is exempted under the measure as enacted.

However, I have a concern about the provision under paragraph (a) to vary the description of any substance. This concern is shared by the Constitution Committee of your Lordships' House, and I declare an interest as a member of that committee. In its report published at the beginning of last week, the committee draws attention to the fact that the power to vary any description of substance could presumably be employed to narrow the description of such substances, thereby expanding the range of substances brought within the ambit of the Bill's provisions.

The power to seek to vary the description of substance is subject to it being exercised by a statutory instrument but, given the breadth of the power and the absence of any definition of what is meant by varying a description of substance, that may be deemed an inadequate safeguard. Exercising the power by statutory instrument may be necessary but it may not be sufficient.

This is compounded by the fact that, as the Constitution Committee notes, the power to add, remove or vary the description of substances is not constrained by any explicit statement of the purpose or purposes for which the power may be exercised. Any constraint would have to be inferred from the scheme of the Bill but that may be difficult given that, as the committee notes,

"the Bill adopts an ostensibly neutral conception of what should constitute a (non-exempted) psychoactive substance".

There is no notion of harm embodied explicitly in the Bill, so one cannot adumbrate clearly the range of substances upon which its provisions have effect. Given the wide power conferred by paragraph (a) to vary any description of substance, some amendment to the clause to make clear the meaning of vary would seem appropriate, along with a statement of the purpose or purposes for which the power may be exercised; in short, making it clear what it is and when it would be appropriate to use it.

If the Minister were to indicate that the Government would be prepared to consider amending the Bill along those lines, that would allay concerns about the broad and undefined powers given by this clause. Without such an assurance, the prudent course would be to remove altogether the provision to vary any description of substance. That would leave the Minister with the capacity to add by regulation and to remove by regulation anything added. That would offer at least some clarity in a way that we do not have at the moment. One either defines what is meant by varying a description of substance or one removes the term from the Bill. The amendment, by providing for removal, is designed to concentrate the Minister's mind. I beg to move.

Baroness Hamwee (LD): My Lords, my noble friend and I have Amendments 20, 21, 47 and 48 in this group. First, I welcome the introduction of this issue in Committee by the noble Lord, Lord Norton of Louth, which, as he said, was considered by the Constitution Committee. We are lucky to have committees which manage to just about keep ahead of the game in looking at legislation and helping the rest of the House in raising such issues. It is a very important point.

My amendments are in two pairs and both regard the regulations. One of each pair provides that when the Secretary of State consults before making regulations, as well as consulting those whom she considers to be appropriate, she should specifically consult the Advisory Council on the Misuse of Drugs both with regard to exempted substances under Clause 3 and excepting certain actions in regard to offences under Clause 10. The second amendment in each pair provides that she must also make a report to Parliament on the consultation. I have added that assuming that that is what would happen but I seek the Minister's confirmation.

A number of people commenting on this Bill have said that the ACMD seems to have been sidelined when it should be upfront and the centre of what we are doing. I hope that this small point—it is not a small issue, but a small insertion—is something that the Minister and the Secretary of State would be glad to confirm as proper to be in the Bill.

3.15 pm

Lord Howarth of Newport (Lab): My Lords, we should be grateful to the noble Lord, Lord Norton, and to the noble Baroness for drawing our attention to

these points. The Delegated Powers Committee and the Constitution Committee of your Lordships' House had first done so, but it is unsatisfactory that there is so little clarity about the power to vary. We ought always to aim—certainly in this context—for as much legal certainty as it is possible to create.

I am glad that the noble Baroness, Lady Hamwee, has tabled amendments in this group that would amend Clause 10. This clause, which provides powers for the Secretary of State to create exceptions to offences, seems to be quite extraordinarily open-ended. I am rather surprised that the Constitution Committee did not draw attention to that as well. It leaves the Secretary of State free to retire from the field—to alter the specification of offences in all kinds of ways, subject only to the need to consult and the need for affirmative regulations. I submit that that is not a satisfactory way for the Government to legislate. Clause 10, if not Clause 3, does seem to create Henry VIII powers.

There is a broader constitutional point, which I think my noble friend Lady Bakewell made at Second Reading, when she noted that our normal constitutional practice—our normal tradition in this country—is to leave citizens free to do things unless they are specifically forbidden. The tenor of the Bill is to make everything forbidden, unless it is accepted in the field of the use of psychoactive substances. The House should be careful in permitting that kind of exception to constitutional tradition and practice. The policy had better work; it needs to be justified in its practice, because it is a somewhat objectionable principle.

The noble Baroness, Lady Hamwee, has tabled an amendment to require the Secretary of State to consult the Advisory Council on the Misuse of Drugs to report before exercising these different powers. It would be helpful if the Minister would clear up for us what consultation Ministers and their officials had with the Advisory Council on the Misuse of Drugs in the preparation of this report. It is, after all, the statutory duty of the ACMD to keep under review the situation in the United Kingdom in respect of drugs. However, we have been led to understand, possibly erroneously, that the first time that the Home Secretary sought the advice of the ACMD in drawing up this legislation was on 26 May, when she sent a letter asking for its advice on how to achieve better forensic services and to establish a comprehensive scientific approach to psychoactivity for evidential purposes. That was only two days before the Bill was laid before Parliament. It would appear, as the noble Baroness suggested, that the ACMD has been sidelined in the preliminaries to the legislative process.

It is by no means the first time that the advice of the ACMD has been rejected by Ministers of various Governments. Its recommendations in respect of the classification of magic mushrooms, cannabis, MDMA, khat and now of nitrous oxide have all been rejected by the Government. It was not always the case that the recommendations of the ACMD were so routinely ignored. Back in the 1980s, when we faced the crisis of mounting levels of heroin addiction and the spread of HIV and of AIDS, the ACMD's advice was taken, to the great benefit of improved policy.

When the UK Drug Policy Commission chaired by Dame Ruth Runciman reported in 2000, and again when it published *An Analysis of UK Drug Policy* in 2007, it warned of the lack of research underpinning policy development, and that policymakers,

"operate partially blind when choosing effective measures".

It would appear that that may still be the case in 2015. The recommendations of the Runciman commission were dismissed, as were the recommendations of the Global Commission on Drug Policy dismissed by the Home Office in 2011, as were, in 2012, the recommendations of the Home Affairs Select Committee that a royal commission should be established. However, policy should be made not on a basis of political expediency, but in response to evidence. It should be made not on a basis of anxiety about what the tabloids might say but on the basis of the advice of independent experts.

Professor Nutt, the chairman of the ACMD, was sacked essentially for telling the truth about the relative dangers of alcohol and tobacco vis-à-vis cannabis and ecstasy. Mephedrone was classified before the Government had received the advice of the ACMD, but following a huge campaign by the *Sun* newspaper and an endless series of "meow meow" stories, most of which turned out to be false when the facts were properly established. There were many resignations from the ACMD at that period. People in the front line of enforcement—the noble Lord, Lord Paddick, may be able to tell us something about this, if he chooses to do so—found that the vacillations and vicissitudes of policy made life very difficult for police officers in the front line of enforcement in Brixton or elsewhere.

Therefore, what advice does the Minister follow? What does he see as the role of expert advisers, and to what extent has the ACMD been consulted in this context? Certainly, I hope that he will answer the questions articulated by the noble Lord, Lord Norton.

Baroness Hamwee: My Lords, as we are in Committee, I would like to ask the Minister a question which I told the Bill team I would ask him, but which I forgot to include in my previous remarks. Why do the offences clauses, up to and including Clause 10, not receive a mention in the Home Office's human rights memorandum, except a reference in the summary at the start of the memorandum? One would have expected that, having created new offences, they would have deserved some attention in that document.

Lord Kirkwood of Kirkhope (LD): My Lords, I make a very short intervention simply to support this group of amendments ably moved by the noble Lord, Lord Norton, and in particular to support the plea of my noble friend Lady Hamwee for a better explanation vis-a-vis the advisory council—a point made eloquently by the noble Lord, Lord Howarth of Newport. When I read the Bill, I was astonished to find that the advisory council had been sidelined to the extent that it had. If it is to be sidelined in future, this is an extremely important change.

Speaking for myself, I will be looking very carefully at what the Minister says in reply to the previous speeches made on Amendment 47 because, if he is not careful, he might find another plethora of amendments

[Lord Kirkwood of Kirkhope]
being tabled at later stages to restore the advisory council to its rightful role, which it has discharged with distinction in my view since the 1971 Act. This is not an insignificant moment for me. If the Minister can persuade the Committee that these are simply incidental circumstances indicating that the advisory council has been put to one side for the temporary purposes of this Bill, that is one thing. However, if this is a systematic attempt to reduce its significance in future policy-making in this important area, I think noble Lords will want to return to this during later stages of the Bill.

Lord Blencathra (Con): My Lords, I will make just a brief point on the amendment in the name of the noble Baroness, Lady Hamwee. I would be surprised and appalled if the advisory committee was not one of the consultees in the Bill. But I am not sure it is necessary to actually mention it. The Secretary of State is under an obligation to consult such persons as appropriate, and clearly, the advisory committee is one of the top ones on the list to be consulted. If the Home Office failed to do so, in my experience we would be in court on a judicial review within minutes and the Secretary of State would lose the case for failing to consult an appropriate body.

It is one thing having a duty to consult, but that is quite different from being under an obligation to carry out all the advice the committee can give. It is perfectly legitimate for the Government to consult the advisory committee but then reject some of its advice after due consideration. If it is not given due consideration, again, that is a case for judicial review. While I agree that the committee must be consulted, I am not sure it is really necessary to put that in the Bill. Perhaps the Minister will clarify that in his response.

Lord Rosser (Lab): We very much support the points that have been made by the noble Lord, Lord Norton, and the Constitution Committee, and we await with interest the Minister's response to them. I thank the Minister for his letter of 15 June, which followed up on the Second Reading debate, and in particular on questions that I and three of my noble friends had asked about the role of the Advisory Council on the Misuse of Drugs in relation to the Bill.

We are a party to Amendment 20, spoken to by the noble Baroness, Lady Hamwee, which relates to Clause 3 on "Exempted substances". Clause 3(3) says that before any regulations to amend Schedule 1 are made,

"the Secretary of State must consult such persons as the Secretary of State considers appropriate".

The purpose of the amendment is to add the reference to the Advisory Council on the Misuse of Drugs. I note the point that the noble Lord, Lord Blencathra, has just made but one could interpret the Bill as saying that there is no statutory requirement for the Secretary of State to consult anyone because it is open to them to conclude that they consider no person appropriate, despite the importance or significance of amending Schedule 1 and getting any such decision right. No doubt the Minister will comment on the point that in reality, under Clause 3(3) the Secretary of State could not get away with consulting nobody at all and that it obliges them to consult at least somebody. That is the point that the noble Lord, Lord Blencathra, made and I would like to hear a very specific response, on the record, as to exactly what Clause 3(3) means in that regard.

Referring to another point made by the noble Lord, Lord Blencathra, the Minister's letter of 15 June 2015 states:

"The ACMD is required by statute to be consulted before any amendment by Order in Council is made to Schedule 2 to the Misuse of Drugs Act 1971".

The principle of the ACMD being required by statute to be consulted is thus not new, and I do not see how it can be argued that somehow it is unnecessary to put it in the Bill, given that the Minister's own letter refers to that already being a requirement. If the Minister is going to oppose Amendment 20, I hope he will explain the reasons for doing so in some detail. In his letter he says that the Government are,

"ready to consider carefully any recommendations the ACMD may have about other aspects of the Bill".

Has a response been received from the ACMD? Has it said whether or not it wishes to be consulted as per the terms of Amendment 20, to which we are a party? What difficulties does the Minister believe there would be if the ACMD had to be consulted as per this amendment, and who exactly might the "such persons" referred to actually be?

Finally, to come back to the point I made earlier and which the noble Lord, Lord Blencathra, has already made, does the Minister think it right that the Secretary of State could apparently make a change to Schedule 1 without taking expert advice? That is what Clause 3(3) apparently enables the Secretary of State to do, unless the Minister is going to tell me that I have misunderstood it.

3.30 pm

The Minister of State, Home Office (Lord Bates) (Con): My Lords, I am grateful to my noble friend Lord Norton of Louth for introducing this amendment. Perhaps I may structure my response by first putting on the record some important comments which might be helpful to the House and then, at the conclusion of those remarks, seeking to address some specific issues and questions which have been raised.

The Constitution Committee drew to the attention of the House the fact that the power to vary Schedule 1 could be exercised so that something which, on the enactment of Schedule 1, is an exempted substance ceases to be exempted. A similar point was raised by the Delegated Powers and Regulatory Reform Committee in its report on the Bill. The Constitution Committee also commented on the absence of a statement of purpose or purposes for which the Clause 3 power may be exercised. At this point, I would put that in the context of assuring my noble friend that the Constitution Committee has concentrated our minds. I think that the report was published last week, on 18 June, and we will be considering it carefully. We will have a full response to the committee ahead of Report.

As we indicated in our delegated powers memorandum, the list of exempted substances needs to be robust and kept up to date so as not to unintentionally criminalise the production, supply and so on of psychoactive substances that may legitimately be consumed for their

psychoactive effect. Following on from one of our debates last week, I can assure the noble Baroness, Lady Hamwee, that the regulation-making power indeed enables substances to be added to Schedule 1. To take an example, alcohol is both a substance and a description of a substance. It may also be necessary to vary an existing entry: for example, if the regulations mentioned in paragraphs 2 to 5 of the schedule relating to medicinal products were revoked and replaced with new regulations. While we expect the list in Schedule 1 to remain reasonably stable, the regulation-making power affords the necessary flexibility to make required changes relatively speedily should it be appropriate to do so.

We have deliberately drafted this regulation-making power so that it will not be possible to exercise it to remove any description of a substance that is contained in Schedule 1 on enactment. But I would be wary of further narrowing the scope of the regulation-making power, as Amendment 15 seeks to do. I stress that the power is subject to the affirmative procedure, so any regulations would need to be debated and approved by both Houses. I will of course reflect on this debate before responding formally to both the Constitution Committee's views and the Delegated Powers Committee's report.

Amendments 20 and 47 would require the Home Secretary to consult the Advisory Council on the Misuse of Drugs before making regulations under Clauses 3 and 10. The noble Lord, Lord Rosser, spoke in support of these amendments and has added his name to Amendment 20. I begin by saying that the Home Office continues to greatly value the scientific advice provided by the Advisory Council on the Misuse of Drugs. Following its advice over the last few years, we have controlled more than 500 new psychoactive substances under the Misuse of Drugs Act 1971. The advisory council will continue to have its central role in assessing the harms of specific drugs, including new psychoactive substances, for control under the 1971 Act and in providing advice to Ministers.

In drafting Clauses 3 and 10, the Government included a requirement for the Home Secretary to consult with such persons as she considered appropriate prior to making any regulations: for example, regulatory bodies and relevant experts. This was to account for the fact that the Government may need to consider different types of substances and so wanted to tailor their consultations to organisations with specific expertise. For example, if it was thought necessary to change the description of food, we would want to consult the Food Standards Agency. In this example, the advisory council would not necessarily have much to contribute to any consultation. None the less, as noble Lords will have seen from the Explanatory Notes to the Bill, the ACMD was included as an example of the type of consultee the Government had in mind. That being the case, I am happy to take away Amendments 20 and 47 to consider the matter further in advance of Report.

The Government are, again, supportive of the principle behind Amendments 21 and 48, but I question whether we need to specify such a requirement in the Bill. There are many examples on the statute book of requirements to consult before a Minister exercises regulation or order-making powers. It is taken as read that the outcome of any consultation would be published —a point mentioned by the noble Lord, Lord Kirkwood —alongside the making of the relevant regulations or order. We do not need to clutter the statute book with express duties of this kind. There is a joint working protocol between the advisory council and Home Office, which commits us to open and transparent dealings. The advisory council routinely publishes its advice to the Home Secretary and I fully expect it to continue to do so. We will encourage other bodies responding to any consultation on these regulations to do likewise.

Any regulations made under Clauses 3 and 10 will be made by the affirmative resolution procedure. It is standard practice to publish an explanatory statement alongside draft regulations. Such a statement would, among other things, summarise the outcome of the consultation. Therefore, one way or another, Members of both Houses will be able to consider the consultation responses in conjunction with the draft regulations to be made under Clauses 3 or 10. In the light of this explanation, and on the understanding that I will give a sympathetic consideration to Amendments 20 and 47, I hope that my noble friend Lord Norton would feel able to withdraw his amendment.

I now turn to some of the specific points raised. On Clause 3(3), I agree with the noble Lord, Lord Rosser, that it is difficult to conceive of circumstances where the Home Secretary would reach the conclusion that there were no appropriate persons to consult. We have had some excellent work by the Delegated Powers Scrutiny Committee and the Constitution Committee on the Bill. Were there not be an adequate and full demonstration of the experts who had been consulted, that particular measure—which might be before the House on an affirmative basis—would clearly be in for a very difficult ride. In reality of course, the Government would not seek to do that.

The noble Lord, Lord Kirkwood, made the point that he was very concerned about whether this was some kind of attempt to downgrade or sideline the ACMD, which I understand. The council does of course have a statutory duty under the Misuse of Drugs Act, which is very important, and it was consulted. It has been looking at the area of psychoactive substances. I cannot remember the exact date of that but I am happy to get details. One of its recommendations was that the Government ought to consider and explore a legislative response to this. I do not say this in order to unearth a previous relationship, but it was Norman Baker, the Liberal Democrat Home Office Minister, who decided to put this out to an expert panel.

To make a serious point, the purpose there was not to deal with a question on the science, which is just one component of this. Another part of it is then to say, "How do we deal with the science?". Whereas we have an eminent group of scientists on the ACMD, the expert panel is particularly constituted so that it has expertise on enforcement at local authority level; forensics; prosecution, from the Crown Prosecution Service; medical science, of course, with three members of the ACMD on the expert panel; social sciences; an international dimension, with drug addiction; and, very importantly, education and prevention, with representatives from Mentor UK and DrugScope. So it was constituted to address a different stage in the problem, the issue having been identified earlier.

[Lord Bates]

I want to deal with the points that have been made, although I shall provide a fuller response to the Constitution Committee. My noble friend Lord Norton of Louth made a particular reference to the term "vary". It might be helpful if I add some words to the record at this stage on that point. "Vary" is given its natural meaning in the Bill: the ability to amend individual definitions within Schedule 1. It does not stretch to changing the principle of an exemption, nor to removing it. Schedule 1 exempts groups of substances; the ability to vary the definitions is important to future-proof the legislation against regulatory changes, which may change how particular substances are legally defined. It may be that a definition in the Bill is varied in the way in which it narrows its scope. However, this would be the case only if the scope of the underlying regulation was also narrowed. A similar approach has been taken in Ireland—without wanting to reopen that particular canard at this stage. Since the passing of the Criminal Justice (Psychoactive Substances) Act 2010 in Ireland, they have not needed to make any amendments to their exemption list. We therefore anticipate a stable list.

The noble Baroness, Lady Hamwee, mentioned a point that she had raised with officials and which we had tagged under the Clause 10 stand part debate. These offences are modelled closely on those provided by the Misuse of Drugs Act 1971, which has been in force for 45 years. Although it was enacted before the Human Rights Act 1998, the compatibility of the 1971 Act with the human rights convention has been tried and tested thoroughly in both domestic courts and the European Court of Human Rights. By following closely the existing law and statute, we have endeavoured to draft offences that we believe are compliant with the ECHR. In view of this, and to avoid restating old arguments in the memorandum that are already well accepted by the courts, the decision was taken that the ECHR compliance of these offences did not require rehearsing in the memorandum. Instead, the memorandum focuses on those issues that may properly be described as new or significant. We look forward to any observations on these and other provisions from the Joint Committee on Human Rights; in the usual way, a full response to the committee's report will be possible once it has been received.

With those assurances, which I reiterate are on important issues which we undertake to consider very carefully and come back to on Report, I hope that the noble Lord will withdraw his amendment.

Lord Howarth of Newport: I listened carefully to what the Minister said about the Government's consultation with the Advisory Council on the Misuse of Drugs on the subject of psychoactive substances, and I think that I heard him tell the Committee that the ACMD had urged the Government to do something about psychoactive substances. An expert panel, which is not the same as the ACMD, was then set up. It would be helpful if the Minister could tell the House, in response to the points that I put to him in my contribution, what dealings the Home Office had with the ACMD on this legislation on psychoactive substances, following receipt of the advice from the expert panel, up until the letter that the Home Secretary sent to the ACMD on 26 May. Given that the ACMD has a statutory duty to keep under review the situation of the UK in regard to drugs, surely it would have been appropriate—and I should have thought a statutory requirement—to seek its views as to the wisdom of the policy that the expert panel recommended and on which the Government were proceeding to legislate. What consultations took place on this specific Bill?

3.45 pm

Lord Bates: I think I have tried to deal with that important point. Effectively, it is a discussion about which came first, the chicken or the egg. On the exact phraseology—I am just trying to read and, being a simple man, I can do only one thing at a time; it is difficult to multitask at the Dispatch Box—my understanding was that the advisory committee used a particular phrase, which was not as strong as the noble Lord perhaps suggested. However, it was an invitation to the Government to explore legislation, which they then chose to do through a multidisciplinary panel along the lines I outlined earlier.

Clearly, there will be a point—once we have come back and published the Bill—where the Home Secretary, quite rightly, wants to explore further. The letter of 26 May to which the noble Lord referred, and which I do not have in front me, sought the scientific advice of the ACMD on how we use forensics to determine what is a psychoactive substance. It was a particular task, which I hope demonstrates that there is a healthy relationship between the Home Office and the ACMD, which is not of course uncritical. It has a very important role to play. The fact that the chair and other members of that committee formed part of the group is important.

Let me just read out a point that has been highlighted for me. However, since October 2014, when the Government published its response to the expert panel's report and Ministers wrote to the ACMD, we have been open and transparent about our plans to develop the blanket-ban approach, now encapsulated in the Bill. The Home Secretary has written again to the ACMD and we look forward to receiving its views on how we can strengthen the UK's forensic capacity and capability to support the implementation of the legislation. I think that is broadly what I said the letter was about and what the response was. If there is any difference, I will write to the noble Lord.

In the mean time, I would be grateful if my noble friend would consider withdrawing his amendment.

Baroness Hamwee: My Lords, it is appropriate to mention that, as well as the two committees to which the Minister referred, the Secondary Legislation Scrutiny Committee also takes an interest in consultation on regulations. I was a member of it for quite a long time and we frequently asked officials to go back to different departments because an Explanatory Memorandum gave very little information about the consultation that had been undertaken and the responses to it. That probably got into my DNA so I did not even realise it was there in prompting me to raise this point. I would not threaten the Minister with the Secondary Legislation Scrutiny Committee but it will certainly be on top of this if the Explanatory Memorandum is inadequate in this respect.

Lord Norton of Louth: My Lords, I am grateful to my noble friend the Minister. I shall look forward to further discussions with him, and I know the Constitution Committee will be very interested in his response to its report.

I listened with great interest to what my noble friend said. On defining the term "to vary" he offered a description but not necessarily a compelling argument for why a description should not be in the Bill. I appreciate that the power to vary will be subject to the affirmative resolution, but that places a burden on the House to establish criteria for assessment when the instrument is brought forward, whereas it may provide better discipline for the criteria to be established in the Bill. We can say no when the instrument is brought forward, but there may be a case for it not to be brought forward in the first place to make it clear to the Government what should and should not be permissible. So I am not necessarily persuaded that the Government should be given the essentially unrestricted power in Clause 3. One can have a little too much flexibility.

However, I look forward to discussing this further with my noble friend and, in the mean time, beg leave to withdraw the amendment.

Amendment 15 withdrawn.

Amendments 16 to 22 not moved.

Clause 3 agreed.

Amendment 23

Moved by ***Lord Paddick***

23: After Clause 3, insert the following new Clause—

"Possession of controlled drugs

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

(2) Omit section 5(1) and (2).

(3) After section 5 insert—

"5A Measures in respect of possession of controlled drugs for personal use

(1) Where a person is detained on suspicion of having committed an arrestable offence and is found to be in possession of a controlled drug falling within Schedule 2 (Class A drugs) in circumstances which do not constitute an offence under section 3 (restriction of importation and exportation of controlled drugs) or section 4 (restriction of production and supply of controlled drugs), a senior officer or a local authority may require the person to attend a drug treatment programme or drug awareness programme.

(2) The Secretary of State shall by regulations define "drug treatment programme" and "drug awareness programme" for the purposes of this Act.

(3) Regulations made under this section must be made by statutory instrument.

(4) A statutory instrument under this section may not be made unless a draft of the instrument has been laid before, and approved by resolution of, both Houses of Parliament.""

Lord Paddick (LD): My Lords, I shall speak also to Amendment 24. These amendments are tabled in my name and that of my noble friend Lady Hamwee.

First, there has been a bit of confusion in the editing of the amendment. Subsection (1) of proposed new Section 5A should refer to all drugs falling within Schedule 2, not, as suggested in the brackets, "Class A drugs". Schedule 2 refers to Class A, Class B and Class C controlled drugs.

Amendment 23 amends the Misuse of Drugs Act by removing Section 5(1), which states that it is illegal to possess a controlled drug, and Section 5(2), which states that it is an offence to possess a controlled drug. It adds a new Section 5A to the Misuse of Drugs Act requiring those arrested for offences to be referred to a drug treatment programme or a drug awareness programme if they are found to be in possession of controlled drugs at the police station. The effect of the amendment is to bring controlled drugs, as defined by the Misuse of Drugs Act, into line with substances that are controlled by this Bill, where simple possession of psychoactive substances is not a criminal offence. This amendment would have the effect of decriminalising the possession of psychoactive substances under the Misuse of Drugs Act and is similar to Amendment 39 which is proposed by the noble Lord, Lord Howarth of Newport, and the noble Baroness, Lady Meacher.

This amendment also allows that when someone is in police custody for an offence and it becomes apparent that drugs may be behind the criminal behaviour, the person can be referred to an education programme, a drug awareness programme or a drug rehabilitation programme. It allows the Secretary of State by regulation to define a drug treatment programme and a drug awareness programme for the purposes of this Bill. Amendment 24 is simply a consequential amendment to Schedule 1.

At Second Reading, I said that making possession of drugs illegal is not a deterrent, and the Government appear to agree with me to the extent that they are not seeking to make possession of new psychoactive substances illegal under this Bill. It is claimed that proportionality is the reason for not doing so. A proportionality argument can be made for possession of controlled drugs as well. First and foremost, there are millions of people in the UK who continue to take drugs even though they are illegal. Why do they do so? One of the reasons is because the law is in disrepute as far as those it was intended to protect are concerned. Secondly, criminal sanctions do not appear to have any impact on drug use. The Home Office's 2014 paper *Drugs: International Comparators* states:

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

UK drug laws appear to have failed to impact on the level of national drug use. The UK has the second-highest lifetime amphetamine and ecstasy use, the second-highest cocaine use and the fourth-highest lifetime cannabis use in Europe.

Release examined 21 jurisdictions where possession of all or some drugs had been decriminalised, and there was no increase in drug use. In the most notable example, Portugal, the Home Office notes that there has not been a lasting or significant increase in drug use there since decriminalisation in 2001. Whether simple possession of drugs is a crime or not appears to make very little difference. The Government are content not to criminalise possession of the substances covered by the Bill, some of which are—and some new substances certainly could be—far more harmful than some of the drugs covered by the Misuse of Drugs Act. For the sake of consistency, clarity and credibility, simple possession of any psychoactive substance should not

[LORD PADDICK]
be an offence. Some will be concerned about such a move, and I myself long resisted calls to legalise drugs. However, I have been convinced by the evidence from Portugal.

These amendments go on to suggest that where someone commits an offence, whether it is antisocial behaviour as a result of being intoxicated by drugs or committing an acquisitive crime to feed a drug habit, and it is found that they are in possession of a controlled drug, they may be referred to an education programme if they have been reckless in their use of drugs, or to a drug treatment programme if they are addicted. There are already well-established practices within the police of giving conditional cautions, where someone is not charged with a criminal offence provided that they comply with the conditions imposed on them. That conditional caution mechanism for the substantive offence for which they have been arrested could provide the incentive for those who are willing to change their behaviour. This is, in essence, the Portuguese model, as I understand it—an approach that focuses on dissuasion.

This amendment has significant other benefits. As with substances covered by the Bill, it would deprive police officers of the power to stop and search people they suspect of simple possession of controlled drugs. At Second Reading, I pointed out the impossible position that the police would be put in if the Bill were implemented without a change in the Misuse of Drugs Act. The police could not possibly be able to tell whether the psychoactive substance they suspected the person to be in possession of was covered by the Bill or by the Misuse of Drugs Act, one for which they have a power to stop and search, the other for which they do not. This amendment deals with that difficulty

Stop and search is a very contentious tool that the police have used disproportionately against black and minority ethnic young men in particular. In 56% of cases of stop and search by the police in London in 2013-14, the reason the officer gave for searching was "for drugs". Admittedly, some of those stop and searches may have been for suspected drug dealing, but in my own professional experience they would have been very few. Last week there was discussion in the media about the growth of knife crime in the capital, and it has been reported that the Commissioner of Police for the Metropolis has suggested that stop and search may have to increase again as a result. In the same 2013-14 period in London, only 9% of stop and search was targeted on offensive weapons. Freed from the burden of stop and search for simple drugs possession, the police could focus on more serious crime such as drug dealing and knife crime.

As the noble Lord, Lord Howarth of Newport, alluded, I have some experience of de facto decriminalisation of cannabis in the London Borough of Lambeth, where I was the police commander. In 2001, for a year, the then Commissioner of Police, now the noble Lord, Lord Stevens of Kirkwhelpington, agreed a 12-month pilot scheme where no one would be arrested for simple possession of cannabis, subject to a few exceptions such as possession on or near school premises. The official report by the Metropolitan Police Authority into that scheme is still available on the internet. Some 83% of local people supported the scheme. There was a 19% increase in arrests for dealing in class A drugs. Contrary to press reports, there were fewer drug tourists, fewer incidents of drugs in schools and a saving of police time, which was diverted into tackling more serious crime that was of more concern to local people. The pilot was so successful that the procedure to allow officers to seize and warn for simple possession of cannabis was extended nationally. It also prompted the then Home Secretary to reclassify cannabis as a class C drug—a decision overturned by a new Labour leader a few years later. No wonder the public have no faith in drugs classification.

4 pm

Since then, the police procedure nationally for dealing with small amounts of cannabis for personal use has evolved. In addition to having the cannabis seized and a warning given, those caught are given a fixed penalty for disorder—a specific penalty notice provided by statutory instrument, which was presumably agreed to by this House. Simple possession of cannabis has effectively been decriminalised with the agreement of Parliament.

The wording of my amendment may not be perfect, and I have since learned about the FPN approach, which may be a better way forward. However, the principle is sound and it is this: we should have a consistent approach to all psychoactive substances by decriminalising simple possession. Even if the Government do not feel that they can go that far, at least simple possession of drugs only as harmful as or less harmful than cannabis—a class B drug under the Misuse of Drugs Act 1971—should be decriminalised. I beg to move.

Baroness Meacher (CB): My Lords, we will return to the subject of decriminalising possession of all drugs a little later in relation to other amendments, and I will speak then. I applaud the noble Lord, Lord Paddick, for this amendment. This is an incredibly important issue and I want to say a few words about Portugal.

The crucial issue that I think the Government have to consider is whether it is more important to reduce social use. For example, if an alcohol policy results in rather more people having a glass of wine or beer on a Saturday night, does that really matter? I do not think so. What really matters is addiction, and a policy that reduces addiction is, for me, a good policy.

As I understand it from all the research—of which there has been a lot—into the Portuguese decriminalisation of possession and use of all drugs, there has been a bit of an increase in social use in Portugal, but under the scheme fewer young people are addicted to any drug. As I understand it, the right-wing political parties were against decriminalisation when it was introduced, but Dr Goulão, the wonderful doctor who spearheaded this reform—he is terrific; I know him very well and he is splendid—is thrilled that all political parties in Portugal now support the policy. It is true that Portugal is going through terrible economic issues, so I am not sure exactly what is happening to the policy right now, but it has been proved that a policy of decriminalisation wins the support of all political parties once it is seen in action, and it is all about addiction.

My question to the House and to the Minister is: why are fewer young people in Portugal now addicted to all drugs, not just one? I believe that it is to do with the psychology of young people. They like to be cool. When I was at school I used to break the school rules. I thought it was a terrific thing to do, although I do not think that I broke the law. If all young people have to do is get a spliff to break the law, they think that that is cool. In Portugal it is not cool. Why is that? It is because if you are referred to a dissuasion commission, you see a psychiatrist, a social worker or a lawyer who determines whether you are addicted. You are then referred for treatment. That is not cool; it is a mental health treatment, and it is not cool to have a mental health problem.

I believe that Governments of all political persuasions should think about the psychology of young people when they think about drugs policy, because it will only be when we get inside the minds of young people that we might come up with a policy that makes sense and works.

Lord Blencathra: My Lords, as someone from the highlands of Scotland, I like to be cool as well, but I suspect that it is a slightly different interpretation.

I was not quick enough on my feet to ask this of the noble Lord, Lord Paddick, before he sat down. I readily acknowledge his great practical expertise in these matters and I acknowledge my own ignorance. Is there a definition, in statute or in case law, of how much is a "small amount" of drugs for personal use? One needs to know how much a person could get away with by claiming, "This is just for my personal use, guv". Or is it rather like the cross-channel ferries, where people can come back with 10,000 cases of cigarettes and lots of booze and claim that they are a heavy drinker and smoker, and possibly get away with it?

The noble Baroness, Lady Meacher, and the noble Lord, Lord Paddick, quote favourably from the Portuguese experiment, and there are some debatable results there. I would also refer them to the trendiest, most socialist and liberal country in the EU—Sweden. Sweden has a zero-tolerance policy on drugs and, admittedly, a big back-up self-harm programme behind it. Although one can quote Portugal favourably, one can also quote Sweden and its no-tolerance policy favourably. I hope that noble Lords have seen the reports from Sweden, as I have, and if I am wrong, I am happy to be reminded and amended later on.

Lord Howarth of Newport: My Lords, like the noble Lord, Lord Paddick, and the noble Baroness, Lady Meacher, I too have been impressed and encouraged by the evidence emanating from Portugal. Just before I add a few words on the subject of Portugal, I would say to the noble Lord, Lord Blencathra, that if he looks at the incidence of drug-related deaths in Sweden, he will find that they are exceptionally high. People are ignoring these draconian policies that the Swedes do indeed operate, but not with happy consequences. One of the reasons is that criminalisation and the panoply of very severe penalties in operation in Sweden deter people from seeking treatment and help. Personally, I think that that is ill advised.

The Portuguese took another route when they faced a real crisis of drug abuse at the beginning of the century. They consulted an expert panel, which recommended the depenalisation—I think that that is perhaps the term—of small amounts of drugs for personal use. Again I say to the noble Lord, Lord Blencathra, that under the Portuguese legislation, those "small amounts" of each drug are very precisely defined, so it can be done in legislation. At the same time, they invested very significant resources in treatment, education, programmes of social reintegration and the disruption of supply. It was a coherent strategy that appears to have worked very successfully.

As an aspect of that strategy, dissuasion commissions were set up so that somebody apprehended in possession of an amount of a drug—a psychoactive substance—would have to go before the dissuasion commission. As the noble Baroness said, it consists of a clinical psychologist or psychiatrist, a social worker and a lawyer; it is a fairly formidable panel to have to face. But if you are brought before that panel, you are not charged with a criminal offence. It does have power to impose administrative sanctions but its main focus is on getting people into treatment.

The central principle of the Portuguese legislation is that drug abuse is a health issue and not a criminal issue. I would suggest to the House that the results have been most impressive. Over five years, the number of people injecting drugs halved; drug-related deaths and new HIV infections more than halved; drug use among the 15 to 24 year-old age group fell; there was no rise in use in the older age groups; very importantly, the rates of continuing use, year-on-year use as opposed to occasional use, fell below the European average; and the numbers seeking treatment doubled, while the costs to the criminal justice system plummeted. All this is documented—there is plenty of evidence to tell us about the success of the Portuguese experiment, which has been going for 15 years. As the noble Baroness noted, the global financial crisis and the extraordinary pressure on the public finances of Portugal made it difficult to persist as fully as they would have wished with the education and treatment dimensions of the strategy. None the less, they have continued with the policy, and as she said, it has become accepted right across the political spectrum. I know that Home Office representatives have visited Portugal to learn at first hand from Dr Goulão and others about how it has worked. It is puzzling and disappointing that more lessons have not been taken on board.

Amendment 23 in the name of the noble Lord, Lord Paddick, would create powers such that,

"a senior officer or a local authority may require the person to attend a drug treatment programme or drug awareness programme".

"May require" is quite a prudent element in the drafting, only because—and I fully endorse the policy of encouraging people to go to such programmes and benefit from them—the scale of drug-taking is, sadly and very worryingly, large in this country. A survey of Cambridge students found that 63% had taken illicit drugs, half of them before they had reached the age of 16; 45% of them had bought drugs for their friends; and 14% said that they had at one time or another sold drugs for a profit. A survey in 2011 of people in management jobs in London found that one in 10 took illegal drugs at work or at social events associated with their work. Mostly, they used class A drugs—cocaine and ecstasy. Of course, the use of cocaine and other

[Lord Howarth of Newport]
class A drugs can lead to serious addiction, illness and death, so we should congratulate those such as Dr Owen Bowden-Jones, one of the members of the noble Lord's expert panel, who set up Club Drug Clinic at the Chelsea and Westminster Hospital—and other such clinics have been established across the country—which is particularly focused on helping young professionals who become addicted in this kind of way. I am simply describing the scale of the challenge we face if we seek to make drug awareness and drug treatment programmes available universally to people found in possession of drugs. It is estimated that some 350,000 children in this country have a parent who is a drug addict. I understand that one-third to one-half of those entering prison are already problem drug users. In 2010, there were 2,182 drug-related deaths. So it is a colossal challenge whatever strategy is adopted. Helping more drug users find the healthcare treatment they need will be a challenge on a large scale.

This is not a new dilemma. Back in 1924, the Government of the day established the Rolleston committee. Its recommendation to the Government certainly was that penal elements of policy were important, but it also said that addiction should be treated primarily as a disease. I would suggest that the moral imperative is not to stigmatise or to punish but to help those who are sick. We must communicate facts accurately, precisely and honestly if young people are to respond constructively, seriously and respectfully to the policy and the legislation. In 2000, Lady Runciman and her colleagues said that,

"the most dangerous message of all is the message that all drugs are equally dangerous. When young people know from their own experience that part of the message is either exaggerated or untrue, there is a serious risk that they will discount all of the rest".

One of the difficulties with this legislation is that it fails to discriminate between the harms at different levels of psychoactive substances. I understand the problem that, with the proliferation of psychoactive substances on such a scale and at such a pace, this is a very difficult thing to do, but it remains an important objective of policy.

When the previous Labour Government were being tough on the causes of crime and sought to get more people into treatment, they found that it was not plain sailing. The Home Office identified at one point 320,000 so-called problem drug users and invited them to undergo voluntary testing in the hope that it would offer a route away from the revolving door of crime and addiction and into treatment. If I remember aright, the Home Office reallocated a very large sum of money—some £600 million; it was a PES transfer, if that is the right terminology—from the Home Office to the Department of Health and the National Treatment Agency. The Drugs Act 2005 set up the drugs intervention programme, expanding the drugs treatment and testing orders and making it compulsory to test on arrest or when an ASBO is issued so that a defendant was offered the choice of treatment or jail.

4.15 pm

How effective was all of this? The National Audit Office reported in 2004 that there had been 18,400 DTTOs at a cost of £50 million a year but that they had had little impact: 80% of those who entered the programme were reconvicted within two years. Coercion into treatment was a problematic policy. Three-quarters of people dropped out of the programmes and only 4% of addicts left the programmes drug free. Professor Mike Hough, one of the academics who assisted the Home Office in the evaluation of the programme, said that they were making exaggerated claims about the effectiveness of their drug strategy to Ministers which were just not sustainable.

The scale is even bigger now with new psychoactive substances, and it is difficult to cure addicts and to help problem drug users. If we are going to do that, we have to invest in aftercare, housing and training programmes for them. There will be significant implications for the budgets of the police, the health service, housing, benefits and further education. What the noble Lord is proposing in his amendment is desirable in principle but we should be well aware of the difficulties that there may well be in practice.

I say again that if we were to legalise and regulate, selectively and strictly, certain drugs, it would open the way to transferring substantial funds away from policing and the criminal justice process into treatment. One dimension of the Government's anti-drug strategies is building recovery. I would be grateful if the Minister will give his assessment of the success of the building recovery part of the strategy.

Lord Mackay of Clashfern (Con): My Lords, it is important that in this Bill, it is not proposed that there should be a criminal offence of possession of psychoactive substances. In due course we shall see how that works, and it may well be that the lesson to be learned from that could have an effect on the older legislation to which the amendment refers.

My Lord, as I understood the noble Lord, Paddick, he said that one of the successful police techniques is the conditional caution, which of course depends on the underlying offence—that is the power on which the conditional caution rests. It is an extremely valuable approach to this difficult problem. I agree entirely with what has been said about how difficult a problem this is. I have no doubt at all about that and I do not need to reiterate the point. The conditional caution has a degree of authority behind it to persuade the person who receives it to do what it requires him to do. That is extremely important. The difficulty I have with this amendment is that if a senior officer suggests or requires that someone should attend one of the systems as defined by the Secretary of State in a later amendment, there is not much power to ensure that that will happen.

It is a long time since I had experience as a judge in criminal cases involving drugs where possession was an issue, but I distinctly remember the sadness I felt when sentencing a lady with a young child who had been in possession of quite substantial quantities of prohibited drugs. As the sentencing judge, I had the power to invite her to subscribe to a programme as a condition of her probation, rather on the same principles as the conditional caution, except at a slightly more authoritative level. The lady was obviously very attached to her child and there was a risk that if the situation continued, she might be separated from the child by the social work authorities. I was keen, it if was possible,

to help her get out of that situation. A good programme aimed at helping people out of addiction was being run in Glasgow at the time. I got her agreement to attend the programme, subject to the probation order, which, as noble Lords will know, meant that if she left the programme she had agreed to attend, there would be other possible consequences. It was to my extraordinary sadness to discover that after she had been getting on well for a few months, she suddenly left. That is one of the difficulties of a programme which has no authority to continue.

I am not good at getting into the minds of very young people, for reasons which are obvious, as the noble Baroness, Lady Meacher, would attest, but there is the question of the psychology of all this. There is also the question of a level of authority, so that the treatment becomes something a person is required to undertake in order ultimately to get out of the criminal justice system. I agree that this is an important matter, and it would be good to see how the regime set out in this Bill works. It might have a good lesson for the existing legislation.

Lord Brooke of Alverthorpe (Lab): My Lords, I apologise to the Committee: I did not speak at Second Reading, but I would like to make a brief contribution at this point and to ask a question. Following up on the issue of alternatives to formal action being taken by the police in introducing people to recovery courses, I should say that I have had a good deal of experience over many years of dealing with people with drug and alcohol addictions. There is a big question mark over whether the addictive personality ever truly recovers, in the sense that people talk about recovery, because people often switch from one addiction to another, but they reach a stage at which they can maintain their addiction and lead a good life. However, it has been my experience that, before they get to that point, no one can undertake a course or programme of any sort unless they have an inherent willingness and desire to recover. One drawback, unexplained in the amendment before us, is this: what does one do with the literally very high percentage of people who will want to opt for this course because it is the soft option, but who have no intention whatever of displaying the willingness and commitment required to achieve recovery?

Lord Cavendish of Furness (Con): With the leave of the House, I follow the Lord, Lord Brooke, in apologising for not having taken part at Second Reading. I declare an interest: I am what is called a recovering alcoholic. I am not about to fall over—it is 30 years since I last had a drink—but in keeping with what the noble Lord was saying, I regard myself as possibly still being an addicted person and therefore have to conduct my life accordingly. I endorse everything that the noble Lord says: we have to learn to take responsibility for our lives.

Getting that help means confronting some extremely ugly truths about what we have done and the effect we have had on ourselves and members of our families. That is a very hard role for the state to take on, and it has always been my view that one should rather encourage the private sector. The cost to the economy of addiction —whether to alcohol or to drugs, and in my view the two are closely related—is known almost precisely. The best outcome would be if a leading firm with good social values pioneered something that the rest of the world could piggyback on. Firms have a vested interest in their employees and their employees' families being clean and free of drugs and alcohol, and they know what the cost is. It would be of enormous benefit, which perhaps could be reflected in some tax concessions, if the private sector were encouraged to lead on this matter.

Lord Tunnicliffe (Lab): My Lords, the Opposition are not minded to support Amendment 23. I thank the noble Lord, Lord Paddick, for setting out so clearly the intention behind it, which is to decriminalise the simple possession of all drugs listed under the 1971 Act and partially replace that with a drug awareness programme. I emphasise that we believe that education and treatment have to be an essential part of the whole programme that the Government must responsibly pursue to tackle the enormous problems that drug addiction produces, but we do not believe that this is the vehicle to make such a substantial change to the 1971 Act. If the Government were minded to go down this road, surely they would first have to conduct a major programme of research and a major consultation. They may choose to do that, and I await the Minister's response with some interest, but we are not in favour of the delay that such a research and consultation programme would lead to. The Bill mends a hole in the 1971 Act with respect to psychoactive drugs, and it should be enacted as soon as reasonably practicable in order to attack this difficult problem.

Lord Bates: My Lords, I thank the noble Lord, Lord Paddick, for introducing the debate on this amendment and giving us an opportunity to contemplate in broad terms these two groups of issues: one around the experience of dealing with people with drug problems and the other looking at international comparisons and alternatives, and health and education. This is something that your Lordships' House does incredibly well: drawing on people who have had practical experience, not just in the police, as the noble Lord, Lord Paddick, has, but in adjudicating, as my noble and learned friend Lord Mackay of Clashfern has done in difficult areas. Then there were the contributions from the noble Lord, Lord Brooke of Alverthorpe, and my noble friend Lord Cavendish about their own experiences in trying to assist and work with people coming to terms with addiction. It has been a very thoughtful debate.

I am conscious that I will not be able to cover all the points, but we have a meeting with all interested Peers on 7 July in Committee Room 10A between 4 pm and 5 pm. We will announce it on the all-party Whip—or the business managers will, lest I overegg my powers. It has been set up particularly so that we can hear from Public Health England and about what is happening in education and treatment. I agree wholeheartedly with the noble Lord, Lord Tunnicliffe, that that goes very much to the heart of the wider issue we are seeking to address. The point made by the noble Lord, Lord Howarth, about updating where the Government and Public Health England are with the wider drug strategy and building recovery programmes might be usefully discussed at that meeting, along with many other issues.

4.30 pm

Let me put some remarks on the record and then come back to some of the specific questions that have been put to me. I acknowledge that drugs policy is a particularly difficult and challenging part of public and social policy. There probably are some countries in the world that do not wrestle with the problem but not many. Certainly everybody in the West, North America, South America, and Africa, and across Europe into Asia, is wrestling with the same challenges. My noble friend Lord Blencathra made the point that we look at other countries and draw conclusions. If there was a silver bullet or something that worked universally, clearly the world, being the way it is, would have unearthed it. Indeed, the UN General Assembly special session on drugs, which meets again next year, tries to harness experience from around the world. There is also the diligent research and work of our own expert panel, as well as examples of particular cultures in particular places where programmes have worked.

In that process, we should not underestimate that people might also take a look at drugs policy in this country and suggest that, across the majority of drugs and age groups, there has been a long-term downward trend in drug use over the last decade. Among 11 to 15 year-olds, drug use has been falling since its peak in 2003. More people are recovering from their dependency now than in 2009-10. The average waiting time to access treatment is down to three days. I pay tribute to the previous Government—the noble Lord, Lord Patel, talked about this at Second Reading—for the programmes which were started then and have been continued. We should not be averse to saying that there have been examples of success in many different jurisdictions, not just in Portugal—although that is an important area that we need to look at.

The noble Lord, Lord Paddick, seeks to remove the possession offence for controlled drugs under the Misuse of Drugs Act. The Government's position is that liberalisation, through decriminalisation of harmful drugs, is not the answer to the problems we face. This Government have no intention of decriminalising the possession of drugs. It would not eliminate the crime committed by the illicit trade, nor would it address the harms associated with drug dependence and the misery that this can cause to families and communities.

Decriminalisation fails to recognise the complexity of the problem and has insufficient regard for the harms that drugs pose to the individual. It neither addresses the risk factors which lead individuals to misuse drugs and alcohol, nor takes into account the misery, cost and lost opportunities that dependence inflicts on individuals, their families and the wider community. Preventing and reducing drug misuse is a key part of our evidence-based drugs strategy. It is a drugs strategy which produces an annual report and is ongoing across many government departments. We take a broad approach to prevention, combining universal action with targeted action for those most at risk or already misusing drugs.

Drug recovery is at the heart of our current approach, with the key aim to support people to free themselves from drug dependency for good. We have moved our focus beyond the treatment system to include factors that help people recover from drug dependency and fully integrate back into the community. Amendment 23 in the name of the noble Lord, Lord Paddick, seeks to give police and local authorities a discretion to require a person to attend a drug treatment programme or drug awareness programme. The Government strongly support local investment in approaches that help to identify drug-using offenders and direct them to treatment at the earliest possible opportunity.

There are a number of examples of this work in action. For example, we are supporting police to use the model of drug testing on arrest to ensure that individuals are identified and referred to the treatment they need. We are supporting NHS England in its rollout of a new standard model of liaison and diversion services that identify and assess those who may have mental health or substance misuse issues—a point eloquently referred to earlier in the debate. There are now 22 liaison and diversion sites set up and running, covering more than 50% of the population. We are working with local areas to identify and respond to their heroin-using population in order to grip and reduce harms caused by heroin and crack cocaine, including drug-related offending and wider social outcomes. Finally, NHS England, Public Health England and the National Offender Management Service are working together to share and develop emerging learning from the north-west prisons "through the gate" substance misuse services early adopter approach.

The police and the courts of course have discretion in the implementation of our drug laws so that an informed and proportionate approach can be taken to an individual caught in possession of controlled drugs. The police have a range of alternatives. These currently include simple cautions, conditional cautions and—in cases of cannabis possession—cannabis warnings and penalty notices for disorder. Although a criminal offence is still committed, these types of out-of-court disposals do not amount to a criminal conviction.

Following a consultation on the current out-of-court disposal framework, the Government announced in November 2014 their intention to simplify the current range of disposals into two tiers: a suspended prosecution based around a conditional caution and a new statutory community resolution. The new framework would require offenders to take action to comply with the new disposals and face meaningful consequences if they fail to do so, rather than simply accept a warning. Both tiers would allow and encourage the police to include rehabilitative measures designed to prevent reoffending, including interventions to tackle drugs misuse and to help address underlying issues that may have contributed to the offending. The new arrangements are being piloted in three police force areas before a decision is taken on whether to roll them out more widely. It is the Government's firm view that, by delivering on national commitments set out in the drug strategy and in other programmes, and by enabling local partners to take responsibility at a local level, we will enable more individuals to become free of their dependence and contribute to society.

On the idea of giving more local power, it was the Drugs Act, referred to by the noble Lord, Lord Howarth, that sought to address the issue raised by my noble

friend Lord Blencathra: what actually constitutes personal possession? The Act went into a fine line-by-line definition, a bit similar to what had happened in Portugal, which defined an amount. We then found that this was unworkable for similar types of reasons that we have found for psychoactive substances: once you put down on a bit of paper what the amount is, people naturally start to try to find a way around it. What did we come back to? We came back to saying that the police at the scene should use their own judgment and determine whether drugs are for personal use or whether a person is dealing.

That is why we come back to where we are with this measure; we have said that it is for the police to apply that judgment as to whether the person they intend to stop and search is someone who they feel is likely to be in the production, supply or import or export of psychoactive substances, and whether the substances found would contribute to that, whether they be large or small.

So that is more or less where we have come to. I am sure that the noble Lord will not come round completely to saying that the Government have arrived at something which is a little closer to his innovations in Brixton, and clearly not on the scale proposed in his amendment. However, given our commitment to hold a meeting for all interested Peers, which will provide an opportunity for ongoing discussion, I hope that he will feel able to withdraw the amendment.

Lord Howarth of Newport: Will the Minister help us just a little bit further, because I know the Home Office knows a good deal about what has happened in Portugal? Much earlier in his speech, he was very dismissive of the benefits of decriminalisation on the Portuguese model, as I understood him to say—that is, possession of small amounts of drugs precisely defined for personal use. How, then, does he account for the success of the Portuguese policy?

Lord Bates: I did not mean to be dismissive about that. The *Drugs: International Comparators* report, which was referenced by several noble Lords, is clear that the success in Portugal cannot be attributed to decriminalisation and dissuasion panels alone. While drug use went down and health outcomes went up, there was at the same time a significant investment in treatment, which has already been referred to. That is an important part of it. That report could have looked at some of the—albeit modest—successes which we have had in this country with our approach. What is beyond doubt is that it is not just enforcement or the law but also education and health treatment which are at the heart of our being able to deal with this problem.

Lord Paddick: My Lords, I thank all noble Lords who contributed to this debate and wish, if I may, to address a few of the points that were made.

The noble Lord, Lord Blencathra, asked how much constitutes personal use. If you have even a small amount of a drug but have it all in little bags, that indicates that you might be supplying it, or have possession with the intent to supply it. That is the sort of decision that a police officer has to make on the street. Whether it is to do with cannabis or any controlled drug, the decision on whether it is for personal use or possession with the intent to supply is one that is faced by officers every day.

Mention was made of the Swedish absolutely zero tolerance approach. I was not going to raise this issue again but it goes to the heart of what we are discussing. We are all on the same page as regards a lot of what the Minister has said, and what I have suggested in trying to persuade people to get treatment, or on education and so forth. However, the very big difference between us, of course, is whether or not possession is illegal.

As I say, I was not going to bring this up again, but I mentioned at Second Reading a former partner of mine, who became my best friend, who tragically died as a result of taking drugs. His mother asked me to go to the inquest, which is where I learned what had happened. He realised that he had taken an overdose of a drug called GHB. I honestly believe that, if possession of a small amount of that drug for personal use had not been illegal, he and the people that he was with would have sought medical assistance quicker. In fact, he tried to make himself sick in order to get rid of the overdose and thought that he would be okay. He fell asleep and, by the time he was found by his friends, he had obviously stopped breathing for half an hour or an hour or so. They did not seek medical treatment because his condition was to do with illegal drugs.

I know a nightclub manager in Vauxhall who tells me that in other clubs in Vauxhall partygoers who have collapsed—collapsing is what happens if you overdose on GHB—as a result of taking illegal drugs are carried out on to the street by security before an ambulance is called, which could be the difference between life and death for those people, because the nightclub owners do not want to have a reputation with the police that illegal drugs are being used in their clubs. That is why in Ireland, with the passing of a similar Bill, and in Sweden, there are so many deaths because people are taking illegal substances and therefore do not seek the medical help that they desperately need. So I hope your Lordships will forgive me but this is personal as well as professional for me.

4.45 pm

The noble and learned Lord, Lord Mackay of Clashfern, raised the issue of authority. These people will have been arrested for a substantive offence and if they do not accept the route of treatment—which they are entitled to do; it is very difficult to force people down that route—they simply get charged with the offence for which they have been arrested. If they are found guilty, there is an opportunity for the courts to have another go as far as that is concerned.

No doubt there will be opportunities to discuss this at the meeting the Minister has referred to and to come back to it on Report. But for the moment, I beg leave to withdraw the amendment.

Amendment 23 withdrawn.

Schedule 1: Exempted substances

Amendment 24 not moved.

Amendment 25

Moved by ***Baroness Meacher***

25: Schedule 1, page 34, line 7, leave out paragraph 2 and insert—

"2 All medicinal products prescribed by a doctor or sold by a licensed pharmacist."

Baroness Meacher: My Lords, I will also speak to Amendments 26 and 27. I am very grateful to Rudi Fortson QC for advising me about the issues I am seeking to resolve with these three amendments.

Amendment 25 seeks to adjust Schedule 1 in order to exempt:

"All medicinal products prescribed by a doctor or sold by a licensed pharmacist".

In the absence of this amendment, some perfectly legitimate medications prescribed by a medical practitioner may be banned under this legislation. The point here is that the exemption for "investigational medicinal products" does not encompass the supply by a GP on a named-patient basis of a particular medication. The GP will not be acting in pursuance of a clinical trial and thus will not be covered by the exemption of substances used for investigational purposes.

In the Bill no exemption is made for medical practitioners who believe it to be in the patient's best interests to supply a psychoactive substance that is unlicensed and which does not fall within Schedule 1. The amendment seeks to overcome this problem. I can give the House an example to clarify the point. Acetylcysteine is used on a named-patient basis for cystic fibrosis, pulmonary fibrosis and renal protection. These are not trivial matters; they are very serious and it is really important that doctors are able to prescribe these substances in the future despite the passage of the Bill, which we assume will go through in some form. I hope the Minister has had an opportunity to consider this issue and, if she would find it helpful to discuss it with some experts, I have proposed a few people who would be happy to attend a meeting.

A separate issue is covered by Amendment 26. I thank the Royal College of Psychiatrists, as well as Rudi Fortson QC, for its briefing on this amendment. Here the need is to ensure that research scientists using psychoactive substances in their work to develop new medicines or progress neuroscience research do not have their work hindered by this legislation. I am sure the Government do not intend to interfere with this important sphere of research but I hope they will ensure that the final wording of the Bill achieves fully the objectives of the amendment. The royal college welcomes the Bill's current exemptions for investigational medicinal products as defined by the Medicines for Human Use (Clinical Trials) Regulations 2004. Moreover, as the ban on psychoactive substances set out in the Bill relates only to such substances that are consumed by humans, this means that research that does not involve human consumption of a psychoactive substance—that is, pre-clinical trials—would not be banned under the Bill.

However, there are some experiments involving humans that sit outside the 2004 regulations. Some biologicals and early-stage pharmacological tools—proteins or manipulated chemical compounds—would fall outside this definition as they cannot be classified as "investigational medicinal products". According to the Royal College of Psychiatrists, this is hugely concerning as physiological experiments on humans, for example, or studies in human neuroscience looking at issues such as attention, consciousness and memory-use drugs and amino-acids—not medicines—would therefore be illegal under the Bill, unless exempted via this amendment.

The aim of the amendment is to ensure that all research, including work using humans consuming substances for research purposes—not for fun—but not captured by the Medicines for Human Use (Clinical Trials) Regulations 2004, would remain legal and enable vital neuroscientific research to continue. Without this amendment, laboratory suppliers may be wary of supplying some requested compounds for neuroscience research because of their potential to have a psychoactive effect on humans. This could mean that vital new medicines may never get developed. I would be grateful if the Minister could confirm that she agrees that the term "investigational medicinal products", as defined by the 2004 regulations, does not cover all research used to develop new medicines or progress neuroscience research, and therefore that this amendment really is needed to protect these crucial areas of research.

At this point, I want to mention the letter to the Home Secretary from the Academy of Medical Sciences, the British Pharmacological Society, the Royal College of Psychiatrists, the Royal Society, the Wellcome Trust and the Society of Biology. They all expressed concern about this issue. The letter welcomes my amendment but makes the point that it "goes some way towards" protecting vital research. I obviously have not managed to go all the way in my amendment. I hope that the Ministers—the noble Baroness and the noble Lord—would agree to meet the key people to make sure that the wording in the Bill really is right at the end of the day.

My final point on this issue is that the problems could of course be resolved by regulations, as indicated in Clause 10. However, this seems far too important a matter to leave to regulations, and I think that all those scientists would be very concerned if it was not in the Bill. I also think I am right in saying that a similar issue was dealt with in the Bill that became the Misuse of Drugs Act 1971. Perhaps the noble Baroness can address that issue, because at least we would therefore have consistency. Even without that point, this matter needs to be dealt with in the Bill to make sure that our research base is not interfered with.

I turn very briefly to Amendment 27, which addresses the possibility that low non-psychoactive doses of potentially psychoactive substances could and should be exempted from the scope of the Bill. How can a Government justify criminalising someone for supplying to someone else a dose of a substance when that dose in itself is not psychoactive? Can the Minister respond to this point or take it away and write to me before Report to clarify the position? The scientists are worried about this because they often use tiny amounts of a psychoactive substance and want all that to be exempted from the Bill. Again, the Minister might find it helpful to discuss this with the experts; I do not pretend to be an expert on this matter myself. I beg to move.

Baroness Hamwee: My Lords, we have Amendment 28 in this group. The noble Baroness has covered the issues very thoroughly, particularly with regard to her Amendment 26, so I do not want to take too long. I struggled with the issue of research, in particular as to how Schedule 1 and Clause 10 fitted together, if they fitted at all. The noble Baroness alluded to that. As she said, the reference to the regulations in Schedule 1 raises the issue of non-human use and research for purposes other than those covered in the Medicines for Human Use (Clinical Trials) Regulations—for instance, understanding neurological processes. The definition seems to link a product with clinical trials. I am no scientist, but I do not know how you get to the point of a trial without a much wider exemption than we have as the Bill stands. Like the noble Baroness, I am concerned as to whether Clause 10 may be used to make research not an offence. I do not think that would be the right way to go about this but, if it is in the Government's mind, questions would include what is being proposed, when it will happen and what the process of that will be.

On Tuesday last week, on the first day in Committee, I mentioned the problems of undertaking research on cannabis, through my amendment on medicinal cannabis. Those problems were described by Professor Curran and Frank Warburton in the report which I mentioned then. I am not entirely confident that our amendment captures everything that needs to be captured, and although I am glad to see the amendment on the same subject in the name of noble Lords, Lord Rosser and Lord Tunnicliffe, I am not entirely convinced that theirs captures everything either—but that is why we have Committee.

The correspondence which we received was very helpful in prompting us to focus on this. The Academy of Medical Sciences, in its letter to the Home Secretary, referred to the "important tools" that scientists need. This House has a well-deserved reputation for focusing on research and ensuring that research is assisted and not hampered. It is very clear to me that we need to explore this issue further and to ensure that the Bill does not hamper, but promotes, research.

Lord Howarth of Newport: My Lords, very briefly, I would endorse every word that the noble Baroness, Lady Meacher, said and put a rather practical consideration to the Minister. The noble Baroness, Lady Meacher, asked for a meeting, and I am sure that Ministers will wish to hold such a meeting. However, time is somewhat against us, as we have Report in a fortnight's time, and it would be very helpful if the Minister could assure us that that meeting will take place. I am certain the Government will not ignore these very important representations from eminent research bodies in the medical field—they are bound to take account of them. However, just as the Academy of Medical Sciences has shared its letter with noble Lords who are participating in these proceedings, it would be very helpful if the Home Secretary would share her reply with us and if we could have, before Report, an explicit amendment tabled by the Government to remedy the defects that these eminent research bodies, under the umbrella of the Academy of Medical Sciences, have drawn to our attention.

Lord Rosser: My Lords, we also have an amendment in this group, Amendment 49, providing for regulations under Clause 10 to give exemptions from an offence under this Bill—and from its ban—for specific medical research activity. Of course, a number of noble Lords raised concerns at Second Reading about the impact of the ban on new psychoactive substances and the creation of an offence on medical research. We do not want the Bill to inhibit or restrict important medical research that will help us to improve our knowledge of drugs and their impact, and I do not believe that that is the Government's intention.

5 pm

Clause 10 would appear to provide a means to ensure that proper medical research can be exempt from the consequential effects of the ban on psychoactive substances in the Bill, and our amendment refers to appropriate regulations being laid before both Houses to achieve this goal. We need to hear from the Government how they intend to give assurance that legitimate research will not be inhibited or restricted by the terms of this Bill, and how any processes or procedures for enabling medical research to be exempt from an offence under the Bill would work in practice.

The report of the Constitution Committee refers to Clause 10 authorising the Secretary of State,

"to specify excepted acts",

from a defence under the Bill,

"by making regulations".

The committee stated that the House might,

"wish to consider whether it is appropriate to confer such a broad power on the Secretary of State, and in particular whether it should be unconstrained by any textual indication as to the purpose or purposes for which it may be exercised".

Our amendment inserts a specific requirement in Clause 10 in respect of medical research activity.

The Constitution Committee also drew attention to the fact that,

"the details of the excepted-acts regime are … absent from the Bill",

unlike the exempted-substances regime. It says:

"Whether any such regime is in fact established and, if so, on what terms are instead matters that are wholly for the Secretary of State to determine … The House may wish to consider whether it is appropriate to leave the details of the excepted-acts regime to be determined wholly through secondary legislation".

I assume from an earlier debate that that is an issue that the Government will consider in the light of the report from the Constitution Committee.

As the noble Baroness, Lady Meacher, said, the Secretary of State has received a letter from a number of major organisations involved in, or associated with, medical and scientific research, expressing concern about the Bill's potential unintended consequences for medical research and asking that the final draft does not pose a barrier to important scientific work, both in neuroscience and in other areas. I hope that the Minister will be prepared to show in her response that the Government will take the necessary action to address those concerns, and that we do not end up with a Bill that could be interpreted as leaving researchers open to the possibility of prosecution.

Baroness Chisholm of Owlpen (Con): My Lords, I believe that the noble Baroness, Lady Meacher, and the noble Lords, Lord Paddick and Lord Rosser, have the same ambition as the Government—to ensure that lawful medical practice and patient care, as well as bona fide research, are untouched by the provisions of this Bill.

The purpose of Schedule 1 is to list psychoactive substances exempted from the scope of the Bill. It excludes certain substances which are not the target of this legislation, and are mostly already subject to regulatory controls. Importantly, under paragraph 2, it exempts medicinal products; this is the subject of Amendment 25, as proposed by the noble Baroness, Lady Meacher. This covers those products that have marketing authorisations issued in the UK, in the EU, or such authorisation issued by the licensing authority. The current definition for medicinal products was a starting point for the Bill's introduction and is being reviewed again by the Medicines and Healthcare Products Regulatory Agency.

We continue to test whether our objective is achieved by the schedule as currently drafted. For example, we recognise that unlicensed medicines for human use need to be taken out of scope. These are lawfully manufactured, imported, distributed or supplied for the treatment of individual patients after being ordered by a range of healthcare professionals, not just doctors. It was always our intention to remove these medicines and this activity from the scope of the Bill. In this case, we see the advantages of making provision on the face of the Bill—in Schedule 1 to the Bill—rather than in regulations made by virtue of the power in Clause 10. I confirm to the noble Baroness, Lady Meacher, that our intention is to bring forward appropriate amendments—if possible in time for Report—to ensure that the exemption for such products is properly aligned with existing medicines legislation.

Amendments 26, 28 and 49 all relate to safeguarding research into the medicinal and other legitimate uses of psychoactive substances. As I said, the Government attach a high priority to bona fide scientific research and to not putting in place unnecessary regulatory barriers that in any way impede research in the UK. We are actively ensuring, in accordance with our original intention, that any interaction between the provisions of the Bill and those conducting or supporting bona fide research into psychoactive substances is removed.

Along with the Department of Health, we are testing the need for greater latitude, over and above this exemption. As a priority, we are establishing how we best achieve this, perhaps through the drafting of further exemptions in the Bill. There could also be a case for making exceptions through regulations under Clause 10. We may well, therefore, bring forward government amendments on this issue on Report. I have listened to the concerns that have been expressed and all our further considerations will take account of the text and intent of noble Lords' respective amendments.

Finally, the noble Baroness, Lady Meacher, has also tabled Amendment 27 in this group, which would exempt low non-psychoactive doses of psychoactive substances. My understanding is that such materials are used by forensic and other laboratories, which hold these chemical reference samples for investigative procedures. I can assure the noble Baroness that, as these substances are not supplied for human consumption, they are already outside the scope of the Bill.

I hope I have demonstrated that I have sympathy for the intention behind Amendments 25, 26, 28 and 49. We are actively looking at whether the definition of medicinal products needs to be strengthened and whether further precision is needed to safeguard legitimate research. We will also make every effort to get together with the experts; that is an excellent idea. On the understanding that we will return to these issues on Report, I trust that the noble Baroness will be content to withdraw her amendment.

Baroness Hamwee: My Lords, is there an issue around veterinary medicine as well as human medicine? I do not know the answer to that; it is a straight question. Is it something that needs to be looked at? The Minister is shaking her head, which suggests that one could go on producing veterinary medicines without offending under the Bill, which raises all sorts of other issues.

Baroness Chisholm of Owlpen: Veterinary medicines are not for human consumption, so they do not fall within the scope of the Bill.

Baroness Hamwee: My concern is that research in that area should not be impeded.

Baroness Meacher: My Lords, I am grateful to the Minister for her response, which was very positive. I was particularly pleased that she agreed that these matters should be dealt with in the Bill, which suggests agreement that they are sufficiently important for them to be dealt with there, and said that the Government will be bringing forward amendments before Report on the medicinal matter and may bring forward amendments on the research matter. I understand from the experts—the scientists—that it is important that there are amendments before Report on that issue. I hope the Minister may be able to respond immediately to that point because it will be difficult to leave this one unless we have that assurance.

On the low-dose issue, her reply was interesting because I tend to agree with her that surely these things are not for human consumption. On the other hand, the matter has been raised with me by people who know about these things, and I must express my gratitude for the willingness of Ministers to meet the experts and cover that issue and the others because they are the people who need to advise Ministers about exactly what the wording should be on all these matters. I express my gratitude, and I beg leave to withdraw the amendment.

Amendment 25 withdrawn.

Amendments 26 to 28 not moved.

Amendment 29

Moved by ***Lord Norton of Louth***

29: Schedule 1, page 34, leave out lines 25 to 29

Lord Norton of Louth: My Lords, my amendment would remove alcohol from the list of exempted substances in Schedule 1. The purpose of tabling the amendment is to enable the Minister to do that which he did not have time to do at Second Reading: to provide an intellectual justification for the exclusion of alcohol from the provisions of the Bill.

Alcohol has the effects listed in Clause 2(2) and as developed by the Minister in responding in Committee on Amendment 7. Why, then, is it an exempted substance? The logic of the Bill is, on the face of it, unclear. It seeks to prohibit psychoactive substances that are seen to be harmful, but it then exempts the substance that is the most harmful of all in human, social and economic terms. Alcohol misuse kills, it rips families apart, it puts strain on public services—the police and the NHS—and it has enormous economic consequences for public services and for employers in working days lost. There are at least 5,000 alcohol-related deaths a year. If one includes deaths where alcohol is causally implicated, the figure rises to some 20,000, a point made by the noble Baroness, Lady Hollins, at Second Reading.

Alcohol abuse remains the leading risk factor in deaths among men and women aged 15 to 49 in the United Kingdom. In 2012-13, there were more than 1 million hospital admissions related to alcohol consumption, and almost 300,000 were wholly attributable to alcohol consumption or classed as alcohol specific. Alcohol abuse not only harms those who drink but impacts on society as well. Heavy drinking can not only damage one's physical and mental health but lead to assaults and leave one vulnerable to assault. There were nearly 10,000 casualties of drink-driving the UK in 2012, including 230 killed. In almost half of all violent incidents, the victim believed that the offender was under the influence of alcohol. Perhaps most remarkable of all, according to Alcohol Concern, the NHS estimates that some 9% of men and 4% of women in the UK show signs of alcohol dependence; that the cost of alcohol misuse in England is an estimated £21 billion in healthcare, crime and lost productivity; that the cost to the hard-pressed NHS is £3.5 billion; and that the cost in terms of crime is £11 billion. It is difficult to comprehend the sheer scale of the social and economic cost.

Why do we continue to tolerate heavy drinking and many city centres being awash with drunken youths on Saturday evenings, and why are we willing to excuse clearly inebriated individuals in all sorts of social settings but do not tolerate those who take other psychoactive substances? Why is one type of misuse apparently culturally acceptable, or at least tolerated, but not the other? Should we not adopt the same approach to all psychoactive substances that can produce serious personal, social and economic harm? Why do we seek to ban the manufacture and distribution of one but not the other? My noble friend may say that the answer is purely practical: that we cannot ban the production and sale of alcohol because such a ban would be unenforceable; we would be emulating the USA of the 1920s. If that is the case, let us have that on the record. Is the use of legal highs on such a scale that a ban on their production and distribution can be enforced, or, at least, is that the justification? If so, what is the evidence that such a prohibition is enforceable? What consideration has been given to the alternatives?

5.15 pm

Why do the Government think that regulation and education are the best approach to tackling alcohol issues but not legal highs? I hold no brief for legal highs, but I hold no brief for alcohol either. I regard them all as potentially harmful substances. I would not dream of drinking alcohol. Some noble Lords may say, "You don't know what you're missing". I wonder how those noble Lords would respond to someone who takes legal highs saying to them, "You don't know what you're missing". Let us therefore be quite clear as to the reason why we ban one type of damaging psychoactive substance but not another. Why is alcohol in Schedule 1? What is the Government's intellectual case for treating it as an exempted substance? I beg to move.

The Deputy Speaker (Baroness Fookes) (Con): My Lords, I point out that if Amendment 29 is agreed, I shall not be able to call Amendment 30 by reason of pre-emption.

Lord Brooke of Alverthorpe: My Lords, had I spoken at Second Reading I would have supported the Government's aims of trying to avoid the harms which arise from legal highs and to prevent them wherever possible. However, like the noble Lord, Lord Norton of Louth, I would have gone on to ask why the Government are so inconsistent in their approach. Ethyl alcohol is a psychoactive substance. There is no question whatever about that—the Government cannot disagree. It will be very interesting to hear why they believe it should be treated differently.

When one considers the differing approaches the Government take to alcohol these days, one sees the great sledge-hammer—that is the best way to describe it—that has been brought in to deal with an issue that, although worrying, is a nut compared with the boulder that is alcohol and the problems it creates for our society. The noble Lord, Lord Norton of Louth, just described those problems, so I will not repeat them. The Government should think long and hard about moving, fairly quickly, on some of their policies on alcohol if they want to carry the confidence of this House in trying to make changes of this nature. They have a responsibility deal whereby, in partnership with the drinks industry, they seek to reduce the volume of alcohol consumed in this country. They have targets, yet the Chancellor stands up in March and announces a freeze in duty on wine, beer and cider and a reduction in some other areas, including a 2% reduction in the duty on spirits.

The Government will not use pricing as a mechanism to try to discourage drinking, and the drinks industry sees that such pricing effectively discourages people from buying its products, so it lobbies the Government to reduce duties, which the Government, in turn, do. On the one hand we have the responsibility deal, with its targets that seek to reduce the consumption of alcohol, while on the other hand we have the statement

[Lord Brooke of Alverthorpe]
made by the Chancellor. As the Government documents produced after the Budget prove, he will in fact increase the volume of alcohol that is sold, which, in turn, will increase the harms that arise for people who abuse it. So, a conflict does arise. I want to persuade the Minister to think ahead about what might be happening with alcohol and alcohol-related substances, and about whether there is a case for making a change to the schedule.

As long ago as last summer, I wrote to the noble Earl, Lord Howe, about a powdered white alcohol called Palcohol which is being marketed in the United States. Powdered alcohol has been around in Europe for quite some time. It was produced in Germany and then in Holland about seven or eight years ago but was not marketed. It is now being produced and marketed in the States. I wrote to the noble Earl to find out what the Government were doing in their conversations with the drinks industry at the responsibility deal level. The reply was:

"The Department has not discussed the import, production and sale in the United Kingdom of Palcahol and its European equivalents with partners in the Responsibility Deal".

I also wrote to the noble Lord in the Home Office to ask,

"what assessment they have made of the decision of five states in the United States to ban the sale of Palcahol".

He replied:

"The Government is aware of powdered alcohol from media reports and the banning of the product in five states of the United States of America. The Government is not aware of powdered alcohol being marketed or made available to buy in England and Wales".—[*Official Report*, 6/1/15; col. *WA 107*.]

I followed that up with another Question:

"To ask Her Majesty's Government what assessment they have made of the status under the Licensing Act 2003 or the Misuse of Drugs Act 1971 of imports from the United States or Europe of alcohol powders".

The noble Lord, Lord Bates, told me:

"Although the Act refers to liquids and this product is sold in solid form, it is intended to be drunk as a liquid".

I tell the Minister that he is not quite up to date with what people are doing with this powdered drink. They are not simply taking it as a liquid; it can be snorted. Admittedly it is an uncomfortable experience, I understand, but it can be snorted. More particularly, it can be baked into cakes or go into confectionary and a whole range of products that people are now contemplating using it in. The noble Lord went on to say:

"The Government is not aware of powdered alcohol being marketed or made available to buy in England and Wales, although we are aware of its sale in other countries. In the event that there is a proposal to market powdered alcohol in England and Wales, the Home Office will make a formal assessment of its legal position".—[*Official Report*, 7/1/15; col. *WA 223*.]

I would argue that this is the day when the Government can start to look at the legal position of Palcohol and at whether they are prepared to see it come into the country. If so, how are they going to handle it? It will shortly be available on the internet and imported through the internet, because that is how it will be marketed. It is already spreading on a wide scale within the US and, as night follows day, it will come to the UK.

Therefore, I suggest that the Government go back to the Answers that they sent me. I suggest that they look at what is happening in the United States at the moment, the problems that are arising there and the reasons why some of the states have banned it. If they are not prepared to accept in totality the amendment moved by the noble Lord, Lord Norton of Louth, which I support—although I suspect that the Government will not—I also suggest that they look at whether they are at least prepared to consider whether this is a borderline area in which they should take some action, which they could do under this legislation. If they are sensible, they will look to the future, lay the ground, put this substance into the schedule and ban it, in the same way as they are banning legal highs. I hope that they are prepared to consider that.

Lord Blencathra: My Lords, I could never hope to give my noble friend an intellectual answer as to why all alcohol is exempted, but perhaps I can try to give him a legal one and a practical political one.

Most alcohol policy in the United Kingdom is now controlled by the EU and we have a few little bits left. I refer the Committee to the last report conducted by EU Sub-Committee F on the EU alcohol strategy. It was an eye-opener for all of us. Given the parts of alcohol policy we control, if we were to be completely consistent, there would probably be an increase in the price of Scotch whisky. However, that cannot be done for a variety of reasons—not least, it would probably feed into nationalism. With regard to the other parts of the policy, cider is desperately underpriced. No Government have felt it appropriate—no doubt for political reasons—to increase the price and disadvantage manufacturers in the West Country. It may be that with only one Member left in the West Country—I am not meaning to be snide here—a future Labour Government may, in due course, feel it more politically acceptable to put up the price of cider.

The parts that are controlled by the EU mean that, for example, we see on wine and spirit bottles in this country how many units of alcohol are in a glass and how many are in the bottle. That is a purely voluntary system because we are not allowed, under EU rules, to make it compulsory. We also discovered on the committee that some young people—mainly women, although men as well—may be on some form of crash diet and think they can avoid fatty food and sugars and just drink white wine instead. We are not allowed to put the calorific value of a glass of wine on the bottle, except by some voluntary means.

In Scotland, they are trying to conduct an excellent experiment on unit pricing. There may be considerable merit in unit pricing and I think that the Government in England are watching carefully to see how they get on. But of course they have been taken to the European Court, where it may be regarded as a constraint on trade —so Scotland may be prohibited from using unit pricing under EU rules. I could go on, but I will not, because I do not want to be seen to be too mischievous on this. However, there are a lot of other aspects of alcohol policy that we are no longer completely in charge of.

The other, more serious point is that all of us on EU Sub-Committee F, including my colleagues, noble Lords and Baronesses who are much more experienced

than I, began the report a year ago thinking that alcohol abuse was out of control in this country, that everyone was drinking more and that we had a terrible problem. We were very surprised to discover that alcohol use is declining, particularly among young people. We cannot have an EU alcohol strategy because every country has a completely different problem. They all have problems with binge drinking, but different age groups are bingeing on different kinds of alcohol. What we discovered is that a small minority are drinking more to excess. I think that I am right in saying that alcohol deaths through cirrhosis of the liver have increased, but it is a smaller minority drinking extraordinary amounts—one or two bottles of vodka or scotch a day, so long as they can afford it. But overall, alcohol reduction policies are working.

In conclusion, I say to my noble friend that if he wants to really have more control over alcohol policy and be able to implement his amendment, he will need to vote no in the referendum when it comes.

Baroness Meacher: My Lords, I want to make a brief but important point. In responding to the noble Lord, Lord Norton, will the Minister address his mind to not only the illogicality but the danger of exempting alcohol from the scope of the Bill while banning relatively very safe psychoactive substances? If this ban works at all—the Minister knows that I am pretty sceptical about it—the Government would, in effect, be preventing or discouraging very strongly young people from taking relatively very safe substances while encouraging them, one could argue, to drink alcohol, which we know is a killer drug. Therefore, I ask the Minister, in responding the noble Lord, Lord Norton, to address that particular point about the danger of banning substances while leaving alcohol exempt.

The Earl of Erroll (CB): My Lords, I want to make a quick point because the subject of alcohol has been introduced into the debate. Although I entirely agree with my noble friend Lady Meacher about not classing all drugs together, the idea that we should include alcohol in this would, equally, cause huge problems. Every society in the world has always had something that allowed them to let their hair down at parties. Introducing the subject of alcohol into this sort of debate always makes me think of the definition of a puritan as someone who has a haunting fear that someone somewhere might be enjoying themselves. I get very worried when we try to cover all these things and try to stop everything.

As to the point about increasing the price of alcohol and unit pricing, some time ago some young people pointed out to me that if you increase the price of alcohol, the price of drugs becomes relatively cheaper. It drives people away from something over which we have relative control, which we deliver in controlled concentrations that we understand, into an area over which we have less control. That is very dangerous. We should be careful about trying to alter people's behaviour in relation to alcohol by pricing mechanisms. There are a lot of people who may be medically qualified, but they do not understand market pressures. That is the only word of caution that I shall say on this matter.

5.30 pm

Lord Tunnicliffe: My Lords, for the avoidance of doubt, it is not the policy of the Labour Party to ban alcohol. I leave it to the Minister to enjoy the privilege of office and explain the intellectual case.

Lord Bates: Oh, that I could get away with that, although I can say that it is not the policy of Her Majesty's Government to criminalise the consumption of alcohol. On that, we might be clear.

I understand the point made by the noble Lord, Lord Norton of Louth. He has spotted a certain lack of consistency in approach and wishes to draw the Committee's attention to it. As a distinguished academic, he then invited me to put forward an intellectual case that would satisfy him. Of course, he knows that that will not necessarily be forthcoming.

As I listened to the debate, the thought occurred to me that the nearest you could get to an intellectual case would be to say that you would not necessarily be starting from here with alcohol. It has been enjoyed and endured, probably in equal measure, for about as long as people have been walking around in this great land of ours. Therefore, alcohol has been part of our culture and our society for millennia.

Lord Winston (Lab): In many cultures, cannabis has had exactly the same status and is a good deal less dangerous.

Lord Bates: That is true. I see my officials in the box becoming terribly nervous, as I am jousting way out of my depth here and I should just stick to the script. The point which I was trying to make was that we are dealing in this Bill with a new menace, where there are no controls. People of any age can go into a head shop and procure products which are designated as plant food or as not fit for human consumption. There is no supervision of their manufacture; nobody is required to produce an ID card; and they are unregulated. We have explored different ways of dealing with them and have come down on the side of a blanket ban. I will leave it to the Committee to deduce whether, if alcohol were to be introduced into society today, we would take a different approach. That might be as close as I can possibly get to addressing that.

Let me put on the record some remarks about the Government's position on alcohol. Alcohol-related harm is estimated to cost society more than £21 billion a year. This figure includes the £11 billion cost of alcohol-related crime and £3.5 billion in costs to the NHS. The harm caused to health is clear. Alcohol misuse is one of the three biggest lifestyle risk factors for disease and death after smoking and obesity. In 2013, more than 6,500 deaths in England were due directly to alcohol consumption. There has also been a steady increase in the number of adults accessing specialist alcohol treatment services, from just over 100,000 people in 2008-09 to nearly 115,000 people in 2013-14.

Alcohol is also a key driver of crime. In particular, it is strongly associated with violent crime. In 53% of violent incidents, victims perceive offenders to be under the influence of alcohol. This is clearly unacceptable.

[Lord Bates]

We can all agree that alcohol, when consumed excessively, is a dangerous substance, which is why the sale of alcohol is tightly controlled under existing legislation. However, when used responsibly, alcohol plays an important social part in our communities. More than £10 billion is raised each year in alcohol duty and more than £38 billion worth of alcoholic beverages were sold in the UK in 2011. Almost 2 million jobs in the UK are said to be linked to the alcohol industry in some way.

The Government's alcohol strategy, launched in 2012, promoted targeted action to reduce crime and health problems caused by alcohol without disproportionately affecting responsible drinkers. Local communities, agencies and businesses are best placed to identify and deal with alcohol-related problems in their area. The Home Office has worked with 20 local alcohol action areas to tackle the harms caused by excessive alcohol consumption. These areas worked on initiatives to strengthen local partnerships and share innovative ideas that work. Some of the areas which looked at ways to reduce alcohol-related health harms also explored the evidence and local processes that would be required to introduce a health-related licensing objective to address alcohol-related health harms caused by high density of premises. The project ended in March, and Home Office officials are collating the learning from the work that took place in each of the areas with a view to sharing it more widely in due course.

The alcohol industry has an important part to play, too. The Government challenged the industry to take action as part of the public health responsibility deal. The industry has taken a number of positive steps, such as reducing the number of alcoholic units sold and putting more information on labels—though not as much as my noble friend Lord Blencathra would ask us to, probably for the reasons that he alluded to. In addition, the Government have asked Dame Sally Davies, the Chief Medical Officer, to oversee a review of the alcohol guidelines to ensure that they are founded on the best science and help people at all stages of life to make informed choices about their drinking. The review is under way and we expect consultation on new guidelines to take place from the autumn.

There have also been government-led initiatives on alcohol and drug prevention in schools. In March 2013, the Department for Education launched a new drug and alcohol information and advice service for schools, providing information and resources on what works and assisting local areas to choose interventions which are right for their circumstances. The Personal, Social, Health & Economic Education Association has produced a revised programme of study based on the needs of today's pupils and schools which includes alcohol and drug education. In February 2015, Public Health England launched the Rise Above website, helping to empower young people to make positive choices about issues that have a profound impact on their health. In its first two months, the site received more than 250,000 visits.

Since the alcohol strategy was launched, there has been a reduction in the level of alcohol-related violence. Consistent with trends in overall violent crime, there has been a 34% fall in the number of violent incidents perceived as alcohol related since 2004-05. There have also been reductions in the level of binge drinking and in the number of 11 to 15 year-olds drinking alcohol. The Government have sent a strong message that selling alcohol to children is unacceptable, and there is now an unlimited fine for persistently selling alcohol to children.

Looking ahead, this Government are committed to building on the successes of the alcohol strategy to tackle alcohol as a driver of crime and to supporting people to stay healthy. When misused, alcohol is undoubtedly a harmful substance, and it is right that its availability is properly regulated and that we tackle the health and crime-related issues that arise when people drink to excess. But for most of the population, alcohol is not a dangerous psychoactive substance which should be subject to the blanket ban provided for in the Bill. I hope that, having prompted this timely debate, my noble friend will be content to keep alcohol as an exempted substance for the purpose of the Bill and consider withdrawing his amendment.

Lord Brooke of Alverthorpe: I would be grateful if the Minister will respond to the points that I made about Palcohol, which is quite different from what we have been debating today.

Lord Bates: The noble Lord is right. We will go back and look again at those Written Answers. We are alert to the risk of powdered alcohol and are actively looking at how best to meet this challenge. However, we are not persuaded by this amendment. We are alert to the problem and are looking at it. I will be happy to meet with the noble Lord, together with officials, if he has new evidence to share with us about how the problem of powdered alcohol is being tackled in other countries and if and how it is being used in this country.

Lord Norton of Louth: My Lords, I am grateful to everyone who has spoken. It has been a useful discussion for getting certain matters on the record. We may have done a public service by finding out what the Opposition's policy is on this matter.

The Minister's response—and, indeed, my noble friend Lord Blencathra, to some extent—made my case for me. The point that we have established is that there is no principled case for the exemption. The Minister basically said that it is difficult to ban it, that we are where we are and that it brings in a lot of money to the Treasury. That has to be set against the damage that alcohol misuse causes, as I have detailed and, indeed, as my noble friend confirmed in the data that he placed before us. My noble friends Lord Blencathra and the Minister made the point that I was making—that in relation to alcohol there is an approach of regulate and educate—so why are we not being consistent? That is the issue that I was raising and it is important that it is borne in mind. If we are going to proceed, we have to be clear about why we are doing this. Where is the consistency? What is the intellectual case? As we have heard—as my noble friend confirmed—there is not one.

I am sure my noble friend will be relieved to know that I do not intend to press the amendment, nor is it something that would lend itself to come back to on Report. I am grateful to the noble Lord, Lord Brooke,

who has raised an important issue which is worth pursuing. I do not intend to pursue the broad issue that I have raised, but I hope that throughout our discussions this will remain the elephant in the room. I beg leave to withdraw the amendment.

Amendment 29 withdrawn.

Amendment 30

Moved by ***Baroness Hamwee***

30: Schedule 1, page 34, line 29, after "any" insert "other"

Baroness Hamwee: My Lords, I will speak also to Amendments 31, 32, 33 and 34. In view of the debate on the previous amendment, I should declare that some of my friends say that, when doctors ask the question, "Does anyone ever comment on your drinking?", I should say yes because I drink so little. On the other hand, coffee and chocolate—now, there you are talking.

I am concerned about the definitions in Schedule 1. For example,

"'caffeine products' means any product which … contains caffeine, and … does not contain any psychoactive substance".

I am bemused by this. It must mean "does not contain any other psychoactive substance", in which case we should say so. We have heard that the Government will be responding to the Constitution Committee. I will not say that the committee was also bemused—that would be very disrespectful—but it pointed out some issues with the relationships between exemptions and so on. We await the response.

The first three amendments are all the same and the fourth one is, in essence, the same as the first three. The last amendment in this group refers to instruments relating to food. The noble Lord, Lord Blencathra, talked about the amount of EU regulation on this issue. I am interested in the words,

"the use of which in or on food is not authorised by an EU instrument".

Should it not be "an EU or other applicable instrument", which is what I am suggesting?

Even if there is no secondary legislation or any ruling which applies to this, perhaps we should future-proof it in case there is. I beg to move.

Lord Mackay of Clashfern: My Lords, the "other" must be implied and I see no reason why it should not be expressed. I think the amendment carries itself fairly easily.

Lord Lucas (Con): My Lords, I do not like having a law which states as a fact something which is clearly wrong. I hope my noble friend will therefore accept these amendments, in spirit if not in the exact letter.

Lord Deben (Con): When my noble friend comes to do that, perhaps she will help me with the problem that I have got. I feel that "instrument" is probably not the right word, particularly when used with food. This is one of the ugliest bits of this ugly Bill, and any prettying up of this part would be very helpful.

5.45 pm

Baroness Chisholm of Owlpen: My Lords, I understand that these are probing amendments which seek an explanation of some of the drafting in Schedule 1. Amendments 30 to 33 broadly deal with the same point, although Amendment 33 is in different terms to the others.

I am hesitant to say this following that which we have just heard but, taking alcohol as an example, Schedule 1 defines an alcoholic product as,

"any product which … contains alcohol, and … does not contain any psychoactive substance".

The question is why the second limb of this definition does not refer to "any other psychoactive substance". The answer is logical but, needless to say, not entirely straightforward. It hinges on the distinction between the natural meaning of the term "psychoactive substance" and the meaning given to that term by the Bill.

Under Clause 2, as we now all know, a psychoactive substance is a substance which,

"is capable of producing a psychoactive effect in a person who consumes it, and"—

importantly—

"is not an exempted substance".

Alcohol is an exempted substance and so is not a psychoactive substance for the purposes of the Bill. It is therefore not necessary to refer in the definition of alcoholic product to "any other psychoactive substance" because we have already excluded alcohol from the definition of a psychoactive substance. I hope that makes sense.

Amendment 34 touches on a different issue—food additives and flavourings. These are already authorised under the EU legislation so the reference in paragraph 10 of Schedule 1 to an EU instrument—ugly though that may sound—is all that is required. My understanding is that this amendment would expand the paragraph referred to to read "an EU or other applicable instrument". However, only EU instruments are relevant here and so the additional words are not required. I should perhaps add that we have discussed and agreed with the Food Standards Agency the approach taken in paragraph 10 in Schedule 1.

The noble Baroness suggested that the additional words might provide future-proofing. However, I remind her that there is a regulation-making power in Clause 3 designed with that in mind. In the light of this rather complicated explanation, I hope the noble Baroness will be content to withdraw her amendment.

Baroness Hamwee: My Lords, the *Official Report* will not record the facial expressions around the Chamber in response to the Minister. I think I follow what has been said, but whether it is a sensible way of writing legislation I rather doubt. Legislation should say what it really means and not leave us struggling to justify such really quite difficult wording. I am tempted to press this to a Division, but we have a lot to get through today so I will not take the time now, but who knows? I beg leave to withdraw the amendment.

Amendment 30 withdrawn.

Amendments 31 to 34 not moved.

Schedule 1 agreed.

Clause 4: Producing a psychoactive substance

Amendment 35

Moved by ***Lord Paddick***

35: Clause 4, page 2, line 22, leave out "suspects" and insert "thinks"

Lord Paddick: My Lords, I shall also speak to Amendments 36 to 38, tabled in my name and that of my noble friend Lady Hamwee. Amendment 35 amends the offence of producing a psychoactive substance so that a person commits an offence under Clause 4(1)(b) if he or she,

"knows or thinks that the substance is a psychoactive substance",

rather than if he or she "suspects" it. Amendments 36 and 37 make a similar change to the offence of supply or offering to supply under Clause 5(1)(c) to read that the person "knows or thinks" or ought to

"know or think, that the substance is a psychoactive substance".

Amendment 38 is probing in nature to delete Clause 5(3) simply to try to elicit from the Minister an explanation of what on earth the subsection actually means.

Police officers suspect while the rest of us think. I am picturing myself with a person I have just arrested—sometimes I dream that I am still in the police; rather, it is a nightmare—in the tape-recording interview room at the police station, when I ask him, "Did you suspect this to be a psychoactive substance?". Surely the question is whether the suspect thought that it was a psychoactive substance, not whether he suspected it to be one. "Suspect" is rather value-laden, which usually has negative connotations. "If you suspect it, report it", is the latest from the Metropolitan Police. To us it seems more sensible to substitute "thinks" for "suspects" in the context of these offences.

On Amendment 38, perhaps the Minister can explain what:

"For the purposes of subsection (2)(b), the reference to a substance's psychoactive effects includes a reference to the psychoactive effects which the substance would have if it were the substance which P had offered to R",

means, and why it is necessary. I beg to move.

Lord Bates: My Lords, the short answer to the noble Lord, Lord Paddick, and to get to the heart of it, is that we believe that "knows or suspects" is an established term. It has been used in, for example, Section 21A of the Terrorism Act 2000, Section 2(16) of the Criminal Justice Act 1987—

"Where any person—

(a) knows or suspects that an investigation by the police or the Serious Fraud Office"—

and Section 83ZN(4) of the Banking Act 2009, which states:

"(4) A person who knows or suspects that an investigation is being or is likely to be conducted under section 83ZC".

I simply cite the examples to show that this is a term which has broad acceptance. However, I shall take up the noble Lord's invitation to put on the record a few words to expand on what is meant by these clauses.

Amendments 35, 36 and 37 seek to make a slight change to the mental element of the offences in Clauses 4 and 5, which relate to the production and supply of psychoactive substances. In drafting these offences, we consulted the national policing lead for new psychoactive substances and the Crown Prosecution Service. We believe that the current formulation of these offences is proportionate and fair, capturing those individuals who intentionally produce, supply or offer to supply these dangerous substances while not criminalising accidental behaviour.

To satisfy the mental elements of the production offence, the prosecution must show that the production is intentional, that the defendant knew or suspected that the substance is a psychoactive substance, and that the defendant must either intend to consume the psychoactive substance for its psychoactive effects, or know or be reckless as to whether the psychoactive substance is likely to be consumed by another person for its psychoactive effects. The mental elements of the supply offence in Clause 5 are similar; namely, that the prosecution must show that supplying the substance is intentional, that the defendant knew or suspected, or ought to know or suspect, that the substance is a psychoactive substance, and the defendant must know or be reckless as to whether the psychoactive substance is likely to be consumed by the person to whom it is supplied or by another person for its psychoactive effects.

Amendments 35 to 37 seek to remove "suspects" and replace it with "thinks". Given the two words' natural meaning, the requirement of each is very similar. However, we believe that the use of "think" raises the bar too high in terms of what must be proved. Thinking something suggests that a person needs to be "satisfied" or "believe" that something is the case—I am having a moment of déjà vu here with the then Serious Crime Bill, because we went through the mens rea discussions then—which is a higher test than that which we propose. The formula "knows or suspects" is commonly used in the criminal law to describe the mental element or mens rea of the offence. It is a phrase that is well understood. "Knows" demonstrates a true belief. Suspicion is a subjective test and need not be based on reasonable grounds, but there must be a possibility which is more than fanciful that the relevant facts exist. The courts have held that a "vague feeling of unease" would not suffice to prove suspicion, but the suspicion need not be "clearly" or "firmly" grounded and targeted on specific facts or based upon reasonable grounds.

The Government considered whether the mental element should extend only as far as "knows", but we concluded that this could create an inappropriately high bar for prosecutors to overcome, with defendants arguing that they did not know for certain that the substance they were producing or supplying was a psychoactive substance. Given, as I have said, that a "knows or suspects" test is commonly used in the criminal law, I am satisfied that it is well understood by investigators, prosecutors and defence lawyers. I am therefore not persuaded of the case for change.

Under Clause 5(2) there are two limbs to the offer to supply offence. First, person A must offer to supply a psychoactive substance to person B. The second limb requires that person A knows or is reckless as to whether person B, or some other person, would, if a substance was supplied in accordance with the offer,

be likely to consume the substance for its psychoactive effects. I realise that these are complex legal terms, but I have to say that they probably fit well with a number of cases that I have personally looked into. I am thinking of head shops selling psychoactive substances in bright packaging. To avoid prosecution, the label states that the substance is plant food or a research chemical that is not for human consumption. Clearly, that is what we are aiming to get at so that there is no loophole. Given the way this second limb operates, no offence would be committed if the substance that was in fact supplied was not a psychoactive substance. It will come as no surprise to noble Lords that not all drug dealers are entirely honest. An offer may be made to supply a psychoactive substance, but the person making the offer may intend to defraud the recipient by passing off some benign white powder as the real thing. Indeed the person making the offer may not intend to supply anything, but simply take the money and run. Clause 5(3) is intended to catch those circumstances. What matters here is that the defendant made an offer to supply a psychoactive substance and should not be able to evade prosecution under Clause 5 on the grounds that he or she did not intend to fulfil their side of the deal.

I accept the probing nature of the amendment and I hope that the noble Lord will find that these explanations, even if they have not entirely satisfied him, have allowed us to put some additional remarks on the record that may be helpful in understanding the Government's intent in bringing forward this clause.

6 pm

Lord Lucas: My Lords, I thought that that was a superb explanation but I want to tax the Minister, if I might. There are many ordinary substances—glue being the obvious one, but there are a lot of other things such as spruce logs, which you can burn—which you can use in extremis in the absence of other things for psychoactive purposes. Usually, a supplier of these things would not have to ask themselves whether I intended to use the tube of UHU for psychoactive purposes. When this law is enforced, what rules will apply to a retailer when they are selling something? Most plastic packaging when burnt or heated will produce fumes with a psychoactive effect. What does the retailer have to do not to be reckless? If they think that I am someone who might do that sort of thing, does that qualify? If I sell something to someone, not particularly caring what they will use it for, and they go and kill themselves by using it for psychoactive purposes, am I going to be come after? What are the rules? What do I have to do as a retailer of perfectly ordinary things if there is a potential psychoactive use for them?

Lord Bates: My noble friend is correct in the sense that there are rules that exist relating to solvent abuse, the use of solvents in that regard and protections for retailers. However, we are very clear here as to the target audience for the purpose of this measure: individuals who are seeking to manufacture psychoactive substances for the purposes of being consumed by people for their psychoactive effect, or to supply, import or export. We do not believe that they will come into the categories of what would be appropriate retail activity. My noble friend makes a wider point, though. I will reflect again with officials on his remarks in the *Official Report*, and if I can expand upon that point to provide some additional guidance I will certainly write to him and copy it to other Members of the Committee.

Lord Paddick: I thank the Minister for his explanation, on the basis that I am not a lawyer. I beg leave to withdraw the amendment.

Amendment 35 withdrawn.

Clause 4 agreed.

Clause 5: Supplying, or offering to supply, a psychoactive substance

Amendments 36 to 38 not moved.

Clause 5 agreed.

Amendment 39

Moved by ***Lord Howarth of Newport***

39: After Clause 5, insert the following new Clause—

"Possession for personal use

Possession for personal use of any psychoactive substances, including psychoactive substances hitherto controlled under the provisions of the Misuse of Drugs Act 1971, is not a criminal offence."

Lord Howarth of Newport: My Lords, this amendment proposes that the possession for personal use of any psychoactive substances, including psychoactive substances hitherto controlled under the provisions of the Misuse of Drugs Act 1971, is not a criminal offence. We touched quite extensively on this issue in the debate on Amendment 23 in the name of the Lord, Lord Paddick, but his amendment ranged considerably wider. I hope that the Committee will be willing to focus more tightly on the specific issue that is expressed in the proposed new clause.

In recent years, some 25 countries have removed criminal penalties for personal possession of some or all drugs. Now, for the first time, Her Majesty's Government of the United Kingdom are tiptoeing towards the decriminalisation of possession for personal use because they have omitted, quite deliberately, to criminalise such possession where psychoactive substances are concerned, as defined in the Bill. However, that raises the question of why they are stopping at new psychoactive substances and, of course, the substances that are exempted in Schedule 1. Why do they not now proceed to decriminalise possession for personal use of small amounts of drugs controlled under the Misuse of Drugs Act 1971? The policy is inconsistent and confusing. As such, I fear that it is liable to damage respect for the law, and the law in respect of drugs is already not much respected as it is.

Why does the Home Office judge it appropriate to criminalise young people wholesale? I am advised that in the period 2009 to 2013, 59,742 young people under the age of 20 were criminalised for possession of controlled drugs—something like 29% of young people in that age group received a criminal record. Such an

[Lord Howarth of Newport]
approach is clumsy, to say the least, and I submit that it is very damaging to those young people: the short-term and long-term effects of having a criminal record weigh heavily on their educational and employment prospects and their prospects of being able to obtain credit. It is also expensive for the Exchequer. The continuation of this criminalisation appears to ignore the findings of the Home Office's own study, *Drugs: International Comparators*, which found that the relative toughness of the prohibitionist approach makes no difference to actual consumption.

Like it or not, the recreational use of drugs is widespread in our society. Indeed, I would say that in certain sections of society it is normal. I do not know whether we are welcoming the Minister on his return from a fact-finding mission to Glastonbury at the weekend; he may perhaps have been invited by the organisers in his official ministerial capacity or perhaps he went incognito, possibly not even wearing his suit. I like to think that he was accompanied by Lady Bates and that she may have been bearing in her hand at least a small posy of flowers, because it could be the last time under this legislation that he will have the opportunity to give her flowers—then he will have to default to his position of presenting her with chocolates.

If the Minister was at Glastonbury, no doubt he will have ignored the vapourings coming from left field from such figures as Billy Bragg and Charlotte Church, but he will not have failed to notice that significant numbers of young people there were consuming psychoactive substances. Possibly he regards all of them as lost souls. Still, he may have taken some satisfaction from knowing that this will be the last time that drugs will be consumed at Glastonbury because, through the virtues of this legislation, he will have completed the circle of prohibition: it will be impossible for them legally to obtain psychoactive substances in future. Such will be the zeal for enforcement of the police and other authorities, prioritising this prohibition alongside their duties to deal with illegal immigration and threats of terrorism, he can be confident that next year no drugs will be consumed at Glastonbury—unless, perhaps, psychoactive substances descend like manna from heaven on to the fields of Glastonbury, because that is still a possibility. Miracles do occur, and it is not impossible that psychoactive substances will continue to be consumed at Glastonbury and other festivals.

We need a realistic and constructive approach to this matter. The constructive policy is to decriminalise the possession of all drugs for personal use—to legalise, to regulate and, as we have noted in earlier debates, to have a serious campaign to inform and educate people about the realities and dangers of drugs. How helpful it would be if we could distinguish legally between the recreational use of drugs and problem usage. Through decriminalising, I believe that we could get more people, more quickly into more effective help and treatment. This is the difference between the Swedish approach and the Portuguese approach, which we discussed earlier. Decriminalisation, as recommended in the proposed new clause, would release the police from so much futile activity.

I am told that Her Majesty's Government are spending something of the order of £1.5 billion a year on drug law enforcement. The impact assessment for the Bill, at paragraph 75, anticipates that the costs of the new measures to the public sector will be only £60,000 in year 1 and £50,000 a year thereafter. This is a joke: all the new offences created and all the enforcement activities legislated for in the Bill will cost a lot of money. We would do better to switch that expenditure and other expenditure into a real drive on information, education, youth work, healthcare through Public Health England and doing very much better about drugs in prisons.

Should we be condemning or should we be helping? In our society, there is no consensus as to whether the use of drugs is a crime, a vice, a weakness, an illness, an adventure, an act of rebellion or a recreation. It is all these things to different people at different times. But if we cease treating it as a crime, we will, as I have said before, greatly reduce the alienation of so many young people from politics and government, and we will be better placed to help people in need.

The noble Baroness, Lady Meacher, asked me to convey her apologies to the Committee that she is unable to speak to her Amendment 46. She has had to go because she is hosting a reception for Leonard Cheshire Disability, which is being attended by the Secretary of State. I beg to move.

Lord Paddick: My Lords, I rise to support Amendment 39 and to speak to Amendments 45 and 52, which are in my name and that of my noble friend Lady Hamwee. I agree with some of the remarks made by the noble Lord, Lord Howarth of Newport. However, I got a touch of déjà vu because I think I made out the case for the decriminalisation of drugs when I spoke to Amendment 23. I will not go over that again.

Amendment 45 clarifies the offence of intentionally importing a psychoactive substance under Clause 7(1)(a) to exclude the importation if it is,

"for the person's own consumption".

Amendment 52 makes a similar change to the definition of "prohibited activity". It would amend Clause 11(1)(d) to read,

"importing such a substance other than for the person's own consumption".

As we have heard, the Government do not intend to make possession of psychoactive substances under this Bill a criminal offence. This Bill is targeted at those who supply such substances. While it is therefore reasonable and logical for the importation of such substances for sale or supply to also be an offence, it seems disproportionate to make importation solely for one's own consumption an offence.

What will happen if this Bill becomes law is what happened in Ireland when similar provisions were enacted. People who currently buy their psychoactive substances from head shops will instead buy them from street drug dealers or, more likely, buy them online. Under this Bill, the police will be able to close down UK-based websites, forcing users to buy their drugs from websites overseas. When they buy their drugs from such websites, they will be guilty of importing psychoactive substances, even if their only intention is to consume the drugs themselves. It seems inconsistent for the

Government not to criminalise possession of psychoactive substances under this Bill but still to criminalise people for trying to possess them in this way.

6.15 pm

Lord Rosser: My Lords, as the noble Lord, Lord Paddick, said, we have had the debate on decriminalisation already today. I can only repeat our position that we do not believe that we should be moving to decriminalise possession of a wider range of substances currently controlled by the Misuse of Drugs Act 1971 through an amendment to the Bill, which is designed to address a specific issue that has developed very quickly over the last few years in respect of new psychoactive substances as defined in the Bill. As the noble Lord said, another amendment in the group seeks to provide that importing new psychoactive substances should not constitute an offence where the substance is for the individual's own consumption. That issue was raised at Second Reading.

We will listen with interest to the reply from the Minister, since there is a need to have a very clear definition of which, if any, activities that might be involved in achieving personal possession of new psychoactive substances for personal consumption, which is not an offence under the Bill, are or are not also covered by the non-offence provisions in the Bill. To pursue the point made by the noble Lord, Lord Paddick, will the Minister say whether the reference in Clause 8 to a person committing an offence if they intentionally import a substance for their own consumption is intended to cover the situation where the substance is ordered online from outside the country? What happens if the individual concerned, in ordering the substance online, is not aware of whether it has come from within or outside this country, and it is subsequently proved that it has come from outside this country? Is that person guilty of an offence under the Bill?

Lord Bates: My Lords, I thank the noble Lord, Lord Howarth, for introducing this amendment. The amendments in this group relate to the personal use of such substances. Let me assure the noble Lord at the outset that the Bill does not make possession of a psychoactive substance for personal use a criminal offence. Similarly, it is not an offence to possess for personal use a drug subject to a temporary class drug order. In that sense, the current process is consistent with the way in which we have tackled such issues in the Misuse of Drugs Act, in that the intention is to catch the suppliers and manufacturers of the products.

The noble Lord, Lord Paddick, and the noble Baroness, Lady Meacher, whose apologies we note, have argued that the Bill is internally inconsistent in making it an offence to import a psychoactive substance for personal use but not criminalising personal possession. I hope I can persuade the Committee that this is not the case. The very principle of this Bill, as recommended by the expert panel, is to tackle the supply of these substances. Given that the vast majority of these substances are imported from abroad, clearly, if we are to tackle the supply, we need to ensure that we have in place a robust importation offence and that the Border Force has sufficient powers to effectively stop these substances crossing the border. On that point, I advise the Committee that the Government intend to table further amendments to ensure that the Border Force can access the powers under the Customs and Exercise Management Act 1979 when it intercepts psychoactive substances coming into the UK.

We cannot have a robust importation offence if we permit small quantities of psychoactive substances to be imported for personal use. We want to stop all these dangerous substances entering the country, not facilitate their use. The expert panel was clear that the Bill should focus on the supply of these substances and target all sources, even social supply, which can be a gateway for people into regular drug use. Any supplier of a new psychoactive substance is contributing to the overall drugs problem.

The substances caught in this Bill are deliberately being treated differently from the drugs controlled by the Misuse of Drugs Act 1971. The 1971 Act controls drugs where we have expert evidence of specific harms and therefore apply the full ban on possession and supply for public protection. For those not—or not yet—controlled under the 1971 Act, we are targeting the trade alone. However, allowing possession of a psychoactive substance is one thing; deliberately weakening the controls by creating a loophole that allows the importation of small quantities is something else, both in principle and in practice.

I have already outlined one risk in allowing importation of personal quantities—that of creating the possibility for individuals to import multiple packages of small quantities of psychoactive substances, which on their own are consistent with personal use but could enter the supply chain when combined. There is a raft of practical challenges with this approach: how much would constitute personal use? Would it cover all substances? Would you allow someone to import a year's worth of substances for their personal use? That could, depending on the substance, be a significant quantity.

Another concern would be the enforcement challenges that this new approach would create. A blanket importation ban simplifies enforcement by the Border Force: any psychoactive substance found at the border and which is evidently intended for human consumption can be seized and destroyed, unless it is an exempted substance or for an exempted activity. Allowing smaller packages for personal use would impose significant demands on the Border Force, requiring it to investigate the importation in each and every case to determine whether the seized substances are for onward supply or personal use. It would simply be unrealistic and an unnecessary burden to put this measure in place.

On the website question, which is a fair point, it should be said that there were two effects of the Irish experience: one was immediately to close down the head shops in the Republic of Ireland; the other was to allow the Government to take down the websites that were supplying these substances, which were on a Republic of Ireland domain. On the offences committed when there is the intention to import, if you can prove that you did not know the website overseas and that you were importing, you would not have intentionally imported. Is that clear? Perhaps it is just not clear to me. Let me read it again: on the offences committed when it is intentionally imported, if you can prove that

[LORD BATES]
you did not know the website was overseas when you were importing, you would not have intentionally imported. Yes, that is very clear.

Finally, I should add that the importation of psychoactive substance offences in both Ireland and Australia also apply to all quantities imported: there is no exemption for personal consumption. Amendment 52 would stand or fall with Amendment 45, as it seeks to make a consequential amendment to the list of prohibited activities to replicate the change in the importation offence.

I hope that I have been able to provide some comfort to the noble Lord, Lord Howarth. I suspect I may have been unable to persuade the noble Lord, Lord Paddick. However, having given the issue a good airing, I hope that he and other noble Lords will not feel the need to press their amendments.

Lord Howarth of Newport: My Lords, the groupings were perhaps not quite right, at least as far as Amendment 39 is concerned. That is probably my fault, but I am grateful to noble Lords for their participation and presence in this short but worthwhile debate.

The Minister's charm is such that he would almost persuade the Committee to agree to what is palpably bad legislation, but I congratulate him on his manner at the Dispatch Box. In seeking to refute the proposition put forward by the noble Lord, Lord Paddick, he said that we could not have a partial relaxation of a ban on importation for personal use because it is very important that the Border Force have powers—those powers will be further supplemented in amendments to come—to ensure that, in the phrase I think he used, all these dangerous substances do not get through. He went on to say that there is also the Misuse of Drugs Act, which would allow the proscription of individual substances where there is evidence that they are dangerous. There is quite a tension, if not an inconsistency, between those points. We can think about that a little further.

As to the practicalities for the Border Force, I hope that at some point in proceedings the Minister will be able to give us some statistics about the number of packages that enter this country. We all know that there has been an enormous increase in mail order, online retailing. He mentioned that the Irish-based websites had been closed down by their legislation, but we know that the Irish have become big consumers of new psychoactive substances, even more than they were before the prohibition legislation was brought in. How are they getting them? Where are they coming in? What means are there to prevent the entry of all these packages, which Postman Pat then takes up the garden path and pops through the front door? I cannot see how the Border Force will inspect all these packages. I understand that a few years ago, they were able to inspect only some 2% of shipping containers. The Minister is landing the Border Force with a completely impossible task.

Lord Bates: That is one of the reasons why the Republic of Ireland Government are pleased that we are following their lead in this regard. Naturally, when you make a blanket ban, as they have done, people find it very easy simply to cross the border—which, of course, is not really there—to obtain these supplies in the north of Ireland. I can give the noble Lord some quick statistics. More than three and a half tonnes of new psychoactive substances were seized by Border Force officers in 2014-15—a 75% increase on the previous year. Officers undertake targeted physical checks, supported by technology such as X-ray and new portable FirstDefender devices, to intercept suspected packages out of the 250,000 parcels that come through the UK's depots.

Lord Paddick: Before the noble Lord withdraws his amendment, can I just say that surely there must be a way to allow all these substances—or as many as are discovered—to be confiscated by the Border Force without making importation for personal use a specific offence? Surely they can be treated as two separate things. No doubt we can discuss that during the Bill's further stages.

Lord Bates: We can, but the whole purpose of the legislation is to try to close the loopholes. As I explained, if there was a loophole that meant you could import for personal use, how do you actually track that? Whether it is one packet or multiple packets, what is an appropriate amount for personal use? That makes it very difficult for Border Force officials. We are taking a blanket approach, as we have with other substances, because it gives clarity to the purpose of the policy.

Lord Howarth of Newport: The noble Lord has provided us with some helpful information. I am still left puzzled as to how he thinks people will obtain these psychoactive substances, which it will not be a criminal offence to possess for personal use. Either they will have chemistry sets and synthesise them themselves, or his system of border controls and so forth will fail to work. Anyway, I am grateful for the thoughts that have been offered and the information that has been provided, and I beg leave to withdraw the proposed new clause.

Amendment 39 withdrawn.

6.30 pm

Clause 6: Aggravation of offence under section 5

Amendment 40

Moved by ***Lord Rosser***

40: Clause 6, page 3, line 16, leave out "or B" and insert ", B or C"

Lord Rosser: My Lords, a succession of inspection reports, covering Highpoint, Bristol, Liverpool and Deerbolt prisons among others, have shown high levels of use of synthetic cannabis, known by inmates, as I understand it, as "Spice" or "Black Mamba". These legal drugs are not identifiable, so I am told, by more than a handful of sniffer dogs, nor through mandatory drug testing. Spice can cause high levels of addiction and there have been reports of debt, bullying and violence associated with its use becoming more widespread in prisons.

The government response to the expert panel report included a commitment to improving information about new psychoactive substances in the prison estate. The Minister referred to this issue in his letter of 15 June. However, the purpose of the two amendments that my noble friend Lord Tunnicliffe and I have tabled in this group is to make supplying, or offering to supply, a psychoactive substance in a prison an aggravating feature of the offence of supplying, or offering to supply. As we know, the Bill already makes it a statutory aggravating factor if the offence took place at, or in the vicinity of, a school. Surely another area of significant concern must be our prisons, where there are certainly some fairly unpleasant individuals, but there are also many potentially vulnerable people. To seek to supply, or offer to supply, a psychoactive substance within our prisons—there are different ways in which such substances get inside, whether through visitors, rogue staff, being thrown over the wall or sent in parcels or goods—is clearly making a difficult environment, with significant numbers in a relatively small space, even more awkward for both staff and inmates. I hope the Minister will share the view that supply, or offering to supply, in a prison should be an aggravating feature of such an offence, which is the purpose of our amendments. We await with interest his response to this and the other amendments in this group.

In conclusion, it was stated in the other place:

"Thirty-five per cent. of prisoners have a drug addiction and 6% acquire that addiction while in prison".

The Secretary of State for Justice said in response to that comment that,

"drug addiction is one of the principal factors that lead individuals to commit crime. It is also the case that there is an unacceptable level of drug use, both of illegal drugs and so-called legal highs, in our prisons".—[*Official Report*, Commons, 23/06/15; col. 737.]

If that is the Secretary of State's view—and I do not think that too many people would be surprised that he has expressed it—surely this is an opportunity to make supplying the new psychoactive substances, or offering to supply them, an aggravating feature of the offence in addition to what is already provided for in the Bill, which covers the situation where the offence takes place at, or in the vicinity of, a school. I beg to move.

Lord Kirkwood of Kirkhope: My Lords, in following the commendably concise remarks of the noble Lord, Lord Rosser, I wish to speak to Amendments 41, 42 and 108, standing in my name and that of the right reverend Prelate the Bishop of Bristol. These amendments are self-evident and seek to refine and extend protection for children under Clause 6. The provenance of these amendments is the Children's Society, which, as a result of the important work that it does protecting children, has made a compelling case that these factors need to be inserted in the Bill as additional aggravating factors.

Basically, I am asking the Committee to amend the Bill to make the supply of psychoactive substances to children under the age of 18, or in the vicinity of premises where vulnerable children reside, an aggravating factor of an offence. The evidence indicates that psychoactive substances are now increasingly being used to groom children who are in vulnerable situations and environments. As the Government have already recognised that the school environment needs to be protected, this established principle would merely be extended a little by accepting the amendments suggested by the Children's Society. It has provided some, I hope, very helpful definitions of accommodation for vulnerable children, which I think are applicable to England and probably Wales. I do not know whether they are entirely appropriate for Scotland, but I would like the Minister's advice on that. There are three sets of circumstances where children are particularly exposed to these situations—residential care, as defined by people in supported accommodation, and 16 year-olds and 17 year-olds who find themselves homeless. I would be interested to hear about the experience of the right reverend Prelate in this regard as I know that the church does valuable work in this area. He may be able to expand on some of the background circumstances that caused the Children's Society to promote these amendments.

Amendment 108 seeks to apply these proposed aggravating circumstances to other controlled drugs under the 1971 legislation. As I understand it, at the moment there are merely non-statutory aggravating factors in the 1971 provisions. If Amendment 108 found favour with the Minister, I think that we would be able to ensure the same protection from the courts, as they would be required to take account of aggravating features in considering any offence.

The Lord Bishop of St Albans: My Lords, my colleague the right reverend Prelate the Bishop of Bristol is very sorry that he cannot be here, but I have spoken to him and am keen to add a few words of support for these amendments.

Those who work with children, young people and vulnerable adults know only too well the risks associated with residential care. In 2012, of the 16,500 children who were found to be at high risk of sexual exploitation, more than a third—35%—were children living in residential care. It seems to me that these amendments would add additional strength to the general direction of the Bill, which we on these Benches happily support. We also draw on the research and briefing of the Children's Society.

Places which care for children, young people and vulnerable adults in either residential or supported care facilities can easily become targeted by people who, via grooming and addiction to psychoactive drugs, use control to lead children and vulnerable adults into other very serious kinds of abuse. I note the point that the noble Lord made that accepting the amendment would put this offence on the same footing as that of supplying drugs outside a school, which the Bill already makes an aggravating factor.

My colleague the right reverend Prelate the Bishop of Bristol told me that last year, in his own city of Bristol, 13 men were convicted of a string of sexual offences involving sexual abuse, trafficking, rape and prostitution of teenage girls as young as 13 years old. Their tactics were clear: in return for drugs and alcohol, young girls were forced to perform sexual acts with older men. Much more could be said but I want to support these amendments because, as I say, they would help this vulnerable group to receive additional protection.

Lord Blencathra: I must say to my noble friend the Minister that I have considerable sympathy with the amendments in the name of the noble Lord, Lord Kirkwood of Kirkhope. This seems to be entirely the same sort of situation as providing drugs outside schools—perhaps even more so. I accept the argument that, per head of population, the people in what I would call a children's home—I do not know the modern, politically correct term for a children's home, but those in residential care or whatever—are more vulnerable than the generality of kids in schools. As the right reverend Prelate has just said, some of the children in there will already have had problems of potential criminality or being vulnerable.

I discovered at the Home Office that once you put children together in a residential place like that, they are not locked up at night; in the main, they are free to come and go, and then they are liable to be preyed on by every sort of predator in sight, for sexual abuse and drug use as well. If my noble friend the Minister is going to reject the amendments at this stage, I hope he and his officials will give them very careful consideration because they are an absolutely sensible, logical extension of the policy towards selling drugs outside schools to children. These children are even more vulnerable.

Lord Mackay of Clashfern: My Lords, I support both sets of amendments, on prisons and vulnerable children. It strikes me that these are quite clearly aggravating factors and we should do everything we can to prevent these drugs being introduced to prisons and to vulnerable children.

Baroness Hamwee: My Lords, Clause 6, I believe, replicates almost exactly the provision in the Misuse of Drugs Act. Without commenting on either of the areas of concern, although I quite understand the concern, my question to the Minister is: have the Government had any advice about extending the list of aggravating factors generally? Right at the start of Committee we raised the issue of a review of the Misuse of Drugs Act. This is the sort of thing that could well come within the scope of a review.

The Minister will explain to the Committee in a moment the one word which would be different from Section 4A of the Misuse of Drugs Act and that is in his Amendment 43 to Clause 6(6). The MDA talks about delivering a controlled drug to a third person. Like the original drafter of this provision, I would have thought that referring to a psychoactive substance is logical and if we take out the word "psychoactive"—unless we are going to be told that that is what we have to read into it—it would seem to mean that if someone under 18 delivering anything to another person in connection with an offence falls within this. But I had better not further anticipate what we will be told about this.

Lord Bates: My Lords, these are two very important areas—prisons and children—and I am grateful to the noble Lords, Lord Rosser and Lord Kirkwood, for introducing these amendments.

I will put some remarks on the record but, given the views that have been expressed around the Chamber regarding children, I will undertake between Committee and Report, if the Children's Society and noble Lords were interested and the right reverend Prelate was minded to join us, to arrange for us to meet the Children's Society, with officials, and really examine this part of the Bill to see whether this is something that we need to look at in more detail. I will put some general remarks on the record but that is a commitment that I am happy to give in this important area.

I begin by acknowledging the problem that new psychoactive substances are causing in prisons, and take this opportunity to reassure noble Lords that a wide range of work is currently under way within the National Offender Management Service, including clear and unequivocal guidance to prison governors and staff about the dangers posed by these substances. There is a widespread prison media campaign, including the use of prison radio, to ensure that all prisoners are aware of the very serious risks associated with using new psychoactive substances. A National Offender Management Service steering group has recently been established to deliver actions on supply reduction; demand reduction; data and research; and messaging and communications.

6.45 pm

There has also been a strong legislative response, with the Serious Crime Act creating a new offence of throwing or projecting an item over a prison perimeter. This new offence was designed in particular to tackle the supply into prisons of new psychoactive substances and will go some way to tackling the availability of these substances on the prison estate. Furthermore, the National Offender Management Service has worked and will continue to work closely with the Home Office on this Bill, which we expect to have a marked effect on tackling the supply and use of new psychoactive substances in prisons.

Amendments 40 and 44 seek to make the supply of a psychoactive substance on prison premises an additional aggravating factor when a court sentences an offender for an offence under Clause 5. Similarly, Amendments 41 and 42, tabled by the noble Lord, Lord Kirkwood, seek to extend the circumstances where Clause 6 is to apply. In this instance, the supply of a psychoactive substance on or in the vicinity of accommodation where a looked-after child resides or to a person under the age of 18 would constitute an aggravating factor.

Clause 6 replicates an equivalent provision in Section 4A of the Misuse of Drugs Act, which seeks to provide additional protections to children from the dangers of controlled drugs. In its current form, this clause provides similar protections with regard to new psychoactive substances by creating an aggravated offence which would apply in two circumstances. The first is when someone supplies, or offers to supply, a psychoactive substance,

"in the vicinity of a school premises",

one hour before or after they are used by a person under the age of 18. The second is when a person causes or permits a child or young person under 18,

"to deliver a psychoactive substance to a third person, or … to deliver a drug-related consideration"—

that is, some form of payment—to himself or herself, or to a third person.

It is right that the courts should look particularly seriously upon an offence under Clause 5 committed in these circumstances and take this into account when sentencing the offender. This is not to say that the court would not also take a dim view of other circumstances where a Clause 5 offence is being committed. The noble Lords, Lord Rosser and Lord Kirkwood, are right to highlight other scenarios where a person convicted of the supply offence ought to be treated more severely compared with other cases.

That said, one challenge presented by the amendment in the name of the noble Lord, Lord Kirkwood, is that while an offender supplying drugs would be in no doubt that he or she was operating near a school, the same could not necessarily be said of a residential children's home or other premises to which Amendment 42 would apply. Such premises may not be clearly identified as a children's home and could look like any other house in a residential street. Where that is the case, it would arguably be unjust to impose a higher sentence in circumstances where the offender could have no knowledge that the aggravating factor was engaged.

Lord Blencathra: The bad guys know where the children's homes are, even though they may not be marked on the map or have a sign up. The people we are dealing with are clever drug dealers and if they wish to make drugs available to children in a children's home, they will be able to do so. I suggest to my noble friend that the lack of knowledge of where the home is is not relevant.

Lord Bates: Of course, and I remind my noble and learned friend Lord Mackay of Clashfern that, within the sentencing guidelines, there would be the ability for some of these factors to be spelled out. The awareness would be there and I am very sensitive to that. Having used the case of Canterbury, where one of these head shops was within 100 yards of the King's School—just across the road from it—that is precisely the type of circumstance we are trying to get to. But in the normal way it would be open to the sentencing court, having regard to the relevant sentencing guidelines, to take any other aggravating factors into consideration. In updating its guidelines, the Sentencing Council in England and Wales may wish to reflect on the points raised in this debate. I might add that any prisoner who commits any offence under the Bill could be subject to additional punishments and restrictions through existing prison disciplinary procedures. For the purpose of the Bill we should be guided by the equivalent provision in the Misuse of Drugs Act, notwithstanding Amendment 108, which seeks to bring the 1971 Act into line with Amendment 42.

There is also one government amendment in this group. Amendment 43 is a technical amendment that seeks to correctly reference the second aggravating offence in Clause 6 with the corresponding offence in Clause 5. Clause 6 creates two aggravating conditions which a court must consider when passing sentence. It states:

"Condition A is that the offence was committed on or in the vicinity of school premises at a relevant time … Condition B is that … the offender used a courier who, at the time the offence was committed, was under the age of 18".

Amendment 43 relates to condition B.

Clause 6(6)(a) provides that a person uses a courier if the person,

"causes or permits another person … to deliver a psychoactive substance".

However, and rightly, a person can commit an offence of offering to supply a psychoactive substance in Clause 5(2) without there being any psychoactive substance in existence. The offence would be committed if an offer was made to supply a psychoactive substance but a non-psychoactive substance was in fact supplied. As we discussed in the previous group, it could be a packet of some benign white powder being passed off as a psychoactive substance. In such a case the requirement in Clause 6(6)(a) would not be met. Amendment 43 simply ensures that condition B operates as intended.

I hope that I have been able to reassure the noble Lord, Lord Tunnicliffe, that the Government are actively tackling the issue of new psychoactive substances in prisons and that, on that basis, he will be content to withdraw his amendment. Within that, I extend to the noble Lords, Lord Rosser and Lord Tunnicliffe, the same offer which has been extended to other Members: to have that meeting with the Children's Society to explore this area and, having heard its experiences, to consider whether further action is needed.

Lord Kirkwood of Kirkhope: I hope I can say on behalf of the Bishops' Bench that the offer of a meeting is welcome. If we can do that in association with the Children's Society, that meets our immediate request and I would be happy to operate on that basis.

Baroness Hamwee: My Lords, if the correct way of dealing with subsection (6) is just to refer to the delivery of a substance, are the Government considering changing Section 4 of the Misuse of Drugs Act—I do not have the Act with me—to take out the reference to a controlled drug? I do not expect an answer at this point but I am not immediately persuaded that they should be different.

Lord Rosser: Before I respond on what I am doing with the amendment—I shall be withdrawing it; I do not want to appear to suggest that I am going to do something else—can the Minister say whether the Ministry of Justice is interested in seeing this become an aggravating feature in prisons?

Lord Bates: As one would expect, the justice department will have been consulted and was part of the discussions in preparing the Bill. I note the reference that the noble Lord made to the remarks of the Justice Secretary in another place. I will certainly reflect on those and make contact with the Ministry of Justice again to ensure that its views are fully taken into account in the approach which I have outlined. Given that it has lead responsibility for prisons policy, I would expect those to be exactly as I have said.

Lord Mackay of Clashfern: Before the noble Lord says what he wants to do about his amendment, does not the fact that certain matters have been selected for aggravation make it somewhat more difficult for a judge to take a factor which is not made specific and give it the same weight? It slightly worries me that if you do not mention prisons and vulnerable children,

[Lord Mackay of Clashfern]
while a section in the Bill does mention specific aggravations, that will tend to reduce the possibility of the two factors that we are interested in being regarded as aggravations. I assume that the judges' reaction would be, "Parliament has not thought to mention these, and therefore it is not really quite so serious". Whereas if Parliament has mentioned it—and prisons strikes me as an issue of particular importance—that is something we should emphasise for the judge who has to deal with this matter.

The Lord Bishop of Peterborough: My Lords, I support the aggravated category for prisons and the particularly vulnerable children who are, in one way or another, in care. I am very grateful for what the Minister said about having a meeting on children in care. That is good and I am happy to accept it, but from my fairly regular visiting of prisons in my diocese—I have visited the four that were there but two of them are now closed—I know that the great majority of prisoners are themselves highly vulnerable and need to be treated as such. It seems that so many young men and young women find themselves in prison having started off with drugs in one way or another. They have been used and abused, often as vulnerable young people, and end up in prison still as relatively young people. They are extremely vulnerable to exploitation through drugs, so this really should be another aggravated category.

Lord Bates: In response to those two points, I think I am right in saying that where we came from on this was to try to get consistency with the Misuse of Drugs Act 1971, where "children" is stated as an aggravating factor. We are therefore continuing that into the present. There will come a point where if you then add in certain types of locations and places, where do you stop? Will the courts then be unsure as to what the Government were trying to tackle in introducing the legislation? There is a duty on sentencing judges to follow sentencing guidelines, so the point can be dealt with through that route. We have certainly tightened up the laws with regard to drug use in prison through the Criminal Justice and Courts Act 2015 and the Serious Crime Act 2015. As I say, I certainly understand the comments that have been made and I will reflect particularly on the point about children between now and Report, with the assistance of that meeting.

Lord Rosser: The Minister said that he would reflect particularly on the point about children. Is he saying that he will reflect on the prisons point? He worded it in such a way that it cast doubt as to whether he would.

Lord Bates: I am always learning that the problem with legislation is when you mention one factor and have not necessarily mentioned another. I did not particularly mention it. The specific suggestion I made to the noble Lord, Lord Rosser, was that I would discuss the points which he raised with colleagues in the Ministry of Justice. I will share the remarks he has made in Committee on this amendment with them. That was the offer I made in respect to his amendment. It was in respect to the others that I agreed to the meeting.

7 pm

Lord Rosser: We would like to know where we stand before Report, because if we are drawing a blank, it is something we would certainly wish to consider pursuing on Report. We would not wish to do so if there was some movement on it. I noted the comments about bringing this into line with the Misuse of Drugs Act 1971. One might say that the Bill is not fully in line with the Misuse of Drugs Act, particularly over the offence of possession, for example. I am not sure that arguing that, on the one hand, you have to bring this in line with the Act but that on the other there is a clear distinction is the most consistent or best argument to use, quite frankly, on this issue.

I will of course read the Minister's reply in full, since I appreciate he said quite a few things and I am not satisfied that I necessarily took them all on board. I will read *Hansard* carefully. I also thank all noble Lords who have participated in the debate. One thing I noticed was that, in his reply, the Minister made reference to action that can be taken against the prisoners involved with these drugs, but of course the issue is about the drugs getting into prisons, which can involve them coming in with parcels or visitors. I appreciate that once the drugs are in the prison they are being distributed by prisoners, which is where the bullying and harassment can come in, but there is also the issue of who is helping to get them into prisons in the first place and whether that should be an aggravating feature. I note that the Minister has said he will raise this with the Ministry of Justice. If he could indicate where we stood ahead of Report, that would be extremely helpful indeed. In the light of that, I beg leave to withdraw my amendment.

Amendment 40 withdrawn.

Amendments 41 and 42 not moved.

Amendment 43

Moved by ***Lord Bates***

43: Clause 6, page 3, line 32, leave out "psychoactive"

Amendment 43 agreed.

Amendment 44 not moved.

Clause 6, as amended, agreed.

Clause 7 agreed.

Clause 8: Importing or exporting a psychoactive substance

Amendments 45 and 46 not moved.

Clause 8 agreed.

Clause 9 agreed.

Clause 10: Power to provide for exceptions to offences

Amendments 47 to 49 not moved.

Clause 10 agreed.

Amendment 50 not moved.

Amendment 51

Moved by ***Lord Paddick***

51: Before Clause 11, insert the following new Clause—

"Licences for sale of psychoactive substances

(1) The Secretary of State shall within one year after the passing of this Act make regulations for the licensing of—

(a) specified persons;

(b) specified premises;

to sell psychoactive substances determined to pose low overall risk and exempted under Schedule 1 by regulations made under section 3.

(2) Before making any regulations under this section, the Secretary of State must consult—

(a) representatives of chief officers of police, local authorities and small businesses, and

(b) such other persons as the Secretary of State considers appropriate.

(3) Regulations under this section may—

(a) make different provision for different purposes, and

(b) contain incidental, supplemental, consequential or transitional provision or savings.

(4) The power to make regulations under this section is exercisable by statutory instrument.

(5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(6) In this section "specified" means specified in regulations."

Lord Paddick: My Lords, Amendment 51 stands in my name and the names of my noble friend Lady Hamwee and the noble Baroness, Lady Meacher. It would allow the Secretary of State to make regulations to license people and premises to sell low-risk psychoactive substances after consultation with representatives of the police, local authorities and small businesses.

The Government, in their background briefing to the Bill, acknowledge that some so-called head shops are well run and that the owners or managers of these premises make every effort to remain with the law and to conduct their business responsibly. We maintain that were all head shops to disappear, as happened when similar legislation was enacted in Ireland, users would resort to far more dangerous suppliers, such as street drug dealers and overseas websites. There is a real danger that the complete disappearance of head shops would result in more deaths from new psychoactive substances. Together with other amendments already debated, this amendment would allow low-risk psychoactive substances that have been exempted from the Bill to be sold to adults only, in closely regulated premises, by fit and proper licence holders.

We had a discussion this afternoon about how alcohol is very closely regulated. We are saying that, through this amendment, other low-risk psychoactive substances could be regulated and controlled. The overall effect of these changes would be to keep users from being driven into the hands of criminal suppliers and unregulated websites. I beg to move.

Lord Howarth of Newport: My Lords, I support this amendment. I think it is going to be very difficult in practice to implement the kind of regime that the noble Lord and his cosignatories call for, but I share his view that it may well be of much more questionable benefit than the Government suppose to close down the existing head shops en masse. I suspect that they vary very much in terms of the responsibility with which they deal with their clients but am pretty sure that, as the noble Lord, Lord Paddick, said, there are head-shop proprietors and staff who take a responsible view of the risks that their clients may run and the desirability of ensuring that they do not come to harm. It is very difficult to know how to prevent anyone coming to harm, not least because it is very difficult to identify the exact nature of the substances sold, even for the head-shop importers and proprietors, and there is not the evidence to tell us about the long-term effects of the use of new psychoactive substances.

However, I agree with the noble Lord, Lord Paddick, that there is a lesser danger in this than there is in consigning the users of new psychoactive substances to street dealers and to online sources based outside this country operated by people who have no scruples at all. The consultation process that the noble Lord has proposed would be problematic, because people in the neighbourhood of head shops tend not to like them and it would be very difficult to get local public assent to the licensing of head shops, but a responsible local authority ought to undertake that kind of exercise.

I was very interested to note that, in the briefing from the Local Government Association on this amendment that I think we have all received, it makes some very practical points:

"We would oppose councils being made responsible for licensing because of the difficulties in assessing if a product is of low overall risk. Unless there was a full scale testing and risk assessment regime in place covering health and other risks the safety of a product could not be guaranteed".

It is absolutely right about that, which is one of the reasons why, on another amendment, I have argued for the provision of a network of testing facilities. We ought to aim at that. We should encourage responsible conduct by people who would seek to supply psychoactive substances to the market in this country. There is evidence that many people operating cannabis cafes in the Netherlands for example, particularly because they are under pretty close police and other supervision, take good care to ensure that the products that they offer are relatively safe and that they guide purchasers to buy the products that may be least dangerous and least unsuitable for them. One might even say, for those who favour the taking of cannabis, it is positively suitable for them—but I am neutral on that point. We have all the time to think practically and realistically and, in tabling this amendment, noble Lords are doing just that.

Lord Blencathra: I rise briefly in response to a point made by the noble Lord, Lord Paddick, when he mentioned that the closure of the head shops in Ireland had resulted in the whole trade going underground. I am not sure whether my noble friend has had a chance to see it or research it, but my Google alert this morning said that some new report had been published by some doctors or professors in Ireland—maybe it was Dublin university, or something—that suggested that, quite the contrary, use of psychoactive substances overall had declined dramatically with the head shops ban and it had not gone underground, as people had

[Lord Blencathra]
feared. I have not had a chance to Google it and study it all but, if my noble friend is not aware of it, perhaps he and his assistants in his office can swot up on it. I am sure that it is a measure that will be addressed again at Report. We had a big debate last week on the situation in Ireland, so it would be worth while studying this academic research to see whether it is kosher.

Lord Rosser: As the noble Lord, Lord Paddick, said, the amendment would introduce a system of licensing to sell psychoactive substances determined to pose low overall risk, which is contrary to the objectives of the Bill as it currently stands, which is to provide for a ban on new psychoactive substances. My noble friend Lord Howarth of Newport has already referred to the views of the Local Government Association and its lack of enthusiasm for this amendment, saying that it would oppose councils being made responsible for licensing because of the difficulties of assessing whether a product is a low overall risk. My noble friend Lord Howarth went on to refer to the further comments that the LGA made about the need for a very thorough regime to be in place if we were to go down the road that was being suggested in this amendment. The Government's expert panel also said that it would be difficult to define low risk from a legislative and harms perspective and, even if it could be done, a mechanism for controlling new psychoactive substances would still be needed, which could lead to confusing messages about new psychoactive substances overall.

How does one decide whether a drug is safe? There are immediate risks that occur and also long-term risks that occur, including long-term psychological issues and dependency, so what does low harm mean in that context? The amendment refers to everything being set out in regulations, but I am not sure whether, under the terms of the amendment, a drug would be presumed safe until evidence came to the contrary or whether the producers of a drug would be expected to prove that the drug was safe. If so, how would you do that, how would you determine all the possible different types of harm, and would it have to involve human trials—because, without trials, how do you determine harm or otherwise?

The amendment refers in a sense to Clause 3, which provides that the,

"Secretary of State may by regulations amend Schedule 1 in order to … add or vary any description of substance".

We had a discussion earlier today about the significance of the word "vary" but, in the light of the Minister's response at Second Reading, I am still not clear why that provision in subsection (2)(a) is there, and why the Secretary of State may add a substance to the list. Listening to the Minister's response at Second Reading, I got the impression that he was making it very clear on behalf of the Government that the Secretary of State would not be adding substances under the terms of Clause 3. Bearing in mind that the Government have put it here in the Bill, I would simply ask: in what circumstances do they envisage the Secretary of State adding to items in Schedule 1?

Lord Bates: I shall take that last point first. From time to time, new and very dangerous chemical compounds come into the market in the UK, as we know from the whole experience of tackling new psychoactive substances. The provision is there to allow the possibility, in extreme circumstances, the likes of which we cannot envisage at this stage, on scientific advice and on advice from the police on a new substance coming into the UK and putting lives at risk, that we can act in a prompt way.

7.15 pm

The regulation-making power in the Bill is inserted for a number of reasons—to ensure that any unintended consequences can be remedied, for example, having excluded substances mistakenly or because substances have been undesirably caught, such as flowers. It is also for substances that have a legitimate purpose, such as for industrial uses or for healthcare, and it would enable a description of a substance to be updated to reflect underlying changes to the regulatory regime in respect of that substance—for example, to reflect future revocation or replacement of the Human Medicines Regulations 2012. I know that the noble Lord will probably not find that entirely satisfactory, but it is something that we feel is important to allow us—

Lord Rosser: The Minister will tell me if I am wrong, but I am very much getting the impression that the Government do not actually have any idea at the moment of the circumstance in which they might add an exempted substance to Schedule 1, but have put in the provision just in case something turns up that they cannot think of at the moment and that might lead them to want to do it.

Lord Bates: Well, I have given a couple of examples of things that may have been included by mistake. We know from the European monitoring centre that there are hundreds of new substances and chemical compounds that have been identified in the course of each year. Over 500 substances have already been banned in the past five years alone. Therefore, because of that fast-moving change, we have an enabling power in the Bill to allow us to respond quickly and effectively should a threat or an oversight with an unintended consequence come to light. I would have thought that, in good legislative practice, the fact that the Government would seek to respond in that way would carry a great deal of support.

I am conscious of time, but also of the fact that we dealt with a number of these issues under Amendment 19, when we discussed risk. We had a very good and thoughtful debate on that issue, and it was clear from that why, when the expert panel looked at the New Zealand licensing example, it felt that there were weaknesses in it because of how low risk or low harm would be defined. Therefore, the panel chose not to recommend going down that line but instead chose to follow the example of the Republic of Ireland and a blanket ban.

I come to the point raised by my noble friend Lord Blencathra, who asked whether I had seen the new report produced by Trinity College Dublin, an eminent academic source, on the ban on head shops and how it was actually impacting. One of the authors of the study, Dr Bobby Smyth, claims that,

"the results of the survey show that the kind of drugs being sold in headshops are not being used to the same extent any more".

That would seem to challenge one of the arguments that has frequently been put forward—that somehow the incidence of usage has increased. That is not what has been found. Dr Smyth also claims that those drugs have not been driven underground, as has been feared, stating that,

"the findings have shown that the implementation of legislation, targeted primarily at the vendors of NPS, did indeed coincide with a fall in NPS use among this high risk group of teenagers who attend a drug and alcohol treatment service … The study found that, among the two groups surveyed, not only did the problematic abuse of headshop drugs fall but that the use of cocaine and amphetamines also fell".

Consumption of so-called legal highs fell sharply after the Government cracked down on head shops that sold them, according to new research. Researchers studied two groups of young people attending a drug and alcohol treatment centre in Dublin. The first group attended the service immediately before the legal changes designed to drive head shops out of business were introduced, and the second attended a year later, after the ban came into effect. The percentage of problematic users of head shop drugs fell from 34% in the first group to zero in the second. The percentage who had taken any such drugs in the previous three months fell dramatically from 82% pre-ban to 28% after the ban was introduced. The study was published in the *International Journal of Drug Policy*. That clearly produces some evidence, which I know was sought by Members of the Committee earlier when they asked whether the ban was having any effect.

Was the expert panel's recommendation to take a different approach from New Zealand a sensible way forward? I think it probably is. Just last week, the state of Western Australia passed a blanket ban as well. There is a gathering view that this is having some effect in tackling a very difficult problem, and that licensing, however well-meaning and thoughtfully presented the arguments for it may be, is not as effective in achieving the outcomes that we all want.

Lord Howarth of Newport: Whatever policies are introduced on head shops—whether a wholesale ban, a crackdown, some degree of tolerance, supervision or licensing—we will not end up with the state of affairs that might well be desired by all of us: that there should be no more importation and consumption of new psychoactive substances. The Minister spoke earlier about the difficulties of defining "low harm". I agree with him that these definitions are very hard to pin down. However, I also put it to him that in this field we are looking for the least bad solution. There is no ideal solution. We are looking for a practical set of measures that will, as far as possible, protect young people and society from the perils of dangerous psychoactive substances. There is a strong case for doing more work to achieve a workable, practical definition of "a low degree of harm", and the approach advocated by the noble Lord, Lord Paddick, in this amendment should not be discarded.

Lord Bates: I respect the noble Lord in taking that position but it is a different position from that which the Government have arrived at after taking advice on this. The Local Government Association, which has to wrestle with these problems, has seen numerous examples over recent months of local authorities using a range of powers to shut down head shops in, for example, Lincoln, Portsmouth, Newcastle, Kent and Medway as a result of anti-social behaviour in and around these premises. I am not aware of any local authority or police force that welcomes head shops in its community.

Before I have letters flooding my way from the Australian high commissioner, I should point out that the government of Western Australia introduced legislation last month but it has not yet been passed. I hope that clarifies the position, and I hope that the noble Lord is reassured and feels able to withdraw his amendment.

Lord Paddick: I thank the Minister and other noble Lords for their contributions. The noble Lord, Lord Howarth of Newport, talked about having received the LGA briefing on this amendment. Regrettably, we have not received it, which puts us in a slightly difficult position in commenting on it. However, from what I have heard in the Chamber this afternoon, there seems to be some confusion over what the amendment is proposing. It proposes that local authorities license people and premises but the decision on which substances can be sold—that is, whether something is a low-risk substance—would be agreed by the Secretary of State, who would then put that substance on the exempt list. We have debated what "low-risk substance" means or could mean on a previous amendment. Our Amendment 22 offered a definition of "low overall risk" taken precisely from the Misuse of Drugs Act. What a low-risk substance is and how you define it is a separate debate.

I am grateful to the noble Lord, Lord Blencathra, for raising this new research. Again, it is difficult to comment without having read it, unlike the Minister. However, it sounds as though the surveys were conducted in a treatment centre for young people. The difficulty, as I have mentioned, is that when substances are made illegal people are very reluctant to come forward to seek treatment because those substances are now illegal, whereas previously they were legal and people had no qualms about coming forward.

Last week we offered the House the chance to have an independent, objective review, not only of the operation of the Misuse of Drugs Act but of what is happening in Ireland. It is very difficult for us in Committee to decide which side of the argument we come down on when there appears to be completely conflicting evidence of what the effects of the Irish ban are.

As to one thing I am more certain about, the Minister talked about the rejection of the New Zealand model. I understand that the problem with that model is that the suppliers of new psychoactive substances have not been prepared to put up the money to have their substances tested to the extent that they need to be to be approved. That is why the New Zealand model has run into the ground.

Lord Howarth of Newport: There have also been difficulties because of objections to testing on animals.

Lord Paddick: I accept that testing anything on animals is another very contentious issue. However, it is not right to say that the New Zealand model, whereby the door

[LORD PADDICK]
has been left open to allow people to have substances tested to see whether they are low risk, has been rejected, other than on commercial grounds by the people who are producing them.

Having said all that, I am very grateful to the Minister for his explanation. I beg leave to withdraw the amendment.

Amendment 51 withdrawn.

House resumed. Committee to begin again not before 8.30 pm.

Mental Health: Young People

Question for Short Debate

7.30 pm

Asked by ***Baroness Tyler of Enfield***

To ask Her Majesty's Government what plans they have to respond to the recommendations of the Children and Young People's Mental Health Task Force Report *Future in Mind*.

Baroness Tyler of Enfield (LD): My Lords, following hot on the heels of our excellent debate last week on young people's experience of mental health crisis care, I am delighted that today we are able to debate the Government's response to the children and young people's mental health task force's report *Future in Mind*. Perhaps the focus we now have in your Lordships' House on mental health—and, recently, on children and young people's mental health in particular—shows that the tag "The Cinderella of Cinderella services", which is often used in debates in this House, is starting to become a thing of the past. Let us hope that is indeed the case, but let us also remain vigilant so we can feel confident that the good intentions of the task force's report will turn into a reality for the alarmingly high number of children and young people in this country experiencing mental health problems.

I start by thanking all the members of the children and young people's mental health task force for producing an excellent report. Since its publication in March this year, it has clearly had a major impact on mental health policy. In his March Budget, the Chancellor announced that mental health services for children and young people would receive an additional £1.25 billion in funding over the next five years. This amounts to £250 million annually, £l5 million of which is for perinatal services, the rest being for children and young people's mental health services. This is in addition to the announcement in the Autumn Statement of £150 million over five years for eating disorder and self-harm services. This new investment is much to be welcomed, and I do so wholeheartedly.

However we need to remember the broader context. It is no secret that historically CAMHS have been neglected and starved of cash, perennially losing out to other health services deemed to be of higher priority. So we should keep in mind that, even with the additional money, funding for CAMHS makes up only 8% of the total mental health budget, even though children and young people make up 23% of the population. Given this, it is more important than ever that we examine how these funds will be used.

The additional £1.25 billion of funding will be directed to local areas once they have completed and published local transformation plans. In order to develop these plans, the lead commissioning agency, which is most likely to be the clinical commissioning group, needs to work with health and well-being boards, schools, children, young people and families in the locality to decide precisely where the investment should be targeted. To have real teeth, it is vital that transformation plans contain local access and waiting time targets in line with the ambitions contained in the NHS five-year plan, and address the issue of choice of provider for children and young people, including in the rollout of access to psychological therapy.

Considering that most families do not currently feel that CAMHS is anything like meeting their needs, it will be particularly important that CCGs communicate directly with children and their families to help determine the areas where additional investment is most needed. Yet the proposed timeline for formulating these transformation plans, which are to be completed by the end of September, is very short and, given the time of year that they are expected to formulate these plans—between July and September—one has to ask whether is it realistic to expect CCGs to be able to engage with schools, young people and their families in a meaningful way.

I was pleased to see a specific commitment of £15 million per year to improve perinatal mental health services. The task force reports that maternal perinatal mental health problems carry a long-term cost to society of about £10,000 per birth, and nearly three-quarters of this cost has to do with adverse impacts on the child. For example, the odds of a child developing depression are nearly five times greater if their mother experienced perinatal depression. Such outcomes are avoidable. Specialist mother and baby units across the country are delivering excellent results helping new mothers with psychiatric problems bond with their babies. The NSPCC suggests that one in 10 children would benefit if all new mothers with mental illness had access to programmes such as these mother and baby units. Given this, it is simply unacceptable that currently only 15% of localities provide perinatal mental health services at the level recommended in national guidance and that 40% provide no service at all. Worse still, only 3% of CCGs have a strategy for commissioning perinatal mental health services.

Turning to preventive work, I am also pleased to see that the Government have responded to calls from the task force for schools to take a greater role in promoting good mental health and fostering resilience—something we on these Benches have long called for. Some local areas are already doing very good work in this field. For example, Kingston Council decided to appoint health link workers, part of whose role is to help schools and young people identify mental health issues at an early stage. Working in this way, they are able to address issues such as depression, self-harm and eating disorders early on, so that they do not become a bigger problem later. The health link workers are also able to educate staff to recognise the signs, talk directly to the pupils and try to get them help.

I understand that the Department for Education will contribute £1.5 million in 2015-16 to run a joint pilot programme with NHS England to place named

CAMHS contacts in schools to act as liaison between staff, students, and community CAMHS. If implemented effectively, this programme has the potential to provide more direct entry points into specialist mental health services and to allow school staff to gain insight into how to cultivate a healthy learning environment.

Schools can provide a very valuable referral route towards specialist services but, as the task force report highlights, this will not reach all the children who need mental health care, particularly the most vulnerable children. The charity YoungMinds reports that one in three young people say that they do not know where to turn to seek help. Indeed, the process of accessing specialist services can be lengthy and confusing. Programmes such as the Well Centre in London offer an alternative. It holds open drop-in hours for young people aged 13 to 20 three afternoons a week, when they can access specialist mental health support easily and confidentially.

For others, accessing care is difficult because of disability or other difficulties in their lives. For example, learning disabled children are likely to have particular difficulty accessing care. Barnardo's reports that children in care are five times more likely to develop childhood mental health problems, and 10 times more likely than their peers to have significant learning disabilities, meaning that although they need support the most, they are also less likely to be able to access it. I particularly commend the work of the task force's sub-group, which looked in depth at the issue of vulnerable groups and inequalities. As a result of its work, the task force report makes it clear that in order to engage the most vulnerable children, commissioners and providers across education, health, social services and youth offending teams will need to take an active role in engaging the children and young people who are the least likely to engage with existing services.

The task force found good examples of workers trained to deliver support in a flexible, approachable and joined-up way to help reach some of the most needy young people. What really brought this to life for me was the case study of Jay, a 17 year-old cannabis dealer involved in gang activity, who was mistrustful of professionals, fearing that talking to him would lead to him being put in prison. His mental health had deteriorated since witnessing several stabbings in his area. He failed to show up for various appointments, so his case was closed. But Jay's youth offending team worker identified a youth worker in the community who already knew Jay and his family, and they began to meet Jay in places where he felt comfortable, such as at his favourite fish and chip shop. Eventually, the YOT worker was able to gain Jay's trust sufficiently to convince him to begin treatment for substance abuse. Where most services would have given up on Jay, these workers were able to reach him and put him on a path to recovery from both substance abuse and mental ill health. How do the Government intend to respond to the task force's recommendations about reaching out to the most vulnerable children and young people?

In my view, the task force report *Future in Mind* is a landmark document in the much-needed improvement of mental health services in England. My hope is that it fuels transformational change not just for CAMHS but for all the sectors involved in helping young people access appropriate and effective mental health care. The Government's commitment of additional funding is very welcome and the development of transformation plans in this area is promising, but there is still much to do to ensure that the additional funding is spent to best effect. Will the Department of Health and NHS England therefore commit to publishing an annual progress report on the implementation of *Future in Mind*?

7.40 pm

Lord Patten (Con): My Lords, parity of esteem between physical and mental illness within the NHS is easier to parrot than to achieve, yet its achievement is morally, personally and practically vital, with an urgency no clearer seen than within young people with mental health problems, as the noble Baroness, Lady Tyler of Enfield, pointed out. It is morally vital because it is always a wrong to sideline or neglect one health problem versus another; personally vital because a young person helped through will be a happier young person, just like someone cured of a physical disease or a crippling condition; and practically vital because better care for the mentally ill young should diminish the need later for physical healthcare because of harmful drinking, drugs, obesity, self-harming, risky personal behaviour and all the rest. Therefore it makes pretty good pragmatic common sense, and if handled in this way will enable young people to improve their contribution to the way we live now. Of course, at its most utilitarian—I am sometimes utilitarian—it will also save money in the medium and longer term, which makes much economic sense for the nation.

Those, therefore, are the three reasons why I am an enthusiast for the direction of travel outlined by this Children and Young People's Mental Health Task Force report, which has not received the public attention that it might have done had it not been published during the long-run pandemonium of the never-ending general election campaign. However, happily, from my point of view at least, we have a Government with a clear-cut mandate to deal with the long-running problems of young people with mental health. "No health problem sidelined" should be in NHS terms as resonant a phrase as is "No child left behind" in US educational circles. No sidelining—no one left behind.

Since 1945, mental health generally and young people's mental health in particular has never been in the clearest focus. That is a failure on the part of all of us, at both ends of the Palace of Westminster, over decades. Thus, only perhaps a third at best of young people with a diagnosed mental health problem get full-on treatment, which is too low. Imagine if that was the case for young people diagnosed with cancer, and think of the outcry there would be because help was not available. It is good that so much of the treatment that occurs is of course now outside of longer-stay institutional settings, which I am thoroughly in favour of. However, it is also interesting to reflect that that began only just over half a century ago, back in 1961, when the then Health Minister, Enoch Powell, focused on the asylums of the day, brooded over by those towering chimneys and huge water towers, and started to shut them. However, it took pretty well 20 years after the National Health Service had been founded in 1945 for that process to begin.

[LORD PATTEN]

We are still in a period of sidelining and stigma for some of the mentally ill young. I find that all the more disturbing, as some 50% of lifetime mental illness starts before the age of 14, and 75% of mental illness overall sets in by the age of 18. Therefore it is no slick judgment on my part to say that our mental health problems as compared to our physical health problems are "young people's problems" in essence, from when they first set in, unlike most physical problems—although that is sometimes the case for the young, too. If untreated, they roll on into the mental health problems of adulthood, becoming the biggest single cause of disability and, I am also told, the leading single cause of sickness absence in the United Kingdom. Therefore it is a major economic problem. Failure to treat leads to the further compounding of later misery, illness and economic cost. There are lots of moving parts, which are very hard to simplify.

All that must be set against the neo-exponential explosion of additional pressures on young women and men that have grown over the last two or three decades due to the parallel explosion of social media writ large, from innocent selfie to internet troll and back again, leading all too often to mental pressures and, at worst, teenage suicides, that we see among those who started off as mentally ill.

The compounding effects of social media and internet pressures have not yet been fully recognised by wider policy thinkers as they should have been, or by some policymakers. When more results come, they may well point to a growth rather than a diminution of young people's untreated mental health problems. Perhaps the Minister—if not now, because I have not given him notice, then later by letter—can let us know the Government's judgment on the effects on mental health caused by the growth of social media, and the relevant studies that should be being done if they are not. It is easy to say, "More research should be done"—it keeps researchers very happy—but we need to know the facts.

These issues have to be dealt with—the noble Baroness, Lady Tyler, has been very generous in her praise for what is happening about funding—within a ring-fenced if huge NHS budget. I do not intend tonight to press for yet more; we must live within our taxpayers' means—I hope the Minister is pleased with that—and pay our debts. However, I hope that the Minister can give a clearer indication of the next steps that the Government propose within the tight constraints on public expenditure, which I support in full.

7.47 pm

The Earl of Listowel (CB): My Lords, it is a pleasure to follow the well-considered words of the noble Lord, Lord Patten, who of course quite rightly emphasises that there is a moral and an economic case here. The moral case is that unhappy children grow up into very unhappy, miserable adults, and the economic case is that unhappy children grow up into very unhealthy, unhappy and often troubling adults. Of course, the prison system is full of such adults, and that costs the state many tens of thousands of pounds each year per person. I am also very grateful to the noble Baroness, Lady Tyler, for again bringing us back to the issue of mental health, in particular the mental health of children and adolescents. She is indefatigable and I am so grateful to her for her work. I welcome the Minister to his portfolio. I know that it is some time since he took it, but I welcome him, and I look forward to having these discussions with him in future—I hope I can say that.

This is a very timely debate, an observation which I make particularly from my position as vice-chair of the All-Party Parliamentary Group for Looked After Children and Care Leavers. Two important reports have come out this month on looked-after children's mental health. The first report, *A New Vision*, came out on 10 June. Enver Solomon, the director of the National Children's Bureau and co-director of the Alliance for Children in Care and Care Leavers, said:

> "The care system is not just about removing children from harmful situations and putting a roof over their heads. Many children in care have been seriously abused or neglected, and rely on local authorities as corporate parents to help them get back on their feet. Ultimately, the care system should help children overcome their past experience and forge the lasting and positive relationships that we know are vital to their future wellbeing".

The NSPCC also briefed me this afternoon on a report coming out this Monday on achieving the emotional well-being of young people in care. This is the result of work it has done consulting people involved in the NSPCC childline and looking at case studies and at the costs of failing to meet the mental health needs of 13 to 16 year-olds. Therefore, this is a timely debate.

I have three requests to put to the Minister. First, I hope that he might consider arranging a meeting with the leads at the Department of Health and the Department for Education on looked-after children, including himself, if he has the time, together with me and the noble Baroness, Lady Tyler, given her role as chair of CAFCASS, so that we can discuss what practical steps might be taken to improve the mental health of looked-after children.

Secondly, will he look at conducting another survey of the mental health of looked-after children similar to that carried out in 2004? It was a thorough and deep survey published mainly by the Office for National Statistics, and it was very helpful in judging the scale of the mental health needs of looked-after children.

Thirdly, can the Minister say—perhaps he would like to write to me—how our specialist looked-after children's mental health service provision is performing? There has been a lot of concern that these specialist groups may be suffering under the austerity measures. They are quite expensive to run but they are invaluable. The support that they provide, in particular to children's homes, can make a big difference. I would be grateful if the noble Lord could write to me on how these groups are doing.

I am very grateful to the authors of this extremely helpful report. As has been said, this Government and, previously, the coalition Government have shown great leadership in looking at mental health and, more specifically and more recently, at child and adolescent mental health. Today, I attended a conference on early intervention and I thought about the importance of the leadership of the right honourable Iain Duncan Smith and Graham Allen MP, as well as others such as Andrea Leadsom MP. Their consistent championing

of early intervention over a number of years has raised the matter much higher up the political agenda and has brought in more funding for it. I hope that we will see the same thing in this area through the championing of mental health by various Members of Parliament.

I turn to the report and shall focus on Chapter 6 on care for the most vulnerable. I begin by challenging one particular notion. I am concerned that we sometimes overvalue an evidence-based approach. It is important, but it is also important to value professional judgment—not in some way to fetter our humanity because we are busy waiting for the next piece of evidence-based research to be produced. Perhaps I may pray in aid the experience of Louise Casey. Many years ago when she was the tsar for homelessness, she complained, "I shall be really annoyed if I am presented with one more bit of evidence-based research from civil servants". Looking at her working in practice, she has vision, experience and understanding, as well as a drive to take things forward. Balancing that sort of approach with an evidence-based approach is most important.

Those on the continent are not very interested in evidence-based approaches or in gathering data. In terms of looked-after children, they have very developed social pedagogues and highly trained and highly qualified reflective practitioners. Fundamental to their training is the ability to make and keep relationships with vulnerable children. Therefore, they learn skills such as cookery, art and music to engage these young people. Theoretically, as we all understand, the key to good mental health and recovery from trauma is the ability to keep and maintain an enduring relationship—to learn to endure in intimacy. Research on the continent into the educational outcomes for looked-after children is very positive, and it appears that the children perform better. Therefore, there is more than one way to approach these things.

I see that my time is about to run out but I want to pray in aid briefly the consultation and liaison mental health model, which is referred to in the report. It is important to provide staff in children's homes and foster carers with good clinical support. They are the ones who see the children day to day and build relationships with them, so they should be supported on a regular basis by excellent mental health professionals, as the report suggests.

When consulted, children in care say, "I want one person to follow me all the way through care. I don't want multiple placements. I don't want multiple social workers. I don't want multiple schools. I want continuity of relationships". If this recommendation is adopted, we will see many more healthy young people leaving care. I look forward to the Minister's response.

7.55 pm

The Lord Bishop of St Albans: My Lords, I, too, am grateful to the noble Baroness, Lady Tyler, for introducing this debate, for the excellent work of the task group and for the commitment that Her Majesty's Government have already made to this area.

I also pay tribute to the many excellent charities that are working in this area. Just round the corner from where I live in St Albans is a small charity. I do not suppose that any of your Lordships will have heard of it. It is called Youth Talk and it was set up some years ago, in 1997, by a local GP after she realised that there was a need for a safe place where young people could come for counselling and support. In the intervening years, more than 2,000 young people have used the service. Every year around 190 young people are seen and up to 50 sessions are offered each week. The service is free at the point of access to all 14 to 25 year-olds. It is one of the many unsung charities in our nation that are offering support in this extremely important area. Alongside the crucial statutory work, we need to think about encouraging the voluntary sector.

However, there is still a great deal to be done. As the former Minister Norman Lamb admitted about a year ago, for children and mental health services the prevalence data were out of date and the commissioning services were fragmented. It is good that some of these deficiencies are now being addressed. Therefore, I am supportive of the proposal in the *Future in Mind* report that good research in the form of a prevalence survey should be conducted by the Department of Health every five years. That would give us a wide range of data, including factors such as ethnicity and socioeconomic background, with a special emphasis on vulnerable groups.

I want to comment on two other areas. First, I strongly support the recommendation that,

"designated professionals",

should,

"liaise with agencies and ensure that services are targeted and delivered in an integrated way for children and young people from vulnerable backgrounds".

We are all aware of the problem of statutory and voluntary agencies working in silos, resulting in young people falling through the net. The troubled families programme has shown us the value of having a champion —a co-ordinator whose role is to focus on getting change and who can draw together all the different parties to ensure that the help can be delivered effectively and consistently. Without such "designated professionals" who are given the appropriate power and resources, it is unlikely that we are going to solve the problems that have dogged this area for such a long time.

I also want to commend to your Lordships' House a campaign launched last Friday by the Children's Society called Seriously Awkward. The campaign is based on empirical research of more than 1,000 teenagers of 16 and 17 years of age, and it relates directly to many of the points made in the *Future in Mind* report. However, it argues cogently that there are a number of areas that need urgent attention. In particular, the campaign points out that the legislation relating to 16 and 17 year-olds is highly inconsistent and is causing problems regarding where they fit and who is responsible for them. We need some clarity in this area. The campaign argues that the Government should establish a right for 16 and 17 year-olds to be entitled to support from CAMHS when they need it. This support must be available as early as possible, and long before mental health needs become acute. It argues that the Department of Health should, as it is in the process of recommissioning a new prevalence study, include 16 and 17 year-olds in that study, and there seems to be some lack of clarity about that.

[The Lord Bishop of St Albans]

Tailored information should be produced by CAMHS providers about mental health symptoms and conditions for adolescents to support them in understanding their experiences. Information also needs to be available to their families, to help them both in parenting adolescents appropriately and meeting their emotional needs. In addition, services working with vulnerable adolescents should consider their mental health needs within the family context and offer appropriate support to the young person and their family, working together.

Local authorities and health and well-being boards should evaluate the levels of mental health support available to vulnerable groups of young people. The commissioning of effective mental health services needs to be underpinned by robust and reliable data on the use of mental health services, particularly by vulnerable groups.

Finally, at present, support for victims of child sexual abuse is often dependent upon children displaying symptoms of diagnosable conditions. Child victims should, as a matter of course, receive support to help them overcome the trauma of abuse. Therefore, what are the Government doing to ensure that older adolescents have access to mental health support? Will the Government ensure that 16 and 17 year-olds are included in the upcoming mental health prevalence study of children and young people's mental health? Will the Government ensure that some of the additional funding is ring-fenced to ensure that victims of child sex abuse have access to mental health support?

8.01 pm

Baroness Walmsley (LD): My Lords, I congratulate my noble friend Lady Tyler of Enfield on introducing this important debate. We have heard some very thoughtful speeches, ranging widely across the subject. My noble friend called for wise spending of very scarce resources and emphasised the need to consult children themselves and their families when putting together the transformation plans that are so important. She called for better access to services for young people, particularly the most vulnerable groups, and for some monitoring as to how well we are doing through an annual report.

The noble Lord, Lord Patten, emphasised the importance of parity of esteem for physical and mental health and called for early intervention. He was particularly concerned about the effects of social media on young people—something that of course did not affect your Lordships when we were growing up.

The noble Earl, Lord Listowel, in his usual way championed, as he has done so wonderfully over the years, looked-after children. He called for services to take account of their particular vulnerability to mental health problems and their need for emotional well-being, which they may well not have grown up with given their difficult backgrounds.

The right reverend Prelate the Bishop of St Albans talked about the good work of charities. He called for more data about prevalence and emphasised the difficult position of 16 and 17 year-olds being very inconsistent in legislation.

For my own part, like the noble Lord, Lord Patten, I am particularly interested in the prevention of mental health problems. Like him, I believe that that is the cost-effective approach. There is so much evidence that perinatal mental health, proper parental attachment and early intervention are not only more effective for the human beings involved but more cost effective for the taxpayer. So I welcome those elements of the report that focus on early intervention.

My noble friend emphasised perinatal mental health services, and I would like to start by asking the Minister what progress has been made on the recommendation that there should be a specialised mental health clinician available to all perinatal units by 2017? How much emphasis is given in antenatal classes, for example, to making mothers aware that they need to focus on their own well-being, minimise stress and ensure that they bond well with their baby when it arrives? One cannot start too early when fostering good mental as well as physical health.

There are some excellent charities working in this field, such as OXPIP, which focus on good attachment. They have learned many lessons about what works well in relation to identifying poor attachment and addressing the situation. What is being done to ensure that these lessons are being used all over the country?

The report focused on the need for early support initiatives, and it is clear that health visitors are key to this ambition. However, some health visitors have been in the profession for many years. Although their long experience is enormously valuable, since it allows them to develop deep knowledge and good judgment, it may also mean that they have not had time in their busy schedule to keep up with the latest on early intervention. Can the Minister assure us that they will be allowed enough time for this sort of continuous professional development?

Learning the lessons of what works is a key element of the new HeadStart initiative funded by the Big Lottery Fund and this is to be very welcomed. The project is focused on a key group, those aged between 10 and 14, to better equip them to deal with difficult life experiences and develop their resilience as protection against future events that might damage their mental health. Since half of all adult mental health patients first had problems before they were 14, this is exactly the right target group. Although £75 million sounds like a lot of money, there is a big task ahead. I understand that 12 pilot projects are under way, providing early support to children who need it, both in and out of school. Lessons learned will be shared with schools, youth groups and decision-makers. Partners include, as they should, GPs, local authorities, schools, youth groups et cetera. Some of these are used to working in partnerships, but others are not—I hope that the worst come up to the standard of the best.

Schools, of course, play an enormous role. With others in your Lordships' House, I have long called for compulsory PSHE in schools, starting early in an age-appropriate way. Some people think that we are just talking about sexual health and relationships, but we are not. We are talking about developing self-esteem, self-confidence and resilience, as well as the life skills and knowledge to help the child cope with the modern world when he or she leaves school. Will the Minister go back to his colleague the Secretary of State for Education—who I think has more of an open mind

about the matter than her predecessor—and encourage her to change the Government's mind about this, because it is a vital weapon in our armoury against the epidemic of mental health issues among young people?

The task force also recommended that there should be a CAMHS contact in all schools. Earlier this year, the Department for Education proposed to implement pilot schemes in 15 areas. Can the Minister say whether this has begun and how the schemes' success will be assessed, since we have heard nothing about it since March?

Many schools, of course, are not waiting for government to catch up. They have counsellors, anti-bullying programmes and partnerships with excellent organisations, such as Place2Be, which does wonderful work in schools at a very moderate cost. However, it is not easy for hard-pressed head teachers to find a room for them to work in and the small amount of money to fund their programmes.

The noble Earl, Lord Listowel, talked about the importance of training those professionals who work with looked-after children. But I have become very concerned just recently to realise how few doctors are trained in psychiatry in their initial training. Given that one quarter to 50% of patients presenting to GPs have mental health problems at the root of their illness, it really is important that we have some consistency across the training of doctors in this country, and in particular those Jacks of all medical trades, the very important GPs working in primary care.

I await the Minister's response with interest, particularly on those questions about prevention.

8.09 pm

Lord Bradley (Lab): My Lords, declaring my health interest, I also congratulate the noble Baroness, Lady Tyler of Enfield, on obtaining this short debate and her excellent contribution to it, and thank noble Lords for all the excellent contributions to this debate this evening.

Child mental health is rightly now very high on the health agenda and there is a huge interest in mental health among the public, for both children and adults, as an ambition for parity of esteem between physical and mental health is progressed.

I shall give just a few facts and figures. According to the 2004 data—the most recent available—one child in 10 has a mental health problem. About half of those children, 5% of all children, meet the criteria for a diagnosis of conduct disorder: severe and persistent behavioural problems. A further 15% of children have a mild or moderate behavioural problem that has an impact on their future health and life chances.

Mental health problems during childhood tend to continue into adult life, especially if untreated. Children with behavioural problems also experience poor outcomes in school and in employment and have a high risk of getting involved in crime as young adults.

However, it is estimated that only 25% of children with a mental health problem get treatment of any kind. As we have heard, the previous Government's response was the creation of the mental health task force, which reported in March 2015. Its excellent report, *Future in Mind*, was a template for change in services for children and young people. It made 49 recommendations for better support for children's mental health. They included far-reaching changes to CAMHS provision, greater emphasis on the roles of schools and earlier intervention when children become unwell. Crucially, it called for every local area to be required to produce a transformation plan for improved children's mental health care.

It is very welcome that in the March Budget investment of £1.25 billion was announced, to be provided over five years. That is £250 million a year for CAMHS, perinatal mental health care and employment support for adults. It equates to only about £1 million per clinical commissioning group per year. I would be grateful if the Minister would comment on whether he is confident that this is a sufficient injection of funds for each CCG to meet *Future in Mind*'s 49 recommendations at a local level.

As we have heard, plans have also been announced for a new prevalence survey for children's mental health, replacing the 2004 data which are still in use. Again, this is very welcome and will allow for much more effective and efficient planning of the range of services required for children and those in transition to adulthood.

Another welcome move is the banning of the use of police cells for children detained under Section 136 of the Mental Health Act. I am very pleased that the Minister assured the House that the use of police cells would be at zero by 23 June 2016, but will he also ensure that open adult psychiatric wards are not used as places of safety for children instead of police cells?

While the *Future in Mind* report is welcome, how will the Government ensure that it is implemented in full across the country? Will it be given a prominent place in the next NHS mandate, and how will local areas be held to account for producing and implementing robust transformational plans? Such plans will be crucial if we are going to make a step change for child and adolescent mental health services at a local level.

Most importantly, will the Government set out clear expectations of schools to promote mental health—for example, through social and emotional learning—and empower Ofsted to include it in its inspections? Should we perhaps follow the example of Wales and make access to counselling mandatory in secondary schools? My own report on mental health and the criminal justice system made clear the importance of mental health awareness training for all staff in schools, but, obviously, principally teachers—not to become experts in mental health but to be effective passporters of children to appropriate CAMHS or other services before their health problems may lead them into trouble.

I also commend the Big Lottery Fund's HeadStart scheme that the noble Baroness, Lady Walmsley, rightly pointed to and its investment of £75 million in 12 trial sites. This is an important new intervention which will be monitored and, I hope, rolled out more broadly as a consequence.

Finally, perhaps I may ask the Minister about parenting programmes, as recommended by NICE. These have been found to be extremely effective in addressing conduct disorder, as I identified earlier. The cost of such programmes is estimated to be just £1,750 per

[LORD BRADLEY]
child, against a lifetime cost of not taking action of £175,000 per child. Can the Minister therefore explain the logic behind the Government's decision to cut the public health budget by £200 million, a budget which helps fund such programmes?

This debate on the task force's key recommendations is important and timely. I know that all interested Members in this House will ensure that we monitor the implementation of its key recommendations to ensure that children and adolescents benefit in future from a much more effective mental health service.

8.16 pm

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, I congratulate the noble Baroness, Lady Tyler, on securing this important debate. Mental health is a key plank of this Government's health policy and will certainly be highlighted in the mandate given to NHS England. Whether or not there will be an annual report, I can assure the noble Baroness that there will be clear progress reports on implementation.

A number of noble Lords said in relation to parity of esteem that words are cheap. The noble Lord, Lord Patten, said that we have parroted those words for far too long without putting resources behind them. Even after this new investment, if one today compares the kind of treatment that young children receive if they have cancer with the kind of treatment they get for severe psychosis or eating disorders, even though it may no longer be a Cinderella service I am afraid that the tag "Cinderella" would still be there until we have proven otherwise.

I am happy to confirm this Government's commitment to transforming children and young people's mental health and well-being. The *Future in Mind* report, published on 17 March, sets out a clear consensus and vision for improving services. In the foreword to that report, the NHS England chief executive, Simon Stevens, said:

"However in taking action there are twin dangers to avoid. One will be to focus too narrowly on targeted clinical care, ignoring the wider influences and causes of rising demand, overmedicalising our children along the way. The opposite risk would be to defuse effort by aiming so broadly, lacking focus and ducking the hard task of setting clear priorities".

There is a real danger that one could fall between those two stools if one were not careful.

I can confirm that there will be an additional £1.25 billion allocated for improving children's and young people's mental health over the lifetime of this Parliament. This is in addition to the £150 million announced in the autumn Budget. The noble Lord, Lord Patten, and others made the important point that we are talking with mental health not only about a human tragedy but about a huge economic waste as well. On both counts this should be a major priority for this Government.

The first step in delivering the vision set out in *Future in Mind* will be the development of local transformation plans which will be produced collaboratively by local areas. The right reverend Prelate the Bishop of St Albans and the noble Baroness, Lady Walmsley, both mentioned the importance of local charities and voluntary groups in this area. We will not in any way ignore the vital role that they play. I am not familiar with the work of HeadStart, to which the noble Baroness and the noble Lord opposite referred, but I would like to find out about it after this debate. These plans will have an emphasis on local partnering and joint commissioning. I take on board the noble Lord's comments about the number of different CCGs. When one spreads the money around CCGs it does not look all that much. I am not sure whether the noble Lord is suggesting that we should reduce the number of CCGs or increase the money.

NHS England and the De[apartment of Health are working with partners to jointly produce national guidance to support local areas to develop these plans. NHS England aims to publish its guidance in July.

I was struck by two comments in *Future in Mind* by two young people. One was:

"You have to fit into their paths and none of their paths fit you".

The other was:

"Mental health isn't a one size fits all treatment, it really depends on the person".

The right reverend Prelate the Bishop of St Albans laid particular stress on the importance of co-ordinated care.

The Care Quality Commission report, *From the Pond into the Sea*, highlights the complexity and cliff edge that many children experience as they transition from children's to adult services. We should be particularly focused on this area.

As well as the development of the local transformation plans, I am pleased to say that progress is also being made against many more of the *Future in Mind* proposals. We are expanding the highly regarded Children and Young People's Improving Access to Psychological Therapies programme. This is due to increase access and coverage across England from 68% to 100% by 2018.

We are introducing waiting times. In particular, this will include a target of treatment within two weeks for more than 50% of people of all ages experiencing a first episode of psychosis. It was here that I thought that if you substituted "psychosis" for the word "cancer", we would not be standing here feeling all that good about ourselves. It is not enough, but it is a start. It will go some way to help reduce the number of young people having to wait an unacceptable length of time to access services.

The noble Earl, Lord Listowel, and a number of noble Lords mentioned the prevalence study produced in 2004. We are doing a new prevalence study, as the noble Earl will know. One of the differences with the new study is that it will pick up the impact of social media on young people, which was not there in 2004—a point made by my noble friend Lord Patten. It will include 16 to 17 year-olds and older children as well.

We know that schools have a hugely important role to play in supporting and promoting good mental health. The noble Baroness, Lady Walmsley, raised the question of whether Ofsted in its inspections could look at the liaison with mental health services. The noble Baroness, Lady Tyler, pointed out the good work that is being done by Kingston Council. I will raise the issue of Ofsted with the Department for Education.

The noble Lord opposite raised the issue of the use of prison cells and Section 136. We covered that in a previous debate, so I will leave it today if I can.

We are working with the Department for Culture, Media and Sport to explore how we can better support and protect young people online to prevent damaging experiences and better support distressed users. We are also looking at how we can better use the internet and digital devices to provide clear information and advice to young people in an accessible and familiar environment.

A number of noble Lords raised the issue of vulnerable groups. We must ensure that the benefits of this transformation are felt by all children and young people. I was interested in the particular example mentioned by the noble Baroness, Lady Tyler, of a young man called Jay and the beneficial impact that a youth worker can have on a young person with complex and difficult issues. That gelled with a comment made by another noble Lord who said that we must not always be looking for evidence—rather, we must allow professional judgment to have full sway. Vulnerable groups include people from black and minority ethnic backgrounds who, as outlined in the 2014 report of the Institute for Health and Human Development, face additional barriers to mental well-being.

Perhaps I may briefly address the other two points made by the noble Earl, Lord Listowel. Of course I will be very happy to meet the noble Earl outside the Chamber to talk about looked-after children, particularly in the light of the NSPCC report to which he referred in his remarks. I have not seen it yet—I think that it comes out in a few days' time. I will write to him about the other issue that he raised.

I turn back to prevention. The social and economic case for prevention and well-being promotion is set out clearly in *Future in Mind* and will form an important part of the Government's work. There is no doubt that early intervention is crucial. I was struck by the remark made by the noble Baroness, Lady Tyler, that it is five times more likely that a child will suffer from depression later on if their mother suffered from perinatal depression. That is a new statistic for me and more evidence that you cannot do enough for people when they are very young. I shall quote from *Future in Mind*:

"We can all look out for those children and young people who might be struggling right now. We can confront bullying and we can make it OK to admit that you are struggling with your mental health. We can end stigma. And we can support our friends in their treatment and recovery".

My noble friend Lord Patten raised the issue of stigma. It is a lot better than it used to be, but, again, there is much more that we can do.

The Department of Health is currently working with other delivery partners to develop the collaborative partnering required to co-ordinate delivery of this important work. We will continue to drive forward transformation across children and young people's mental health and well-being, delivering system-wide and sustainable transformation for all children and young people across England. I can assure all noble Lords that the issue of young people's mental health is very important—it is hard to think of a more important issue facing the Department of Health, or indeed a more difficult challenge because these are not easy issues. The right offer, available in the right place and at the right time, delivered by a workforce with the right skills and knowledge, are all essential if we are to deliver this important report into reality.

Again, I thank the noble Baroness, Lady Tyler, for securing this important debate. If I have not done justice to all the questions that have been raised, I am happy to meet noble Lords outside this Chamber or to write to them.

8.27 pm

Sitting suspended.

Psychoactive Substances Bill [HL]

Committee (2nd Day) (Continued)

8.30 pm

Clause 11: Meaning of "prohibited activity"

Amendment 52 not moved.

Amendment 53

Moved by ***Baroness Hamwee***

53: Clause 11, page 6, line 10, leave out paragraph (f)

Baroness Hamwee (LD): My Lords, I shall also speak to Amendment 54. This takes us back to Clause 11, particularly subsection (1)(f), which makes,

"assisting or encouraging the carrying on of an activity listed in",

the previous paragraphs a prohibited activity. Our first concern, which we dealt with in Amendment 54, was that this should not prevent information or education, in the very widest sense, about psychoactive substances. The approach of informing and supporting people who are taking or considering taking psychoactive substances might include support for reducing their consumption rather than cutting it out, or gentle direction towards the use of what might be thought less-harmful substances. I was reminded of what I might call the dark days of Section 28 regarding the promotion of homosexuality; there was a sort of resonance there that I wanted to pick up on. Amendment 54 would provide that advice and information was not to be a prohibited activity, even though I accept that some noble Lords might think of advice and information in a slightly different way from what we envisage.

Then I wondered why this was necessary at all. What happened to aiding and abetting, and what about Sections 44 and 45 of the Serious Crime Act 2007, which deal with intentionally,

"encouraging or assisting … an offence"?

Are they not adequate? Do we have to provide something specific? Section 44(2) says that the person,

"is not to be taken to have intended to encourage or assist the commission of an offence merely because such encouragement or assistance was a foreseeable consequence of his act".

I am sorry, I have not introduced this very well, but my question is not only why Section 44 does not apply but whether there is a deliberate exclusion of Section 44(2)

[Baroness Hamwee]
regarding the not foreseeing of the consequence of the act. I would be concerned if that was not to apply. I beg to move.

Lord Howarth of Newport (Lab): My Lords, I agree with the noble Baroness. I am glad that she has tabled these amendments and made the points that she has. It does not look as if there is anything to worry about but it certainly would be very helpful to have reassurance from the Minister and some clarification. It would also be very helpful if he felt it possible to add explicitly to the Bill the amendment in the name of the noble Baroness and the noble Lord, Lord Paddick; namely, that,

"the provision of advice or information … shall not be a prohibited activity".

We have a number of charities and organisations active in the field which simply seek to reduce harm and to protect vulnerable people. They are not proselytising for the taking of drugs but are knowledgeable about it and doing what they do with good intentions. We certainly do not want the kind of information websites that we have debated as regards previous amendments to find themselves with questionable legal status. Clarification would be helpful and if the Minister feels able to put something in the Bill so much the better.

Lord Tunnicliffe (Lab): My Lords, I am sorry that the Chamber is not fuller to witness this unique moment when I agree with my noble friend Lord Howarth of Newport. I am not sure that it will happen again: it has certainly not happened before. We all take the view that well-informed education is key to drugs policy and to addressing these very difficult issues. The spirit of Amendment 54 seems quite interesting. We are very interested in how the Minister responds to it. It would be very bad if, by accident, we inhibited thoughtful education on this issue.

I cannot go all the way on Amendment 53. Certainly, I can see why we would like to make a crime of assisting. Encouraging, once again, gets into worrying territory. I will listen to the Government's response with great care.

Baroness Chisholm of Owlpen (Con): My Lords, I think we all agree that the key element of this Bill is the provision of civil sanctions. These are important because they offer an alternative, flexible mechanism to tackle the trade in new psychoactive substances. The amendments in this group relate to the list of prohibited activities in Clause 11. These activities essentially cover the offences in Clauses 4, 5 and 8—namely, the production, supply, importation and exportation of a psychoactive substance—along with the secondary offences of assisting and encouraging those offences.

Amendment 53 seeks to remove paragraph (f) from Clause 11(1) and so remove from the list of "prohibited activity" activities which assist or encourage the production, supply, offering to supply, importation or exportation of a psychoactive substance. In the normal way, the secondary offences of assisting or encouraging a crime apply to each of the main offences in the Bill, which is why the Government have specifically included such conduct in the list of prohibited activity.

If this amendment were to be made it would not, for example, be possible to serve a prohibition notice on someone providing precursor chemicals to another person knowing that the other person intended to use them to produce psychoactive substances. Were that the case, the relevant law enforcement agency might then have no option but to charge that person with the criminal offence of assisting the commission of an offence under Clause 4. Amendment 53 could therefore have the opposite effect to the outcome that the noble Lord is seeking to achieve, as it would force law enforcement agencies down the prosecution route rather than deploying a civil sanction.

The noble Baroness has asked how assisting or encouraging a crime differs from aiding or abetting a crime. This is a complex subject, which has excited much debate within the legal community ever since the Serious Crime Act 2007 created the offence of encouraging or assisting. Perhaps it is simplest to acknowledge that there is potential crossover between the two concepts—on occasion it will be possible both to aid and abet, and encourage or assist—but there will also be offences where, because of the circumstances, it will be possible to encourage or assist, even though there is no aiding or abetting.

Amendment 54 seeks to make clear in the Bill that the provision of harm reduction advice or information does not constitute a prohibited activity. Let me assure noble Lords that giving such harm reduction advice will not be a criminal offence under the Bill. The Government have no desire to hinder the giving of such advice—the opposite is in fact true—but if someone were to publish a manual on the production of psychoactive substances, we would wish to see that activity prohibited. The Bill allows for this. For instance, guidance published by a charity which identifies and highlights the dangers of these substances will be seeking to reduce the harms of these substances and will not fall foul of the Bill. I hope that having that assurance on the record will allay any concerns that the noble Lords and the noble Baroness may have in this regard.

The Government recognise that this legislation is not the silver bullet to tackle psychoactive substance misuse. The Bill must be seen in the context of our wider strategy to tackle the harms they cause. We are also driving forward another key recommendation of the expert panel, that of enhancing our efforts to reduce demand, including through effective prevention programmes and by providing the right health-related services to support individuals recovering from substance misuse. This is, of course incredibly important. On the basis of that explanation and the assurance that I have given on Amendment 54, I hope that the noble Baroness will be content to withdraw her amendment.

Baroness Hamwee: My Lords, I certainly will. I am grateful for that explanation. I can understand the structure of the clause and its thrust rather better than I did, which was pretty stupid of me. When I looked up "aid and abet" on the internet to see what that told me, I was pointed straight to the CPS guidance, which seemed to deal with pretty much everything other than aiding and abetting. It starts with "assisting and encouraging", so it is hardly surprising that some of

us are confused. I did not know that there was such a major debate going on in the legal community; they must speak of little else. I am grateful for the clear explanation; I beg leave to withdraw the amendment.

Amendment 53 withdrawn.

Amendment 54 not moved.

Clause 11 agreed.

Clause 12: Prohibition notices

Amendment 55

Moved by ***Baroness Hamwee***

55: Clause 12, page 6, line 23, at end insert—

"( ) In the case of reasonable belief under subsection (3) that the person is likely to carry on the activity, the prohibition notice must set out the reasons for that belief."

Baroness Hamwee: My Lords, in moving Amendment 55 I will speak to Amendments 58 and 60B in my name and that of my noble friend. The first amendment would add to one of the two conditions required for a prohibition notice not only that there must be a reasonable belief that a person is carrying on or likely to carry on a prohibited activity but that the notice must set out the reason for that belief. Clearly, that person should know the basis of it. I realise that this might be covered by Clause 14(2)(a), but I would be glad to have confirmation of that.

Amendment 58 is similar but in the context of a premises notice. Amendment 60B to Clause 14(2)(b)—where we are told that the notice,

"must … explain the possible consequences of not complying",

with it—would add,

"based on the grounds in paragraph (a)".

This is probing the extent of Clause 14(2)(b): what it is expected to cover, in what detail, and so on. I beg to move.

8.45 pm

The Minister of State, Home Office (Lord Bates) (Con): My Lords, as the noble Baroness explained, these amendments relate to the issuing of a prohibition notice and a premises notice under Clauses 12 and 13.

I begin by saying that the Government fully support the principle of these amendments, so much so that the Bill already contains similar provisions which seek the same thing. A prohibition notice can be issued under Clause 12 where a,

"senior officer or local authority reasonably believes that the person is carrying on, or is likely to carry on, a prohibited activity",

and,

"that it is necessary and proportionate to give the prohibition notice for the purpose of preventing the person from carrying on any prohibited activity".

A premises notice in Clause 13 can be issued where a senior police officer or local authority reasonably believes that a prohibited activity, as defined in Clause 11,

"is being, or is likely to be, carried on at particular premises, and … the person owns, leases, occupies, controls or operates the premises".

Amendments 55 and 58 seek to amend Clauses 12 and 13 respectively to require the relevant senior police officer or local authority to set out the reasons in support of their reasonable belief that the respondent is carrying on, or is likely to carry on, a prohibited activity.

Clause 14 contains supplementary provisions in respect of prohibition notices and premises notices. In particular, subsection (2)(a) of Clause 14 requires that a notice must,

"set out the grounds for giving the notice",

as well as the consequences of failure to comply. The Government envisage that the grounds specified in the notice will be those supporting the reasonable belief.

Amendments 57 and 60 seek to ensure that the respondent is fully informed of the consequences of a failure to comply with a notice. Again, this is already addressed in Clause 14—the relevant provision being in subsection (2)(b).

In relation to Amendment 60B, the possible consequences of a failure to comply with a notice are unlikely to vary according to the grounds on which a notice was issued. Essentially, the possible consequences are twofold: either a prosecution is pursued for the relevant offence in Clauses 4 to 8 of the Bill, or the relevant law enforcement agency makes an application for a prohibition order or premises order, as appropriate. On the basis that the Bill already delivers the outcome sought by these amendments, I trust that the noble Baroness, Lady Hamwee, will feel able to withdraw the amendment.

Baroness Hamwee: My Lords, I am grateful for that response. The Minister's comment that the explanation in the notice would vary according to the circumstances is an interesting one which I welcome because standard-form official explanations which are not designed for particular circumstances are often pretty much unreadable. One cannot necessarily work out quite how they apply. I hope that by highlighting that, I am not causing the hearts of people outside the immediate part of this Chamber to sink with the extra work that might be required in that regard. I beg leave to withdraw the amendment.

Amendment 55 withdrawn.

Amendment 55A

Moved by ***Baroness Hamwee***

55A: Clause 12, page 6, line 31, leave out from "notice" to end

Baroness Hamwee: My Lords, in moving Amendment 55A, I will speak also to Amendments 60A and 71A, which stand also in my name and that of my noble friend. Again, the amendment deals with notices.

Amendment 55A would apply Clause 12(6) to people over 18 as well as to those under 18, and would mean that a prohibition notice must specify the period for which it is to have effect—certainty, although in a slightly different context, is something which we have touched on a good deal during the passage of this Bill—and that it must not have effect for more than three years.

[Baroness Hamwee]

I cannot envisage circumstances in which it would be appropriate to apply a prohibition notice to anybody for more than three years. I have my doubts about prohibition and premises notices anyway, but if there is a need to apply a prohibition notice for a longer period, surely the circumstances must be such as to suggest that there should be a prosecution—something rather tougher than a notice. At any age, certainty is important. Amendment 60A would apply both certainty and a statutory maximum to a premises notice.

In neither case has an offence been proved. I cannot see what a notice might do that would not be available under other legislation, particularly anti-social behaviour legislation such as a community protection notice. What is achieved by providing that somebody knows that he should not commit a crime and that the police and the local authority have got their eye on him? In a way, a premises notice is more important. I am assuming that if we are talking about head shops the intention is permanent closure. But the straightforward, honest course would be to address that directly with a proper hearing, giving the recipient of the notice more of a chance to deal with his business interests and have his representations heard in a proper way. I am concerned about the extent there.

Amendment 71A would add that what the court should do in an order should be proportionate as well as appropriate. I assume that that is implied because what courts do almost by definition has to be proportionate—but I am seeking confirmation of that at this point. I beg to move.

Lord Tunnicliffe: My Lords, I have some limited sympathy with these amendments. Any notice that has indefinite extent, which seems to be where the Bill is, has a certain discomfort about it. Clearly the Government share this discomfort because they are limiting the period of extent to three years for under 18 year-olds. I cannot see, having accepted that indefinite extent is inappropriate for under 18 year-olds, why it should not be inappropriate for those over 18. "Proportionate" is a word we all like to move around in legislation. I found that the Government have used it quite freely throughout the document. I will be interested in their response to Amendment 71A as well.

Baroness Chisholm of Owlpen: My Lords, I thank the noble Baroness for these amendments and the noble Lord, Lord Tunnicliffe, for his views. We see the civil sanctions as a useful tool to take proportionate action against offenders. The Bill contains two levels of sanctions: prohibition and premises notices, and prohibition and premises orders. Orders are the most severe, being imposed by a court and attracting a criminal offence for non-compliance.

Amendments 55A and 60A relate to prohibition notices as provided for in Clause 12 and premises notices in Clause 13. The Government have deliberately created the notice regime to be light touch, allowing a senior police officer or local authority officer to impose such a notice where they reasonably believe that a person is carrying on, or is likely to carry on, a prohibited activity as defined by Clause 11. In the case of a premises notice, the test is that there is reasonable belief that prohibited activity is being, or is likely to be, carried on at particular premises. There is no criminal sanction. The purpose of these notices is to try to stop further criminal behaviour occurring in the first instance. They are a form of final warning.

Amendment 55A seeks to remove the differentiation, so that the time limit will apply to all notices. Our starting point in relation to adults is that, as the primary aim of a prohibition notice is to stop an individual engaging in criminal conduct—something they should not be doing in any event—there was no need to impose a time limit. I remind the noble Baroness, Lady Hamwee, that other civil orders of this kind made against an adult—for example, anti-social behaviour injunctions—may also have an indefinite duration. I recognise that there are particular sensitivities about imposing civil sanctions on young people. For these reasons, we have restricted the duration of a notice issued to a person under 18 to a maximum of three years.

On Amendment 60A, a premises notice cannot be issued to an individual under the age of 18. Similar considerations apply here to those in Clause 12, so we feel that there is no need to put a time limit on premises notices.

Turning to Amendment 71A, we entirely agree that any prohibitions, restrictions or requirements contained in a prohibition order or premises order must be appropriate and proportionate. Proportionality will routinely be considered by a court as part of this decision. It is also important to remember that the court is bound by Section 6 of the Human Rights Act 1968 to act in accordance with the convention rights. Arguably, for the reasons I have given, it was not strictly necessary to include a proportionality test in Clauses 17 to 19 but we included it so that there was symmetry with the test applied by a senior officer or a local authority for the issuing of a prohibition notice or premises notice. I accept the spirit in which the amendment is intended but it is simply not necessary to amend Clause 21 to achieve this end. On the basis of this explanation, I hope the noble Baroness will be content to withdraw her amendment.

Lord Howarth of Newport: Did the Minister mean the Human Rights Act 1968 or that of 1998?

Baroness Chisholm of Owlpen: I meant to say 1998.

Baroness Hamwee: My Lords, I cannot say that I am comfortable about notices applying for an indefinite or unlimited period. There may be concerns about the detail of the notice. I obviously need to read the noble Baroness's explanation. I should also wait to see what response we get to my later amendment, which is on appeals against notices. These issues all go together, and I would like then to consider where we have got to in the round. I beg leave to withdraw the amendment.

Amendment 55A withdrawn.

9 pm

Amendment 56

Moved by ***Baroness Chisholm of Owlpen***

56: Clause 12, page 6, line 35, leave out "police officer (or, in Scotland, a constable)" and insert "constable"

Baroness Chisholm of Owlpen: My Lords, the amendments in this group make a number of changes to the provisions in the Bill relating to notices and orders. The most significant amendments—Amendments 75, 76 and 77—insert three new clauses which make further provision in respect of access prohibitions.

Clause 21 enables a prohibition order or premises order to include an access prohibition, barring or restricting access to specified premises. Such a provision would, for example, enable the closure of a head shop selling psychoactive substances, initially for up to three months. This approach is based upon the provisions in the Anti-social Behaviour, Crime and Policing Act 2014 relating to anti-social behaviour closure powers. Although a number of elements of that regime are already in the Bill, the Government feel that a number of additional elements of the 2014 Act should also be replicated.

For the civil sanctions in the Bill to be effective, they must be adhered to. Therefore, sanctions must be included to deter those who would otherwise choose to breach the terms of an access prohibition.

The other amendments are largely of a technical or drafting nature, and I would be happy to provide further details if necessary. I trust noble Lords will agree that these are all sensible refinements to the existing provisions in the Bill and on that basis I beg to move.

Baroness Hamwee: My Lords, I have one or two questions on the amendments in this group. Amendment 75 deals with reimbursement of costs. Would the person being asked to make the payment have the opportunity to make representations with regard to what is being claimed—both about the principle and the amount that has been calculated and ordered?

Amendment 76 inserts a new clause on exemption from liability and refers to,

"an act or omission shown to have been in bad faith".

I note that that does not extend to negligence. I looked at the Anti-social Behaviour, Crime and Policing Act, and we do not have negligence in there either, but it does not seem to me that not having it in that Act makes this right.

It is not quite a read-across, but Amendment 77 again applies similar provisions to those in the Anti-social Behaviour, Crime and Policing Act. Something struck me about this while reflecting on what happened during the last Government and the focus on the rehabilitation revolution and so on. I thought we were trying to avoid short-term prison sentences, and it felt uncomfortable to be providing for short-term prison sentences when we know that so often what happens is that the offender learns more about how to commit crime than he does about how not to commit crime.

Baroness Chisholm of Owlpen: My Lords, I reassure the noble Baroness that Amendment 75 makes provision to enable the relevant law enforcement agency to apply to the appropriate court for reimbursement of costs incurred in relation to the "clearing, securing or maintaining" of premises.

Amendment 76 makes provision to exempt the relevant law enforcement agency from civil liability for anything done or admitted to be done in the exercise of a power in relation to an access prohibition. The exemption does not apply when the act or omission was committed in bad faith or when the conduct was unlawful by virtue of Section 6(1) of the Human Rights Act 1998, acting incompatibly with the convention rights.

Amendment 77 creates an offence for a person, without reasonable excuse, to remain on or enter premises in contravention of an access prohibition or to obstruct an authorised person exercising powers under Clause 22(1). I understand the noble Baroness's worries about the maximum penalty in England and Wales of six months' imprisonment. I might need a little inspiration from my officials on that one, but perhaps we could write to the noble Baroness and make that a bit clearer.

Baroness Hamwee: This is really a broad matter of policy, and I appreciate that the provision on length of sentences replicates part of the Anti-social Behaviour, Crime and Policing Act 2014, although there are also provisions in there for different periods. I should have given the Government an indication of these questions, but I am afraid that I did not think of them until very shortly before we came into the Chamber. This may not be consoling to the noble Baroness, but I was listening in on a rather high-powered legal discussion the other day, where someone referred to what the Minister thought at four in the morning when questioned—

Baroness Chisholm of Owlpen: I am sorry to interrupt the noble Baroness, but I have a bit of clarification about Amendment 77. Six months is the standard maximum in a magistrates' court.

Baroness Hamwee: I shall not continue with the anecdote, because I was only giving the noble Baroness an opportunity for inspiration to fly to her. I might tell her later.

Amendment 56 agreed.

Debate on whether Clause 12, as amended, should stand part of the Bill.

Lord Howarth of Newport: My Lords, I take this opportunity very briefly to raise an issue with the Minister which applies in Clause 12 and in a range of clauses going through to Clause 22. These clauses would create powers of enforcement action to deal with prohibited activity, in prohibition notices, premises notices and orders. Among the authorities so empowered will be local authorities, and I imagine that among their staff on the front line of enforcement will be trading standards officers. Will the Minister clarify what the Government expect of trading standards officers? Presumably they will have a role in closing down head shops and online sites if they are in their locality.

When the All-Party Parliamentary Group for Drug Policy Reform held its inquiry, we received rather impressive evidence from representatives of the trading standards officers profession. They explained to us—this was a couple of years ago—that they lacked the powers to tackle the problem of psychoactive substances in

[Lord Howarth of Newport]
their localities. This Bill would endow them with a considerable range of powers and duties. I do not know whether other noble Lords have received a copy of the trading standards journal, *TS Review*, which landed on my desk quite recently. It is a very impressive publication, which emanates from the trading standards officers profession—beautifully produced, and full of good sense. I learned quite a lot from perusing it, such as the fact that the number of trading standards officers has fallen by 45% since 2009, and that training budgets for them have been cut.

Professor John Raine is quoted from a publication entitled *The Impact of Local Authority Trading Standards in Challenging Times*. He said that trading standards services,

"have lost much of their resilience",

and specialist knowledge. Sylvia Rook is quoted as saying, rather sadly:

"If you've only got 4 staff in your Trading Standards service, there is no option—staff have to be generalist".

Noble Lords will recall the debates we had on the problems of definition and identification of psychoactive substances—about whether a substance is psychoactive and, if so, what exactly it is. These powders look pretty much alike. Karin Layton is quoted as saying:

"Generic officers won't be able to stand up in court and give evidence effectively".

If that is so, the anxiety is that cases will collapse in court.

As it is, trading standards officers have a colossal workload. They are enjoined to enforce some 250 pieces of legislation before they get to this new piece of legislation or, indeed, to the Bill whose First Reading was moved by my noble friend Lord Rooker earlier today to provide for a proportion of folic acid to be included in bread. The sort of things that trading standards officers must deal with include nuisance callers on the telephone, purveyors of horsemeat and underage purchases of alcohol. There is an excellent section within this publication entitled "Saving Lives: The Health Benefits of Disrupting Alcohol and Tobacco Sales to Underage People", a subject we debated this afternoon. They must deal with fraudulent energy efficiency salesmen, animal welfare, weights and measures —which has always been their classic role—the defence of intellectual property rights, e-crime and the enforcement of consumer contracts regulations.

The trading standards officers' profession is determined to cope; these are good, public service, professional people. They are debating among themselves whether, in the circumstances of austerity, there will be a need to design new regional structures so that the work of generalist TSOs can be supported by specialist TSOs. That all represents a very constructive approach on their part but there is clearly a long way to go. It will be very difficult for them to fulfil the tasks that are provided for in Clause 12 and subsequent clauses. Therefore, I would be grateful if the Minister would comment on how realistic the Home Office and the Government are being in asking trading standards officers to do yet more. It is a common weakness of Governments to will the ends but not the means, so I would be grateful for the Minister's comments.

Lord Bates: I am grateful to the noble Lord for giving us an opportunity to look at this important area of trading standards. We expect businesses currently openly selling psychoactive substances to comply with the new law. We will be working with the police and local authorities in the lead-up to the provisions coming into force—which we aim to have happen on 1 April 2016 —to ensure that head shops and online traders operating in the UK are in no doubt that they must clear their shelves of these substances and clean up their websites by 31 March. If they do not, they can expect an early visit from the police or a local authority officer. For those who fail to comply with the law, prohibition orders will offer one possible tool with which law enforcement agencies can respond.

I am very much aware of the excellent work that trading standards officers do around the country. I have noticed their work many times, particularly in my former constituency, where they did tremendous work. Local authorities have overall responsibility for public health and spend around 25%—£760 million—of their health budget on dealing with drug and alcohol misuse. The introduction of the ban should reduce this expenditure, allowing councils to use funds to tackle other public health priorities. If it were the Government saying that, I would expect the noble Lord to say, "I'm not too sure about that". In fact, the LGA is saying just that. It sees this as assisting councils in focusing on the other real problems in their areas which need to be tackled. Far from incurring cost, it sees the blanket ban as easing pressure.

The shop in Canterbury which I keep referring to, which is just across the road from the King's School, was closed down by trading standards and reopened under a different name. As we have said all the way through, this kind of whack-a-mole game of cat and mouse that is going on between law enforcement agencies and the purveyors of new psychoactive substances goes to the very heart of what the Bill is about.

9.15 pm

Lord Howarth of Newport: I am grateful to the Minister. The story he has just told about Canterbury illustrates the difficulty and expense that local authorities are going to incur in seeking to implement the ban that the Bill would create. We know that the Local Government Association is very keen to see head shops closed down, and we understand why that is so. I am perplexed about how it can argue that it will save local authorities money. A lot of activity is enjoined upon them in this measure. I do not know whether the Minister has interrogated it about the basis on which it gives this assurance that it will save local authorities money during the enforcement period. I can see that if they were successful in closing down the head shops then they might have less to do in this regard; but in the transition, while they are actually engaged in these enforcement activities, surely it will cost more money. I would be grateful for the Minister's further thoughts, perhaps not this evening but in due course, on how local authority trading standards departments are to perform the duties that the Government are laying upon them at a time when there has been such a decrease in the number of trading standards officers and in the budgets of local authorities, in particular, in the budgets for training TSOs.

Lord Bates: I reassure the noble Lord that evidence is coming from those in the front line, such as the police, who spend a great deal of time dealing with the side effects of these establishments, such as anti-social behaviour in the vicinity of these shops. We hear from the Local Government Association that it believes that a disproportionate amount of time is spent trying to tackle and regulate what they are doing. That could be spent elsewhere doing worthwhile things in the area of health. We may not disagree, but I will certainly reflect on the noble Lord's important point about trading standards. We certainly want to make sure that we are working very closely to ensure that this is effectively implemented.

Clause 12, as amended, agreed.

Clause 13: Premises notices

Amendments 57 and 58 not moved.

Amendment 59

Moved by ***Lord Bates***

59: Clause 13, page 7, line 12, leave out "prohibition" and insert "premises"

Amendment 59 agreed.

Amendments 60 and 60A not moved.

Clause 13, as amended, agreed.

Clause 14: Prohibition notices and premises notices: supplementary

Amendment 60B not moved.

Amendment 61

Moved by ***Lord Bates***

61: Clause 14, page 7, line 31, at end insert "acting on behalf of the same person as that officer"

Amendment 61 agreed.

Clause 14, as amended, agreed.

Clause 15: Means of giving notices under sections 12 to 14

Amendments 62 to 64

Moved by ***Lord Bates***

62: Clause 15, page 7, line 41, at end insert ", or

( ) subject to subsection (8), sending it to the person by electronic means."

63: Clause 15, page 8, line 9, after second "the" insert "address of the"

64: Clause 15, page 8, line 20, at end insert—

"(8) A notice may be sent to a person by electronic means only if—

(a) the person has indicated that notices of the same description as a notice under section 12, 13 or 14 (as the case may be) may be given to the person by being sent to an electronic address and in an electronic form specified for that purpose, and

(b) the notice is sent to that address in that form.

(9) In subsection (8) "electronic address" means any number or address used for the purposes of sending or receiving documents or information by electronic means."

Amendments 62 to 64 agreed.

Clause 15, as amended, agreed.

Amendment 64A

Moved by ***Baroness Hamwee***

64A: After Clause 15, insert the following new Clause—

"Appeals against notices

(1) A person issued with a prohibition notice or a premises notice may appeal to a magistrates' court against the notice on any of the following grounds—

(a) that a prohibited activity or the prohibited activity specified in the notice—

(i) has not been carried on,

(ii) is not likely to be carried on, or

(iii) in the case of a premises notice, is conduct that the person cannot reasonably be expected to control or effect;

(b) that there is a material defect or error in, or in connection with, the notice;

(c) that the notice was given to the wrong person.

(2) An appeal must be made within the period of 21 days beginning with the day on which the person is given the notice.

(3) While an appeal against a notice is in progress—

(a) a requirement imposed by a premises notice to take any steps remains in effect, unless the court orders otherwise, but

(b) any other requirement imposed by a notice is of no effect.

(4) For the purpose of subsection (3) an appeal is "in progress" until it is finally determined or is withdrawn.

(5) A magistrates' court hearing an appeal against a community protection notice must—

(a) quash the notice,

(b) modify the notice (for example by extending a period specified in it), or

(c) dismiss the appeal."

Baroness Hamwee: My Lords, in moving my amendment I will speak also to my and my noble friend's Amendments 65, 65A, 68, 68A, 85A, 85B and 85C. The first of these amendments would provide for a right of appeal against prohibition and premises notices, with judicial oversight. The amendment is based very closely on Section 46 of the Anti-social Behaviour, Crime and Policing Act, which provides for an appeal against community protection notices. I am not suggesting that a subject of the notice should have free rein to produce or supply a psychoactive substance, and so on, but it could be argued that the steps required by, let us say, a premises notice, are not reasonable.

We are talking, perhaps, about someone's livelihood here. Whatever we might think about head shops, if what they are doing is legal, we need to be very careful about precluding someone from carrying on a business, and certainly we must be careful that we give him the

[Baroness Hamwee]
opportunity to appeal when he considers that the notice is inappropriate and undeserved. I appreciate that a breach of a notice would take us through procedures to an application to the court for an order, with surrounding protections. However, an appeal against a notice seems to us to be right—and properly, a right—and it should be available so that someone can avoid having what I could loosely call "a record". It is not for us to argue for it; it is for the Government to explain why the right of appeal is not included.

The other amendments are all about the standard of proof for prohibition and premises orders and changing them from the civil to the criminal standard. The orders would be made by the criminal courts, and so the criminal rules of evidence, and so on, should apply. This is also the thrust of my Amendments 85A, 85B and 85C to Clause 28, which is about the nature of the proceedings—essentially turning them from civil to criminal proceedings. Again, given the subject matter of this, it is for the Government to explain why what they are proposing should not be required to meet the criminal standard of proof and be dealt with in the way that we are accustomed to through the criminal courts. I beg to move.

Baroness Meacher (CB): My Lords, I will not take up the House's time, but I wish to express my strong support for these amendments. It is eminently reasonable to have right of appeal, as the noble Baroness said, bearing in mind the considerable penalty that somebody will suffer if their livelihood is suddenly withdrawn from them. It also seems eminently sensible to set the standard of proof at the criminal level. I support these amendments and hope very much that the Minister can comply with those two proposals.

Lord Howarth of Newport: I, too, endorse what the noble Baroness, Lady Hamwee, proposed. There will need to be very convincing arguments from the Government as to why there should not be a right of appeal, and I have much sympathy also with what has been said on the standard of proof.

Lord Tunnicliffe: My Lords, just to revert to my original path, I do not agree with the noble Lord, Lord Howarth, on the burden of proof. We think that for the orders a balance of probabilities is appropriate. The only question I seek assurance on is that if any individual were to be either imprisoned or fined, it would be under the provisions in Clause 23—and my understanding is that under that clause the criminal standard of proof would be necessary. Providing that one has that assurance, we do not object to the burden of proof in the relevant parts of the Bill with respect to the order.

Lord Bates: I shall respond, first, to the point made by the noble Lord, Lord Tunnicliffe. Clause 23 would require the higher criminal standard of "beyond reasonable doubt", so that is how the matter would be dealt with.

Turning to the point about appeals, I believe that, as proposed, Amendment 64A would be disproportionate, given the nature of prohibition and premises notices. These notices are the first stage of our graded response to tackling the supply of new psychoactive substances. They are intended as a final warning and can be issued by a senior police officer or local authority requiring that the subject of the notice desist from any prohibited activities.

A prohibition notice can be issued only if the relevant officer reasonably believes that the respondent is carrying out, or is likely to carry out, prohibited activity. Therefore, it cannot be issued without good reason, and the issuing officer must also reasonably believe that it is a necessary and proportionate response, given the circumstances. As I have indicated, a notice acts as a final warning. Breach of a notice is not a criminal offence and there are no other direct sanctions flowing from a failure to comply.

The noble Baroness drew a parallel with community protection notices and pointed to the fact that the Anti-social Behaviour, Crime and Policing Act 2014 provides for a right of appeal against such notices. Indeed, this amendment largely mirrors Section 46 of the 2014 Act, but there is an important difference between a community protection notice and the notices provided for in the Bill in that breach of the former is a criminal offence—hence the right of appeal.

I am not persuaded that, in the absence of a direct sanction for breach, a right of appeal is called for. If the respondent takes issue with a prohibition or premises notice, they can make representations to the issuing agency, which could then, if appropriate, withdraw the notice in accordance with the provisions in Clause 14.

Where the relevant enforcement agency concludes that a prohibition or premises notice had been breached, it could decide to pursue a prosecution for one of the main offences or make an application for a prohibition order or premises order, as the case may be. If the respondent is charged with an offence, they will be able to defend themselves in court in the normal way. If an application is made for a prohibition or premises order, again, the respondent will have his or her day in court and will also be able to appeal against the making of the order. We therefore have judicial oversight where it is appropriate.

I have tried to set out the nature of our graded response to the trade in new psychoactive substances and to state why I believe that an appeal process is unnecessary in the case of a prohibition or premises notice.

The other amendments in this group seek to provide for the criminal standard of proof, rather than the civil standard, to apply when a court is considering making either a prohibition or a premises order—a point on which the noble Lord, Lord Tunnicliffe, sought clarification.

Clauses 17 and 19, which Amendments 65, 65A, 68 and 68A seek to modify, make provisions for the application process for prohibition orders and premises orders, outlining a number of conditions that need to be met for an order to be made. Proceedings under Clauses 17 and 19 are civil proceedings. Accordingly, it follows that the civil standard of proof should apply. The noble Lord suggested that, as the proceedings are part of the criminal process, the criminal standard

should apply, but this is based on a false premise. The whole point of the civil sanctions in the Bill is to enable law enforcement agencies to adopt a proportionate response to any offending behaviour and, in appropriate cases, to seek to tackle the behaviour by action short of a prosecution.

The application of the civil standard to such proceedings is not without precedent. Under Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014, the civil standard applies to proceedings in respect of anti-social behaviour injunctions. The civil standard also applies to proceedings under Section 34 of the Policing and Crime Act 2009 in respect of gang injunctions. Of course, if a prohibition order or premises order is breached, the criminal standard of proof would apply to any proceedings for an offence under Clause 23, as I stated.

One of the key purposes of these civil orders is to enable the police, local authorities and other law enforcement agencies to act promptly to nip problems in the bud before they escalate. If the criminal standard of proof were to apply, it would necessarily dictate that more time was required for evidence gathering and there might be little to be gained by applying for a prohibition order as opposed to pursuing criminal prosecution for an offence under Clauses 4 to 8. These amendments would circumscribe the current flexibility built into the enforcement powers in the Bill, to the detriment of communities and defendants alike.

Much the same arguments apply to Amendments 85A to 85C to Clause 28. The clause provides that proceedings before the court under Clause 18 or Clause 25 are civil proceedings—those clauses relate to the making or variation of orders on conviction. It is the case that such proceedings take place in a criminal court, but it is important to remember that a prohibition order or premises order, as with similar civil orders, is not a punishment. As such, they do not form part of the sentence of the court. These orders are preventive in nature and in these circumstances it is again appropriate that the civil standard of proof and the civil standard of evidence should apply. Given that these are quite properly civil proceedings, I hope that the noble Baroness and other noble Lords with amendments tabled in this group will, on reflection, consider that the civil standard should operate and, in the light of this explanation, that the noble Baroness will withdraw her amendment.

Baroness Hamwee: My Lords, the Minister said that it is not intended as a punishment—I think it was during the debate on a previous group that I wrote down that we heard from the Dispatch Box the term "sanction". I will need to go back and have a look at that.

As to whether or not we are operating on the basis of a false premise, I do not think that it is quite that, but rather that we have different views as to whether there should be civil or criminal proceedings—it is not so much the premise as the approach.

A premises notice could be given when the activity is being carried on, thought to be carried on or likely to be carried on by somebody other than the premises owner. I am actually quite concerned about how these things interplay.

As regards an appeal, I am glad to hear that representations can be made to the police or the local authority about the notice being withdrawn. However, it does raise the question, certainly to me, of whether there should not be explicit provisions about the right to make representations and how representations should be considered, possibly by providing for a more senior officer to look at the matter. That is not necessarily a very satisfactory way of dealing with it, but there is something in there that we would like to think about—my noble friend is nodding encouragingly; I hope it is encouragingly—as to how to cover the right to make representations and how they can properly be dealt with. Between now and the next stage we will have a think about that—but of course I beg leave to withdraw the amendment.

Amendment 64A withdrawn.

Clause 16 agreed

9.30 pm

Clause 17: Prohibition orders on application

Amendments 65 and 65A not moved.

Amendments 66 and 67

Moved by ***Lord Bates***

66: Clause 17, page 9, line 19, at end insert "an individual who is"

67: Clause 17, page 9, line 24, at end insert "an individual who is"

Amendments 66 and 67 agreed.

Clause 17, as amended, agreed.

Clause 18 agreed.

Clause 19: Premises orders

Amendments 68 and 68A not moved.

Clause 19 agreed.

Clause 20: Applications for prohibition orders and premises orders

Amendments 69 and 70

Moved by ***Lord Bates***

69: Clause 20, page 11, line 18, leave out "police officer" and insert "constable"

70: Clause 20, page 11, line 20, leave out "police officer" and insert "constable"

Amendments 69 and 70 agreed.

Clause 20, as amended, agreed.

Clause 21: Provision that may be made by prohibition orders and premises orders

Amendment 71

Moved by ***Lord Bates***

71: Clause 21, page 11, line 32, leave out from beginning to "the" in line 33 and insert "A court making a prohibition order or a premises order, or a court varying such an order under or by virtue of any of sections 24 to 27, may by the order impose any prohibitions, restrictions or requirements that"

Amendment 71 agreed.

Amendment 71A not moved.

Amendments 72 and 73

Moved by ***Lord Bates***

72: Clause 21, page 12, line 2, at end insert—

"( ) An item that is handed over in compliance with a requirement imposed by virtue of subsection (4) may not be disposed of—

(a) before the end of the period within which an appeal may be made against the imposition of the requirement (ignoring any power to appeal out of time), or

(b) if such an appeal is made, before it is determined or otherwise dealt with."

73: Clause 21, page 12, line 19, at end insert—

"( ) Subsection (6) of section 13 (when a person "owns" premises) applies for the purposes of subsection (5) of this section as it applies for the purposes of that section."

Amendments 72 and 73 agreed.

Amendment 74 had been withdrawn from the Marshalled List.

Clause 21, as amended, agreed.

Clause 22: Enforcement of access prohibitions

Amendments 74A and 74B

Moved by ***Lord Bates***

74A: Clause 22, page 12, line 35, leave out "a designated NCA officer or"

74B: Clause 22, page 12, line 46, at end insert ", a general customs official or a person authorised by a person listed in subsection (2A).

(2A) Those persons are—

(a) the chief officer of police for a police area, in the case of an order made in England and Wales;

(b) the chief constable of the Police Service of Scotland, in the case of an order made in Scotland;

(c) the chief constable of the Police Service of Northern Ireland, in the case of an order made in Northern Ireland;

(d) the chief constable of the British Transport Police Force, in the case of an order made in England and Wales or Scotland;

(e) the Director General of the National Crime Agency;

(f) the Secretary of State by whom general customs functions are exercisable."

Amendments 74A and 74B agreed.

Clause 22, as amended, agreed.

Amendments 75 and 76

Moved by ***Lord Bates***

75: After Clause 22, insert the following new Clause—

"Access prohibitions: reimbursement of costs

(1) A person listed in subsection (2) that incurs expenditure for the purpose of clearing, securing or maintaining premises in respect of which an access prohibition is in effect (see section 21(5)) may apply to the court for an order under this section.

(2) Those persons are—

(a) a local policing body;

(b) the Scottish Police Authority;

(c) the chief constable of the Police Service of Northern Ireland;

(d) the British Transport Police Authority;

(e) the Director General of the National Crime Agency;

(f) the Secretary of State by whom general customs functions are exercisable;

(g) a local authority.

(3) On an application under this section the court may make whatever order it considers appropriate for the reimbursement (in full or in part) by the person against whom the order imposing the access prohibition was made of the expenditure mentioned in subsection (1).

(4) An application for an order under this section may not be heard unless it is made before the end of the period of 3 months starting with the day on which the access prohibition ceases to have effect.

(5) An application under this section must be served on the person against whom the order imposing the access prohibition was made.

(6) In this section "the court" means—

(a) the court that made the prohibition order or the premises order imposing the access prohibition, except where paragraph (b) or (c) applies;

(b) where the court that made the order was the Court of Appeal, the Crown Court;

(c) where the court that made the order was a youth court but the person against whom the order was made is aged 18 or over at the time of the application, a magistrates' court or, in Northern Ireland, a court of summary jurisdiction."

76: After Clause 22, insert the following new Clause—

"Access prohibitions: exemption from liability

(1) Neither an authorised person, nor the person under whose direction or control the authorised person acts, is to be liable in damages for anything done, or omitted to be done, by the authorised person in the exercise or purported exercise of a power under section 22.

(2) Subsection (1) does not apply to an act or omission shown to have been in bad faith.

(3) Subsection (1) does not apply so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 1998.

(4) This section does not affect any other exemption from liability (whether at common law or otherwise).

(5) In this section "authorised person" has the same meaning as in section 22."

Amendments 75 and 76 agreed.

Clause 23 agreed.

Amendment 77

Moved by ***Lord Bates***

77: After Clause 23, insert the following new Clause—

"Offence of failing to comply with an access prohibition, etc

(1) This section applies where a prohibition order or a premises order imposes an access prohibition (see section 21(5)).

(2) A person, other than the person against whom the order was made, who without reasonable excuse remains on or enters premises in contravention of the access prohibition commits an offence.

(3) A person who without reasonable excuse obstructs a person acting under section 22(1) commits an offence.

(4) A person guilty of an offence under subsection (2) or (3) is liable—

(a) on summary conviction in England and Wales, to either or both of the following—

(i) imprisonment for a term not exceeding 51 weeks (or 6 months, if the offence was committed before the commencement of section 281(5) of the Criminal Justice Act 2003);

(ii) a fine;

(b) on summary conviction in Scotland, to either or both of the following—

(i) imprisonment for a term not exceeding 12 months;

(ii) a fine not exceeding level 5 on the standard scale;

(c) on summary conviction in Northern Ireland, to either or both of the following—

(i) imprisonment for a term not exceeding 6 months;

(ii) a fine not exceeding level 5 on the standard scale."

Amendment 77 agreed.

Clause 24: Variation and discharge on application

Amendment 78

Moved by ***Lord Bates***

78: Clause 24, page 14, line 28, at end insert—

"( ) An order that has been varied under this section remains an order of the court that first made it for the purposes of—

(a) section (Access prohibitions: reimbursement of costs);

(b) any further application under this section."

Amendment 78 agreed.

Clause 24, as amended, agreed.

Clause 25: Variation following conviction

Amendment 79

Moved by ***Lord Bates***

79: Clause 25, page 14, line 40, leave out "section" and insert "sections (Access prohibitions: reimbursement of costs) and"

Amendment 79 agreed.

Clause 25, as amended, agreed.

Clause 26: Appeals against making of prohibition orders and premises orders

Amendments 80 to 82

Moved by ***Lord Bates***

80: Clause 26, page 15, line 15, at end insert—

"( ) An appeal under subsection (1) against the making of an order must be made before the end of the period of 28 days starting with the date of the order."

81: Clause 26, page 15, line 17, at end insert ", and may also make such incidental or consequential orders as appear to it to be just."

82: Clause 26, page 15, line 19, leave out "section" and insert "sections (Access prohibitions: reimbursement of costs) and"

Amendments 80 to 82 agreed.

Clause 26, as amended, agreed.

Clause 27: Appeals about variation and discharge

Amendments 83 to 85

Moved by ***Lord Bates***

83: Clause 27, page 16, line 16, at end insert—

"( ) An appeal under subsection (1) against the making of a decision must be made before the end of the period of 28 days starting with the date of the decision."

84: Clause 27, page 16, line 17, leave out "Crown Court may" and insert "court hearing the appeal may (to the extent it would not otherwise have power to do so)"

85: Clause 27, page 16, line 19, at end insert—

"( ) A prohibition order or a premises order that has been varied by virtue of subsection (4) remains an order of the court that first made it for the purposes of sections (Access prohibitions: reimbursement of costs) and 24."

Amendments 83 to 85 agreed.

Clause 27, as amended, agreed.

Clause 28: Nature of proceedings under sections 18 and 25, etc

Amendments 85A to 85C not moved.

Amendment 86

Moved by ***Lord Bates***

86: Clause 28, page 17, line 11, after "18" insert ", (Access prohibitions: reimbursement of costs)"

Amendment 86 agreed.

Clause 28, as amended, agreed.

Clauses 29 and 30 agreed.

Clause 31: Transfer of proceedings from youth court

Amendment 87

Moved by ***Lord Bates***

87: Clause 31, page 18, line 31, at end insert—

"( ) an individual against whom a prohibition order imposing an access prohibition has been made reaches the age of 18 whilst proceedings before a youth court under section (Access prohibitions: reimbursement of costs) are ongoing."

Amendment 87 agreed.

Clause 31, as amended, agreed.

Clause 32: Power to stop and search persons

Amendment 87A

Moved by ***Lord Paddick***

87A: Clause 32, page 18, line 42, leave out "or section 23"

Lord Paddick (LD): My Lords, Amendment 87A concerns the power to stop and search. I shall speak also to Amendment 94A, which concerns the power to seize and destroy substances. They are both probing amendments to try to understand why the Government feel it is necessary to include these powers to stop and search.

Originally we focused on Clause 23, which is about failing to comply with a premises order or a prohibition order, but, on reflection, similar arguments would apply to Clauses 4 and 8 in that the power to stop and search is supposed to be on the basis of suspicion that a person has committed, or is likely to commit, an offence under those clauses. These are criminal and arrestable offences. If a police officer or a customs officer suspects that a person has committed either of these offences, they would have a power under common law to stop and search that individual, having arrested them. My question to the Minister is: why is there a need for a separate power to stop and search when there is already a power under common law to do that?

Amendment 94A concerns the power for the police to dispose of seized psychoactive substances even where an offence has not been committed. Clause 46(1)(c) states that if an officer reasonably believes that an item is a psychoactive substance it can be seized and destroyed. My question to the Minister is, surely it needs to go beyond what an officer reasonably believes, otherwise legal substances could be destroyed by the police, with no comeback for the owner of the substances, simply on the basis that an officer's reasonable belief about those substances is not well founded and is not the fact. I beg to move.

Lord Howarth of Newport: My Lords, my amendment in this group seeks to introduce a new clause after Clause 35. Again, it is on the subject of stop and search and, like the amendments of the noble Lord, Lord Paddick, its purpose is to probe.

The Committee should be told what the Government's policy on stop and search is. In April last year the Home Secretary announced that she intended to introduce a comprehensive package of reform of police stop-and-search powers. She had been informed by Her Majesty's Inspectorate of Constabulary that a quarter of a million stop-and-search operations—or some 27% of street searches—in 2013 had been illegal. In the other place she said:

"I want to make myself absolutely clear: if the numbers do not come down, if stop-and-search does not become more targeted, if those stop-to-arrest ratios do not improve considerably, the Government will return with primary legislation to make those things happen".

She went on to say:

"nobody wins when stop-and-search is misapplied. It is a waste of police time. It is unfair, especially to young, black men. It is bad for public confidence in the police".—[*Official Report*, Commons, 30/4/2014; col. 833.]

The Home Secretary noted that black people were still seven times more likely to be searched on the street than white people, which had been seen as sharply divisive in Britain's black and minority ethnic communities. She might also have noted that in 2013, white people were twice as likely to have taken drugs in the previous year as black or Asian people.

9.45 pm

There are class differences in the patterns of drugs usage. The 2011 online global drug survey of 15,500 mainly young, white, employed, well-educated middle-class people found that their patterns and habits of drug use were far greater than those of the generality of the population. Two-thirds of them had taken cannabis in the previous year; more than 50% had taken MDMA; 41% had taken cocaine; and 25% had taken ketamine. One in 10 had been stopped and searched in the previous 12 months. Nearly half those from the sample who were found with cannabis and a third of those found with MDMA were released simply with a verbal warning. I fancy that it would have been a very different case with young black males in inner-city areas.

The accusation, false or justified, that the police were routinely targeting black youths as being likely to be in possession of and dealing in controlled drugs was one of the factors that lay behind the Brixton riots in 1981 and was again alleged at the time of 2011 riots in London, Birmingham and Manchester. It appears that the Home Secretary was only, shall we say, equivocally supported by No. 10 in her ambition to reform police stop-and-search powers, but the police have responded and the statistics show that stop and search is now down. However, knife crime is up, as the noble Lord, Lord Paddick, told us earlier.

Against that background, the legislation introduces a whole new range of circumstances in which stop-and-search powers may be exercised, and it is very confusing. Are the Government trying to reduce the incidence of stop and search or is their policy to make plans such that there will be an increased incidence of it? Sir Bernard Hogan-Howe, the Metropolitan Police Commissioner, said recently that the use of stop and search is a "reasonable tactic" in the right circumstances, and indeed its use may need to increase. But I note also that Tim Newburn, professor of criminology at the London School of Economics, was quoted in the *Times* on 23 June as saying that the police gave suspicion of carrying weapons as a reason for stop and search in 12% of cases, but suspicion of being in possession of drugs as their reason for stop and search in 58% of cases. It is a power that is heavily used where there are suspicions that people are in breach of the law on drugs, and it will be the more so as a consequence of this legislation.

I come back again to the practicalities. I would like the Minister to tell us how a police officer or customs officer can have reasonable grounds to suspect that a person has committed or is likely to commit an offence within the terms of this Bill. The officer must reasonably suspect someone of having a psychoactive substance—we know how difficult it is to identify them—either on their person or in their vehicle or premises, and moreover the officer must have reasonable grounds to suspect that the substance is not for their own use, but with an intent to supply, import or export it. If the officer does find an unidentified substance, how is he or she to know whether it is a controlled substance or a psychoactive substance, because different legislation applies according to which it is?

I think it will be helpful to the Committee if the Minister can tell us why the Home Office has apparently done an about-turn on stop and search. Because I am

concerned about the possible further proliferation of the use of this power, my Amendment 89 would require that:

"The Secretary of State shall make a report to Parliament each year on the use of",

these powers, and to provide,

"statistical and other information which it appears appropriate to the Secretary of State to include as to the numbers of individuals stopped and searched under these powers, their ethnicity and other socio-economic characteristics, the grounds upon which these powers have been used, and the numbers of people subsequently made subject to the various enforcement measures provided for in this Act".

Does stop and search actually prove to be productive and useful?

Lord Bates: My Lords, let me deal first with Amendments 87A and 89, which relate to the stop-and-search powers in the Bill. The noble Lord, Lord Paddick, has explained that Amendment 87A would remove the liability to stop and search persons suspected of committing the offence of failing to comply with a prohibition order or premises order. As I understand it, the case for the amendment is that any breach of a prohibition order or premises order would in itself constitute an offence under Clauses 4 to 8, and accordingly it is not necessary to apply the stop-and-search powers to the Clause 23 offence. Such reasoning seems to misunderstand the nature of the prohibition orders and the premises orders. As we have already debated, these orders may contain any prohibitions, restrictions or requirements that the court considers appropriate. Failure to comply with these would be a breach of the order and therefore constitute an offence under Clause 23, so a person could commit the Clause 23 offence without also committing one of the main offences under Clauses 4 to 8. It is therefore entirely appropriate that the stop-and-search powers extend to circumstances where a person is suspected of failing to comply with a prohibition or premises order. To remove the reference to the Clause 23 offence would weaken the enforcement powers in the Bill.

Amendment 89, in the name of the noble Lord, Lord Howarth, would require an annual report to Parliament on the exercise of the stop-and-search powers. We recognise the sensitivity surrounding the exercise of such powers, which is why my right honourable friend the Home Secretary is determined to reform the way that they are used. Indeed, our party manifesto included a commitment to legislate to mandate changes in police practices if stop and search does not become more targeted and stop-to-arrest ratios do not improve.

As to the specifics of the amendment, I advise the noble Lord that forces must already collect data on stop and search that are published annually for public scrutiny. Those data include the ethnicity of the individuals concerned. Forces are also required under the Best Use of Stop and Search Scheme to record additional data, such as the reason for the stop and search, the outcome and whether there is a connection between the two. This greater transparency enables greater scrutiny and accountability. I expect such data collections to include the stop-and-search powers provided for under the Bill. The noble Lord has raised some serious points. He is right that the stop-and-search powers in the Bill need to be properly monitored, but I hope I have been able to reassure him that there are already mechanisms in place to do just that.

Amendment 94A relates to Clause 46, which provides for a fast-track procedure for the disposal of seized psychoactive substances. The clause was included in the Bill at the direct request of the national policing lead on new psychoactive substances. Clause 46(1) outlines four conditions that, when met, allow a substance to be disposed of under the fast-track process.

Amendment 94A relates to the third condition—namely, that the officer reasonably believes that the seized item is a psychoactive substance but is not evidence of any offence under the Bill. Amendment 94A seeks to amend the condition so that a substance can be seized only where it is proved to be psychoactive. The procedure provided by the clause broadly mirrors the well-established process already in operation for temporary class drugs under Section 23A(4) and (5) of the Misuse of Drugs Act 1971. Section 23A(4) uses the same language as here—namely, a test of "reasonably believes". For small quantities of seized substances, where there is no evidence of an offence under the Bill, this is an appropriate test. We must be mindful both of the need to protect the public—we do not want to be returning potentially harmful substances once seized—and to avoid tying up the police in unnecessary bureaucracy and the need for expensive forensic testing.

The amendment has the potential to severely restrict the utility of this power and questions the professional judgment of police and customs officers. An officer's reasonable belief in this context could be based on the substance's packaging, its markings or even whether the individual from whom it was seized appears intoxicated and the officer can infer that the substance found may be responsible. As demonstrated in the context of temporary class drug orders, requiring officers to make decisions based upon their reasonable belief is not new. The Home Office will continue to work with the national policing lead and the College of Policing to ensure that guidance is developed on this issue to assist officers.

The police rely on statutory stop-and-search powers. I refer noble Lords to annexe A of the Police and Criminal Evidence Act codes of practice for the full list. We need to add those statutory powers for the purposes of enforcing the provisions of this Bill. The Government are clear that the powers of stop and search, when used correctly, are vital in the fight against crime. However, when it is misused, stop and search is counterproductive and a waste of police time. That is why the proposal to introduce the best use of stop-and-search schemes and the publication of data, which the noble Lord requested, is such an important part of us monitoring how this legislation is implemented on the ground. That evidence will be collected and, therefore, able to be reviewed as this goes forward. I hope that, with that additional explanation, the noble Lord will feel able to withdraw his amendment.

I am conscious that a letter is on its way to noble Lords, which I promised after the interventions of the noble Lords, Lord Rosser and Lord Harris of Haringey, on the whole process of how one begins testing and determining whether what is there is a psychoactive substance. That is in train and will certainly be available

[LORD BATES]
to noble Lords ahead of Report stage. I hope that that will give further clarity on this matter.

Lord Paddick: I thank the Minister for his response. By changing horses half way through, I might have thrown the Minister in specifying Clause 23 and not specifying Clauses 4 to 8. Therefore, what the Minister read out was an assumption of what my thinking was, as opposed to what my thinking became when I presented it; namely, that if these are arrestable offences there is a power for the police, once the person is arrested, to detain and search them. Therefore, it would seem unnecessary to have the powers provided by Clause 32. I would not expect the noble Lord to respond now to that because it was my fault for misleading him in the way in which I presented the amendments.

On seizure and destruction of substances that an officer reasonably believes to be a psychoactive substance, my point was not about coming across a small amount in someone's pocket that the officer could then seize and destroy. We were thinking more of where the substances were found in a head shop, for example, and turned out to be a large quantity which could or could not be a psychoactive substance. Those large quantities could be destroyed simply on the basis of the officer reasonably believing that they are something covered by this Bill, but which then turn out not to be.

Having further explained what I was getting at but did not make clear the first time around, perhaps the Minister will respond to me between now and Report stage. On that basis, I beg leave to withdraw the amendment.

Amendment 87A withdrawn.

Amendment 87B

Moved by ***Baroness Chisholm of Owlpen***

87B: Clause 32, page 19, leave out line 10

Baroness Chisholm of Owlpen: My Lords, given the lateness of the hour, I do not propose to speak at length about this group of technical and drafting amendments. My noble friend Lord Bates has provided details of the amendments in two letters to the noble Lord, Lord Rosser, copies of which have been sent to all noble Lords who spoke at Second Reading. Copies of these letters have been placed in the Library. I would be happy to explain particular amendments if any noble Lord would like further details, but for now I beg to move.

Amendment 87B agreed.

Amendment 87C

Moved by ***Lord Bates***

87C: Clause 32, page 19, line 11, at end insert ", or

(0) a designated NCA officer authorised by the Director General of the National Crime Agency (whether generally or specifically) to exercise the powers of a police or customs officer under this Act;"

Amendment 87C agreed.

Clause 32, as amended, agreed.

Clauses 33 and 34 agreed.

10 pm

Clause 35: Power to enter and search premises

Amendment 88

Moved by ***Lord Bates***

88: Clause 35, page 20, line 33, after "a" insert "relevant enforcement officer or a"

Amendment 88 agreed.

Clause 35, as amended, agreed.

Amendment 89 not moved.

Clause 36 agreed.

Schedule 2: Search warrants

Amendments 90 to 94

Moved by ***Lord Bates***

90: Schedule 2, page 35, line 36, at end insert—

"( ) In the case of an application made by a procurator fiscal, any requirement imposed on a person applying for a search warrant by this paragraph or paragraph 2 may be met by a relevant enforcement officer."

91: Schedule 2, page 36, leave out lines 20 and 21

92: Schedule 2, page 36, line 27, at end insert—

"( ) In this paragraph "specific-premises warrant" and "all-premises warrant" have the meaning given by section 35(3)."

93: Schedule 2, page 38, line 23, after "warrant" insert "issued in England and Wales or Northern Ireland"

94: Schedule 2, page 38, line 35, leave out paragraph (b)

Amendments 90 to 94 agreed.

Schedule 2, as amended, agreed.

Clauses 37 to 45 agreed.

Clause 46: Power of police, etc to dispose of seized psychoactive substances

Amendment 94A not moved.

Clause 46 agreed.

Clause 47: Forfeiture of seized items by court on application

Amendments 95 to 99

Moved by ***Lord Bates***

95: Clause 47, page 26, line 35, leave out from beginning to first "the" in line 44 and insert—

"(3) If the court is satisfied that—

(a) the item is a psychoactive substance, and

(b) at the time of its seizure, the item was not being used for the purposes of, or in connection with, an exempted

activity (see subsection (12)) carried on by a person entitled to the item,

the court must order the forfeiture of the item.

(4) If the item is not a psychoactive substance,"

96: Clause 47, page 27, line 3, leave out "body" and insert "person"

97: Clause 47, page 27, line 34, at end insert "an individual who is"

98: Clause 47, page 27, line 39, at end insert "an individual who is"

99: Clause 47, page 27, line 42, leave out subsection (12) and insert—

"(12) For the purposes of this section—

(a) an activity is an "exempted activity" in relation to a person if the carrying on of the activity by that person would not be an offence under this Act by virtue of regulations under section 10;

(b) the persons "entitled" to an item are—

(i) the person from whom it was seized;

(ii) (if different) any person to whom it belongs."

Amendments 95 to 99 agreed.

Clause 47, as amended, agreed.

Clause 48 agreed.

Clause 49: Return of item to person entitled to it, or disposal if return impracticable

Amendments 100 and 101

Moved by ***Lord Bates***

100: Clause 49, page 29, line 16, after "is" insert "an individual who is"

101: Clause 49, page 29, line 21, after "is" insert "an individual who is"

Amendments 100 and 101 agreed.

Clause 49, as amended, agreed.

Clause 50: Forfeiture by court following conviction

Amendments 102 and 103

Moved by ***Lord Bates***

102: Clause 50, page 29, line 30, at end insert—

"( ) In this section "the court" means—

(a) the court by or before which the person is convicted of the offence, or

(b) if the person is committed to the Crown Court to be dealt with for that offence, the Crown Court."

103: Clause 50, page 29, line 31, leave out "by which the person is convicted"

Amendments 102 and 103 agreed.

Clause 50, as amended, agreed.

Amendments 104 and 105 not moved.

Clauses 51 and 52 agreed.

Schedule 3: Providers of information society services

Amendments 105A to 105J

Moved by ***Lord Bates***

105A: Schedule 3, page 41, line 15, leave out from "applies" to end of line 16 and insert "where—

(a) a person proposes to give a prohibition notice,

(b) a person makes an application for a prohibition order under section 17, or

(c) a person mentioned in subsection (1)(a) or (2) of section 24 makes an application under that section for the variation of a prohibition order."

105B: Schedule 3, page 41, line 17, leave out "A" and insert "The"

105C: Schedule 3, page 41, line 17, leave out "a"

105D: Schedule 3, page 41, line 18, leave out second "the" and insert "a non-UK"

105E: Schedule 3, page 41, line 29, after "making" insert "or varying"

105F: Schedule 3, page 41, line 32, leave out "a law enforcement officer" and insert "the relevant enforcement authority"

105G: Schedule 3, page 41, line 33, leave out "officer" and insert "authority"

105H: Schedule 3, page 41, line 36, leave out "a law enforcement officer" and insert "the relevant enforcement authority"

105J: Schedule 3, page 41, line 37, leave out from "of" to end of line 43 and insert "the relevant matters (see sub-paragraph (5A)).

(5A) The "relevant matters" are—

(a) in the case of a prohibition notice, the intention to give a prohibition notice containing the terms;

(b) in the case of a prohibition order, the intention to apply for—

(i) a prohibition order containing the terms, or

(ii) the variation of a prohibition order so that it contains the terms;

(c) in either of those cases, the terms.

(6) In the case of a prohibition order, it does not matter for the purposes of sub-paragraph (5) whether the request or notification is made before or after the making of the application referred to in sub-paragraph (5A)(b).

(7) In this paragraph—

"non-UK service provider" means a service provider established in an EEA state other than the United Kingdom;

"the relevant enforcement authority" means—

(a) in the case of a prohibition notice to be given by a constable, the chief officer of police or chief constable (as the case may be) of the police force of which the constable is a member;

(b) in the case of a prohibition notice to be given by a designated NCA officer, the Director General of the National Crime Agency;

(c) in the case of a prohibition notice to be given by a general customs official, the Secretary of State by whom general customs functions are exercisable;

(d) in the case of a prohibition notice to be given by a local authority, that local authority;

(e) in the case of a prohibition order, the person applying for the order or for the variation of the order (as the case may be)."

Amendments 105A to 105J agreed.

Schedule 3, as amended, agreed.

Clause 53: Interpretation

Amendments 105K and 105L

Moved by ***Lord Bates***

105K: Clause 53, page 31, line 4, leave out "9 or"

105L: Clause 53, page 31, line 17, after "sheriff" insert "or a justice of the peace"

Amendments 105K and 105L agreed.

Clause 53, as amended, agreed.

Clause 54 agreed.

Schedule 4: Consequential amendments

Amendments 106 and 107

Moved by ***Lord Bates***

106: Schedule 4, page 45, line 36, at end insert—

"Police (Northern Ireland) Act 2003

2A In Schedule 2A to the Police (Northern Ireland) Act 2003 (powers and duties of community support officer), after paragraph 9 insert—

"Powers to seize and retain: psychoactive substances

9A (1) If a CSO—

(a) finds a psychoactive substance in a person's possession (whether or not the CSO finds it in the course of searching the person by virtue of any other paragraph of this Schedule), and

(b) reasonably believes that it is unlawful for the person to be in possession of it,

the CSO may seize it and retain it.

(2) If a CSO—

(a) finds a psychoactive substance in a person's possession (as mentioned in sub-paragraph (1)), or

(b) reasonably believes that a person is in possession of a psychoactive substance,

and reasonably believes that it is unlawful for the person to be in possession of it, the CSO may require the person to give the CSO his name and address.

(3) If in exercise of the power conferred by sub-paragraph (1) the CSO seizes and retains a psychoactive substance, the CSO must—

(a) if the person from whom it was seized maintains that he was lawfully in possession of it—

(i) tell the person where inquiries about its recovery may be made, and

(ii) explain the effect of sections 45 to 47 and 49 of the Psychoactive Substances Act 2015 (retention and disposal of items), and

(b) comply with a constable's instructions about what to do with it.

(4) Any substance seized in exercise of the power conferred by sub-paragraph (1) is to be treated for the purposes of sections 45 to 49 of the Psychoactive Substances Act 2015 as if it had been seized by a police or customs officer under section 32 of that Act. Section 46 of that Act applies in relation to any such substance as if the reference in subsection (1)(b) to the police or customs officer who seized it were a reference to the CSO who seized it.

(5) A person who fails to comply with a requirement under sub-paragraph (2) is guilty of an offence and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(6) Paragraph 4 applies in the case of a requirement imposed by virtue of sub-paragraph (2) as it applies in the case of a requirement under paragraph 2(1).

(7) In this paragraph "police or customs officer" and "psychoactive substance" have the same meaning as in the Psychoactive Substances Act 2015."

107: Schedule 4, page 47, line 11, leave out from beginning to "or" in line 12

Amendments 106 and 107 agreed.

Amendment 108 not moved.

Schedule 4, as amended, agreed.

Clauses 55 and 56 agreed.

Clause 57: Commencement and short title

Amendments 109 to 112 not moved.

Amendment 113

Moved by ***Lord Howarth of Newport***

113: Clause 57, page 33, line 12, at end insert "but not before both Houses of Parliament have debated the conclusions of the United Nations General Assembly Special Session on Drugs in 2016"

Lord Howarth of Newport: My Lords, I am conscious that I am prevailing upon the patience and tolerance of the House in moving an amendment at this time of the evening and at the very tail end of the Bill. However, it is on an important topic which warrants our consideration.

I emphasise that this is, of course, a probing amendment, which, if it were pressed seriously, would be a wrecking amendment. It is no part of our role to wreck the legislation; rather, we seek to improve it and offer advice to our elected colleagues in the other place on how to make it better.

My amendment proposes that the provisions of this Bill should not be brought into force,

"before both Houses of Parliament have debated the conclusions of the United Nations General Assembly Special Session on Drugs in 2016".

I think that special session is due to be held in March of 2016. When, some time ago, the Secretary-General of the UN, Ban Ki-moon, announced that there would be a special session of the UN General Assembly on drugs, he urged all member states to,

"conduct a wide-ranging and open debate that considers all options".

Indeed, some Governments across the world have developed rational policy in relation to drugs and have led public opinion. I have in mind the Czech Republic, Portugal, Switzerland, Germany, the Netherlands, Uruguay and, of course, a number of states of the United States of America.

In 2009, three former Latin American presidents wrote in an article in the *Wall Street Journal* that,

"it's high time to replace an ineffective strategy with more humane and efficient drug policies. … we must shatter the taboos that inhibit public debate about drugs in our societies. … the long-term

solution is to reduce demand for drugs in the main consumer countries. To move in this direction, it is essential to differentiate among illicit substances according to the harm they inflict".

That differentiation is conspicuously lacking in this legislation.

The Global Commission on Drug Policy, whose membership is a roll call of eminent and respected international figures—such as Kofi Annan, Paul Volcker, Javier Solana, former UN Commissioners for Human Rights and for Refugees, former presidents of Poland, Portugal, Switzerland, Brazil, Chile, Colombia and Mexico—said in a report published in 2011:

"The global war on drugs has failed, with devastating consequences for individuals and societies around the world. … fundamental reforms in national and global drug control policies are urgently needed".

These were formidable indictments of the prohibitionist orthodoxy.

In a debate in your Lordships' House on 17 October 2013, a former Lord Justice of Appeal told us that it is perfectly clear,

"that there has to be a rethink on drugs in this country. It clearly is not working".—[*Official Report*, 17/10/13; col. 677.]

Public opinion in Britain has been shifting. It is a generational change, and a change that is registered right across the political spectrum regardless of how people vote. Younger people feel that prohibition has failed and that a different set of policies is needed. YouGov research for the *Sun* newspaper in 2012 found that 67% of people thought the policy was working badly. Ipsos MORI research in 2013 for the Transform Drug Policy Foundation found that 53% of people thought that it was right to regulate the production and supply of cannabis and to decriminalise possession.

The United Kingdom, as one of the world's major consumers of drugs, especially cocaine, has a major responsibility for the devastation that has been wrought in the producer countries and transit countries of Latin America, the Caribbean and west Africa. It behoves us to consider the implications of our own habits of self-indulgence and patterns of consumption for unfortunate people the world over. Policy should be based on evidence and experience, not on taboo, fear of what the tabloids may say, a fixed mindset, moralism, and certainly not on panic.

There is a crisis in relation to new psychoactive substances. We all agree about that but the policy response needs to be based on evidence and needs to be rational. As I have said before, it seems futile to attempt to overlay on the digital global economy a system of prohibition that failed to work effectively in the pre-digital era; nor do I think that idiosyncratic legislation in one country or one small group of countries, such as the United Kingdom, Ireland, Poland and Romania, is going to provide the right solution—there is no solution—or, rather, an appropriate range of policies.

Earlier today when we were referring to Ireland and the difficulties that the Border Force might face in enforcing the bans on importation, the Minister observed how difficult it is when a country—in that case, Ireland—seeks to legislate in isolation, and seemed to be arguing for a more cohesive international approach. In that respect, I very much agree with him.

The European Monitoring Centre on Drugs and Drug Addiction, in its very recently published annual report, observes that the complexity of the drugs problem is far greater now than it was 20 years ago. It notes that manufacture, supply, retail, relevant websites and payment processing may all occur in different countries, and says that crudely simplistic unilateral legislation cannot even begin to work.

I believe it is time for all the political parties to admit the failures of policy over the past half-century. I believe that the United Kingdom should join the countries that are willing to think afresh about these problems and that we should adopt a thoroughly constructive approach in the lead-up to the United Nations General Assembly Special Session. I would be most grateful if the Minister told us what part the Home Office is playing in the developing discussions.

My noble friend Lady Meacher, who chairs the All-Party Parliamentary Group for Drug Policy Reform, has been intensively engaged in international diplomacy on behalf of the group to try to ensure that there is a productive outcome of the process leading up to the UNGASS. In the mean time, we should refrain from implementing what I am sorry to repeat that I believe is ill-conceived prohibitionist legislation, at any rate until we see the outcome of these global discussions and Parliament has had the opportunity to deliberate upon the discussions and findings of the UN General Assembly. I beg to move.

Baroness Meacher: My Lords, I support this amendment because of the enormity of the importance of the UNGASS to global drug policy. I will take less than two minutes of the House's time but I plead with your Lordships to bear with me.

The All-Party Parliamentary Group for Drug Policy Reform has provided a document which we hope will be of interest to the Government. We worked for about 18 months on the document, called *Guidance on Interpreting the UN Drug Conventions*. We have worked closely with senior Mexican officials and experts from around the world on the document and we have had discussions with I cannot even say how many country representatives. I spoke at the Vienna CND on it.

As we speak, the President of a very significant Latin American country has his office and Ministers discussing the proposal that he would like to adopt to present the essentials from this guidance document to the UNGASS next year. This week a Latin American ambassador said he very much hoped that the UK Government would support the President's initiative. The former president of the Organization of American States supports our work. The European Commission wants to work with us on an EU document to go to UNGASS because it is so impressed with our document.

Very briefly, the guidance urges UN member states across the globe to begin a process to develop evidence-based policy. The UN conventions upon which we all base our policies were not developed on the basis of evidence of which policies would achieve the overarching objective of the UN conventions to advance,

"the health and welfare of mankind".

Rather, global drug policy has been based upon a wrong-headed psychological theory of motivation. Punish everyone involved with drugs and we will achieve a

[Baroness Meacher]
drug-free world: so said President Nixon all those years ago in 1971. The opposite has of course occurred in the last 50 years.

10.15 pm

We argue that the aim of the UNGASS must be to open up the possibility of trying new drug policies and evaluating them to develop an evidence base about those policies which can and will effectively achieve the objective of the conventions. The amendment suggests that the Bill should be held on ice, awaiting the outcome of the UNGASS and an opportunity for both Houses to debate it. That would of course be a highly rational approach for the Government to take but we are realists. We have never had rational drug policy in this country and we do not expect it today. This is not a party-political point at all. In some sense, I understand why senior politicians do not have rational policy. However, I would be grateful to have an opportunity for the noble Lord, Lord Howarth, and I—and maybe one or two others—to meet the Minister, and perhaps other Ministers too, before or possibly after Report, specifically to discuss the UNGASS and the UK Government's position with respect to it.

Lord Bates: My Lords, I thank the noble Lord, Lord Howarth, for moving his amendment, which gives us an opportunity to return to the big picture on the issues we face, namely the global work which is happening on tackling drugs. Let me start by outlining the importance that the Government attach to the special session and our approach to influencing its form and outputs. The 2016 session will be the highest-level UN meeting on international drug policy since 1998. It represents a unique opportunity to engage with all UN member states, international organisations and civil society, to see how they can improve the global response to the harms caused from drugs. We very much appreciate the work undertaken by the All-Party Group on Drug Policy Reform.

The Government are committed to taking a leadership role at that special session. We are working with our international partners to share our national expertise and to advocate a modern, balanced and evidence-based approach to drugs within the UN conventions—an approach which delivers prevention and recovery, alongside proportionate action to restrict the supply of drugs.

Part of our objectives for the special session will be to enhance international action on new psychoactive substances. This is an area where the UK is recognised as a global leader and our long-term plan is delivering significant successes. In April, the Government secured international controls on mephedrone, the first new psychoactive substance to be banned at an international level. We will continue to work with the World Health Organization and the United Nations Office on Drugs and Crime to strengthen the UN's scheduling system and ensure that the most prevalent, persistent and harmful new psychoactive substances are banned at an international level. We will also use the special session to enhance information-sharing about the latest forensic and public health evidence. I am sure that the Committee will welcome the UK's ongoing work to fund and support the UN's global Early Warning Advisory and the European Monitoring Centre for Drugs and Drug Addiction.

We will also encourage international law enforcement co-operation to tackle the production and supply of new psychoactive substances. This includes supporting China and India to enhance their interception of psychoactive substances for export. We will use the special session to share the lessons we have learned on the need for a balanced and evidence-based approach. We will build on our work through the UN, G7 and EU to share our experience of delivering targeted prevention campaigns.

The Committee will understand the important contribution that civil society and international organisations, such as the World Health Organization, could make to the special session. I reassure noble Lords that the Government are focused on ensuring an open and inclusive preparatory process. We are working closely with our international partners and civil society. We must not, however, allow international discussions to delay for one moment UK action to tackle the pernicious psychoactive substances harming our communities right now. That is why we do not accept this amendment. But in saying that, I would also say to the noble Baroness, Lady Meacher, and to the noble Lord, Lord Howarth, that I am of course very happy to arrange a meeting. It would perhaps be beneficial to have one with my right honourable friend Mike Penning, who leads in the Home Office on this particular area, to offer some reflections about what the Government's position should be going into that important set of negotiations.

This might be the last time I am on my feet in Committee, so my final point is to thank noble Lords for their contributions. It has been an excellent process and has given us a lot of food for thought, which we will reflect on between now and Report. This might be the only contentious part of my closing comments, but I do think that we have a rational approach to drugs policy. It may not be the one that some Members would choose, but it certainly has a rationale to it. In addition, it is not without success: we can all take a modicum of encouragement from the fact that overall drug use, particularly among young people, is falling. That is to be welcomed. Given the context of the earlier debates, I would point out that the use of alcohol and tobacco is also falling among young people. That offers some hope that we are on the right track, although of course we have a very long way to go.

Lord Howarth of Newport: My Lords, perhaps on behalf of the Committee, I can say again how much I believe all of us have appreciated the way the Minister and his colleague, the noble Baroness, Lady Chisholm, have dealt with the proceedings in the Committee. There are profound differences of view as to what the right policy should be, but we have managed to debate these difference of view in, I think, an amicable and constructive fashion. I certainly value that very much and am most grateful to him. I am not so enthusiastic about the Minister's response to this specific amendment and, when he said that the Government do not intend

to delay implementation of the Bill for one minute, I thought he showed himself to be uncharacteristically hard-line.

The Minister then went on to be a little modest about the success of the Government's policies, saying that they had been "not without success". That did not seem to me to be a very large or confident claim. He then did make a rather large claim, and I am not convinced that it is a justifiable one. He said that drug use, especially among young people, has been falling. I just wonder whether he or any of us really knows—it is peculiarly difficult to find out what is really going on. The drug scene constantly mutates: you can monitor usage of some particular drugs but you can be pretty sure that if you find that there is a dip in the use of cannabis, it is because there is an increase in the use of ecstasy or whatever. It is very hard to keep track of it. I notice that in the report on new psychoactive substances that Mr Penning's predecessor, the coalition Minister Norman Baker, produced, it was evident that the experts consulted were really finding it very hard to get a handle on what was actually going on in the field of new psychoactive substances.

The Minister, in his response, uttered a great many decent sentiments and used some encouraging words. He spoke of the Government taking a "leadership role" with international partners and of working towards "balanced", "evidence-based" and "proportionate" policy—who could do anything other than cheer that? He said that there would be a wide-ranging "sharing" of information and talked of partnership with the World Health Organization and with civil society. That I find genuinely encouraging. If the Government really are intent on developing an open and inclusive preparation process, as he told us, that will be helpful, because a lot of people have a contribution to make.

I was a bit more nervous when he spoke of partnership with China. I have myself advocated that the Foreign Office develops its relationship with China in relation to drugs, but none of us should forget that China uses the death penalty and that one of the problems about prohibition is that it leads to constant infringement, of the direst kind, of human rights.

This is complex territory, but I am very grateful to the Minister for agreeing to meet us. He has proposed that we should have a meeting with Mr Penning. If he can persuade the Home Secretary herself to meet the noble Baroness, Lady Meacher, myself and some others, that would be even more desirable, but I shall leave that with him. In the mean time, I beg leave to withdraw the amendment.

Amendment 113 withdrawn.

Amendments 114 and 115 not moved.

Clause 57 agreed.

House resumed.

Bill reported with amendments.

House adjourned at 10.25 pm.

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